



NLADA Comments on the Revision of LSC's 2012 – 2016 Strategic Plan

NLADA appreciates LSC's broad outreach for input in revising your 2012 – 2016 Strategic Plan. We have already provided an actively involved response, both through your survey request and through one of the two webinars held expressly to communicate with the public. This response summarizes a few of the key points we hope you will consider in moving forward on future initiatives.

First, a word of appreciation for the discipline and commitment the board and staff at LSC have shown in furtherance of a number of the goals articulated in 2012.

The involvement of all board members, of both parties, in meeting with and educating members of Congress about the work of your grantees and its importance to American ideals of fairness and justice has been crucial in the difficult political environment legal aid operates in. The efforts of the board, the president, and government relations staff on the Hill in seeking bipartisan support for funding and assuaging congressional concerns about accountability of both grantees and LSC itself has been essential in strengthening support in light of significant impediments. While we believe the goal of effective congressional education should be stated specifically and preeminently in the revised plan, the entire institution has performed admirably in maintaining that focus. This work obviously must continue to be a prime focus of LSC's efforts.

Likewise, we have noted the passion with which you have endeavored to raise public awareness and support for the concept of civil legal assistance for low-income people. The degree to which LSC has reached out to the judiciary, corporate executives, political leaders of both parties, private attorneys, the courts, and many other groups during the last five years has been impressive. The events around LSC's 40th anniversary and the annual White House forums have broadly expanded the circles of support that exist for civil legal aid within our justice and economic systems. Such support will continue to benefit LSC and its grantees well into the future.

Finally, the plan's focus on best practices, innovation and private attorney involvement has led to real, demonstrable progress in increasing the ability to reach and serve many thousands of more people through the application of new technologies, use of non-lawyers and private bar volunteers, and analytics related to the collection and use of data to improve delivery. While some of these new approaches to delivery lead directly to challenges that your new plan should address, there can be no doubt of the promise of these techniques in addressing the overwhelming unmet need for effective, accessible services your grantees face. It is also essential that the legal aid community remain at the forefront of the response to the shifting landscape of the practice of law in the United States.

While we continue to agree with many of the objectives contained in the current iteration of the plan, there are several areas of concern we submit for your consideration as you go forward.

Goal One. Maximize the Availability, Quality, and Effectiveness of Legal Services

1. LSC Funding

The fact that LSC's grantees are unable to serve millions of disadvantaged individuals and families in need of their assistance underscores the need for LSC to focus its energies particularly on educating the Congress about this terrible shortcoming in our justice system. While we note above this administration's exemplary performance to date on making this case to the Congress, as we pointed out in our comments to the 2012 draft plan, we continue to believe that such a paramount responsibility should be specifically designated under the initiatives inherent to the revised plan.

2. Delivery Innovation/100 Percent Access

We appreciated the opportunity to be involved in the design and implementation of the two LSC Technology Summits and subsequent report that have provided a new vision of how innovative technological solutions can transform the paradigm of service to the client community. The concept of 100 percent access to some kind of effective legal assistance has charted a course of action that is already transforming the legal aid delivery system. The 2015 Resolution of the Conference of Chief Justices and State Court Administrators, *Reaffirming the Commitment to Meaningful Access to Justice for All*, will inevitably serve to focus attention at the state level on improving the civil justice system and its capacity to serve the needs of those who cannot currently afford access to justice.

We trust, however, that the movement toward defining and providing 100 percent access will not result in a view of a justice system based purely on the pragmatic limitations flowing from the hugely under-resourced system that we have today. Rather, we trust that the vision will be inclusive of more robust, resource-intensive services necessary in many instances to provide actual, effective access to not just procedural justice, but substantive justice as well.

It is inordinately sensible to provide assistance at the lowest resource level where such assistance is EFFECTIVE in meeting the needs of the person to be served. The concept of 100 percent access through assisted self-help, automated document assembly, the use of non-lawyer professionals, unbundled legal assistance, alternative dispute resolution techniques, and the multitude of other delivery innovations being considered is a transformational concept that certainly should be a significant part of the plan. It is thus appropriate for LSC to devote, as you have, considerable energy to building state systems that help expand exponentially access to legal information and assisted self-help, unbundled services, and the other components critical to greatly expanding available resources for the currently under-served population.

However, any planned civil justice system contained within the vision and definition of 100 percent access must also include the capacity to assist those clients who need more than these types of limited services. LSC and its grantees must aspire to be part of a system resourced at a level that provides a full continuum of the services necessary to achieve effective outcomes for all clients. While we are encouraged by the move you and others have taken to develop better data on the effectiveness of a wide array of legal interventions, there is ample evidence already that many people living in poverty have problems that require full representation to provide effective access to justice.

Yet there is a real danger that particular public funders and justice systems, faced with enormous pro se dockets, might well focus entirely on lower-resource solutions in a way that shifts, or cuts

even further, resources that might otherwise go to more robust advocacy. The concept of 100 percent access must not be used to further limit the government's responsibility to invest in the justice system. At the end of the day, a successful plan should not be measured principally by how many people receive some sort of assistance, but whether the assistance directed towards each person provides actual and effective access to justice.

As we all recognize, there is a need for a great deal more research and data on the outcomes generated by various kinds of assistance. LSC has been a leading voice in pushing for much sounder empirical data to guide decisions about which investments along the continuum are the most effective and efficient use of resources. The planning process around 100 percent access should include an assessment of what kinds of assistance work best, based both upon the likelihood of success and the client's ability to understand and use the assistance and take into account the interests at stake.

3. Performance Management

- **Best Practices**

We continue to support your focus on using the resources of LSC to identify and promote best practices beneficial to the maximization of effectiveness in the legal aid community. We particularly support the inherent recognition in the draft of the wide range of best practices relevant to improving the **quality of civil legal assistance**. As stated above, we view an effective delivery system to include a wide continuum of services - from strategic impact advocacy, to unbundled legal services, to effective use of technologies and data sources to greatly expand the reach of the system to serve those who can effectively represent themselves when provided with the information they need. While your grantees may differ greatly as to the resource choices they make along this continuum of service, LSC should ensure that its expansion and sharing of best practices covers the wide array of management and advocacy practices relevant to your grantees.

We would also suggest that your commentary on best practices be more explicit as it relates to issues of **diversity and cultural competence**. Your grantees face a difficult challenge in recruiting and retaining a diverse cohort of advocates and leaders, an issue particularly critical as a new generation moves into leadership positions. Such leadership is critical to understanding the needs of the racially and culturally diverse populations programs serve.

The ABA Standards for the Provision of Civil Legal Aid have two standards (2.4 and 2.5) that relate specifically to diversity and cultural competence in addition to an inclusion of the concepts throughout the document from the introduction to the last standard. The LSC plan is a document that signals how issues of difference will be engaged by the LSC management and board. We encourage you to incorporate a clear and early statement that reinforces the value of diversity and your intent to include those issues in your continuing development of resources to promote best practices in the delivery of civil legal aid.

We also suggest that the revised plan include specific recognition of the need for additional focus on tools and best practices that support the development of a **new cadre of leaders** in civil legal aid. The moment has clearly arrived when a massive generational shift is affecting every facet of the operations of legal aid programs across the United States. Enhancing the growth of these new leaders should be a priority of the revised plan.

Likewise, we encourage you to add more specific language in the plan concerning the involvement of the client community in the work of LSC and on decisions that affect grantee operations. We applaud your seeking client involvement in the process of revising the 2012 strategic plan and on grantee oversight visits. NLADA remains committed to assisting these efforts in any way that we can.

- **Civil Legal Outcomes/Standards and Metrics.**

NLADA appreciates the thoughtful approach taken by LSC as you adopted a data gathering and outcome measurement protocol and toolkit that was sensitive to the specific local needs of your grantees. Rather than push a nationally driven set of outcome measures, as some continue to propose, the current system allows for grantees to craft appropriate systems that are consistent with the demands of other funders and of internal management priorities. We continue to believe that this fundamental principle should guide LSC as it moves forward to refine its data management processes and analytical metrics of performance.

We understand and support the need for LSC and the entire legal aid community to gather data to improve the quality and effectiveness of the legal services grantees provide and to generate demonstrable results for funders and other stakeholders. As mentioned above, developing evidence-based data to determine the effectiveness of various legal information, advice, and representational techniques is critical to helping grantees wisely invest their scarce dollars.

Now that the toolkit has been developed, the revised plan should include a second step focused on how best to analyze and use the information gathered by your local grantees to support more informed resource and delivery decisions. LSC can develop systems to capture more effective evidence-based data and measure program performance differently while still honoring the concepts inherent in providing local flexibility in deciding how to spend scarce federal resources in conjunction with other funding sources in a coherent whole.

With the new outcomes process becoming operational in the field, the plan should be revised to phase in the development of new metrics and performance measures based upon information gleaned from the data being generated by the toolkits. We agree completely with the current plan's language about developing standards and metrics that take into account the diversity of service delivery models in the field, and the understanding that difficult matters need to be accounted for in a different way than brief service and advice. We are particularly concerned that LSC continue this recognition as you move toward the vision incorporated in the 100% access vision.

As currently drafted, the plan raises several particular issues of concern related to standards and metrics that we urge you to consider in your revision.

First, the current plan places less emphasis than we would suggest on the existing **LSC Performance Criteria** as a quality tool going forward. We understand that the board and management are undertaking a review of the current criteria and look forward to working with you as you consider changes to the existing document.

However, in that process LSC should not overlook that these performances measures have served both management and the field well over a considerable period. These criteria have been in use since 2007 and have served as the basis of LSC oversight and quality improvement initiatives for almost a decade. They were developed with painstaking care through a process that involved a

variety of stakeholders knowledgeable about quality in the delivery of legal services. They are also indexed to the ABA Standards for the Provision of Civil Legal Aid. Our general feedback on the usefulness and relevance of the criteria has been uniformly positive. The criteria clearly define the various areas of legal representation essential for quality legal assistance and have useful indicators to help measure a program's success toward the respective performance goals. While much has changed, and the need for updating is obvious, to start anew by de-emphasizing or rejecting a system that has worked well to define and improve program performance does not make sense.

We also continue to have concerns with the **efficiency metric** as defined in the current plan, as it could potentially be read to overstate the importance of case numbers over other, reasonable measures of quality. While the plan recognizes that this metric should be assessed in the "context of the nature of a grantee's cases", determining a metric for the "amount of legal services delivered" remains a challenging task for legal aid programs. We believe your new outcomes toolkit will assist the field in being able to better assess and track this standard in a quantifiable manner. At the moment, this standard remains definable mostly as a function of the absolute number of cases or matters handled. While that consideration is one valuable metric, at the national level it is problematic for several reasons.

Your 134 grantees operate in very different environments. On a simple measure, a dollar in New York City does not buy as much as a dollar in Albuquerque. To weigh a judgment of a program's performance on cost-effectiveness alone (measured by numbers of people served) will not provide a true measure of quality when used to assess a provider's cost per case.

Even more significantly, as the saying goes: "We should avoid valuing what we measure rather than measuring what we value". As previously noted, your grantees have carefully crafted delivery models that allocate resources to a broad continuum of legal assistance, including representational activities aimed at achieving "lasting results" under Standard 2.6 of the ABA Standards for the Provision of Civil Legal Aid and current LSC Performance Area Three (1)(c). The results of some of the work necessary to address recurring, systemic issues affecting large numbers of eligible clients are difficult to measure under a cost-effectiveness approach. Some of these cases are time consuming and expensive. We urge you to avoid a national measure that significantly dulls the incentive to pursue lasting community outcomes by primarily measuring cost efficiencies.

The move toward 100 percent access raises a whole host of new considerations as LSC tries to measure efficiencies of services provided using new technologies and delivery techniques. As stated above, the revised plan should recognize the importance of developing new metrics and standards of performance that are reflective of the opportunities created by the new outcomes data to be gathered and revised to be consistent with a landscape that has shifted dramatically since 2012.

With respect to the area of **performance triggers**, we reiterate our strong support for the maximization of the per capita-based allocation of LSC basic field funding, particularly in light of the huge financial pressures facing all of your grantees. We ask that any system LSC develops to provide rewards or corrective actions be respectful of this principle.

We continue to endorse your focus on **Operational Support** in the plan. As to training and support, NLADA stands ready to assist and partner in this arena in any way that we can. We appreciate your recognition that many other organizations, both inside the legal aid community (e.g., NLADA, MIE,

Voices for Civil Justice, the Shriver Center), and outside organizations (e.g., National Center for State Courts, the ABA, Self- Represented Litigants Network, National Coalition for a Civil Right to Counsel, Department of Justice Access to Justice Initiative, Access to Justice Commissions, IOLTA, foundation and state funders) are also involved with your grantees in the important work of seeking justice for all. Some of your focus areas are already being addressed by these organizations, though possibly toward a different end than that which you aspire to. We urge that you both continue your efforts to support your grantees, while also maintaining the appreciation you have shown for partnering with appropriate outside stakeholders.

Goal Two. Become a Leading Voice for Access to Justice and Quality Legal Assistance in the United States

Once again, we share this priority with LSC and enthusiastically support your focus on the general concept, both with the public at large and with potential sources of funding for your grantees. Creating and conveying a compelling narrative about the needs of LSC's clients and the work of your programs is essential to your mission, particularly in such trying economic times. We only have a few comments on this goal:

1. Recognition should continue to be given to poor people and community voices in the development, cultivation and delivery of the message. Kudos to the significant efforts you have made to highlight client stories on your website and otherwise. The plan should continue to highly value the importance of telling the stories of your grantee's clients.
2. We appreciate the sensitivity that the plan expresses with regard to LSC's efforts to raise private funding for its own internal use and the caution LSC has exercised in avoiding competition with sources that might otherwise provide funding for grantee operations in your successful fundraising efforts to date. We expect that you will continue to follow that path as you revise the existing plan.

Goal Three. Ensure Superior Fiscal Management

We support the concept of LSC doing all it can to ensure the fiscal integrity and regulatory compliance of its grantees. You should approach this goal with the clear understanding that your grantees are staffed by thrifty, hardworking and underpaid advocates and management staff. They are under-resourced programs and continuing to provide them with support to ensure superior fiscal management with limited resources of staff, money and technology should certainly remain as an important goal of the plan. NLADA appreciates LSC creating regulatory workshops to consider the broad range of fiscal changes being contemplated currently by the board.

With the reorganization of the oversight function finally completed, we hope that the new plan will prioritize better coordination of visits conducted by the Office of Program Performance, Office of Compliance and Review and the Office of Inspector General. We continue to hear too many stories of the enormous resource drain to the field caused by multiple, uncoordinated visits from the various oversight components of LSC.

Finally, we urge you to take a broad view of the wide range of responsibilities that LSC has to the provision of quality legal aid in addition to ensuring a high level of fiscal management and grants oversight. As you consolidate your management and oversight structure, LSC should

also ensure that adequate resources are devoted to supporting the programmatic side of your grantee's work.

NLADA again appreciates your invitation to comment on the future direction of LSC. We look forward to working with you on accomplishing many of the important initiatives contained in the plan.



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