

# BLUE RIDGE LEGAL SERVICES, INC.



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PLEASE RESPOND TO BOX 551

DANA J. CORNETT  
PRESIDENT

JOHN E. WHITFIELD  
EXECUTIVE DIRECTOR  
& GENERAL COUNSEL

April 2, 2012

Mattie Cohen, Senior Assistant General Counsel  
Office of Legal Affairs  
Legal Services Corporation  
3333 K Street, NW  
Washington, DC 20007

## ***Re: Comments regarding Proposed Revisions to 45 CFR Parts 1606, 1618, and 1623***

Dear Mattie:

I am writing on behalf of the membership of the Association of Virginia Legal Aid Programs (AVLAP), which includes all six Virginia grantees<sup>1</sup> of the Legal Services Corporation (LSC) as well as the other five Virginia legal aid societies<sup>2</sup> which do not receive funding from LSC, to register our concerns with the proposed revisions to 45 CFR Parts 1606, 1618, and 1623.

As preface to these comments, I note that I previously participated, as one of six representatives of LSC grantees, in LSC's June 26, 2008 rulemaking workshop on this very question regarding whether LSC should adopt additional sanctions. Like many other participants in that workshop, I expressed my deep concern as to how the proposed monetary sanctions of less than 5% would seriously disrupt the operations of an LSC grantee already stretched thin financially, to the detriment of the clients we are all trying to serve. Ultimately, later in 2008, the LSC Board voted not to proceed in the proposed rulemaking, undoubtedly because its members shared our concerns about the detrimental impact of such additional financial sanctions on an affected program's clients.

Now this new proposal for additional sanctions has again been proposed to the LSC Board, without any clear justification provided for revisiting a concept that was abandoned by the LSC Board of Directors just a few years ago. If anything, current conditions, with legal aid programs reeling from cuts in federal funding and the collapse of IOLTA revenue streams, strongly mitigate against revisiting this rejected concept.

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<sup>1</sup> These six LSC-funded Virginia programs include: Blue Ridge Legal Services, Inc.; Central Virginia Legal Aid Society, Inc.; Legal Aid Society of Eastern Virginia, Inc.; Legal Services of Northern Virginia, Inc.; Southwest Virginia Legal Aid Society, Inc.; and Virginia Legal Aid Society, Inc.

<sup>2</sup> These five non-LSC Virginia programs include the Legal Aid Justice Center; Legal Aid Society of Roanoke Valley, Inc.; Legal Services Corporation of Virginia; Rappahannock Legal Services, Inc.; and the Virginia Poverty Law Center, Inc.

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When legal aid programs are struggling to preserve their capacity to serve clients effectively after the recent funding cuts, the LSC Board's focus on this issue would telegraph a disheartening message to the field regarding the LSC Board's priorities. A more constructive approach would be for LSC to focus on providing better training and communication with the field, by sponsoring high quality regional trainings or webinars on the compliance issues they believe are problematic.

The proposed revisions appear to be a solution in search of a problem. That was the apparent consensus in 2008, when the LSC Board declined to pursue this. We are not aware of any developments since then that would justify such action now.

In addition, we have a number of broad concerns about the latest proposed regulatory revisions, which are in some important respects worse than the abandoned 2008 proposals, from the field's perspective.

**Potential Harm to Clients.** Certainly our greatest concern is the potential harm to legal aid clients that would result in the imposition of the proposed sanctions. While we are cognizant of the perception that a truly recalcitrant program could attempt to hold its clients "hostage" as a shield from any sanction threatened by LSC, this presents a false choice. Any "lesser sanction" adopted ought to be one that is not disruptive or detrimental to client services. Instead, any such lesser sanction would be better fashioned by providing a mechanism for advance notice of a potential short-term suspension of funding, and that would allow the restoration of the suspended funds upon sufficient compliance by the errant program. In this manner, clients in a particular service area would not be unfairly denied access to justice. This would seem to be a much more appropriate tool for the situations envisioned by these proposals.

**Lack of Adequate Due Process Protections.** The new proposals have dropped the due process protections that were included in the 2008 proposal, a serious step backwards. The 2008 draft notices allowed for an informal meeting with LSC staff followed by the right to seek review by the LSC President, while specifying that any decision would be made solely on the information contained in the administrative record together with any additional submissions supplementing it. As a matter of fundamental fairness to its grantees, LSC should provide no less due process than what was proposed in 2008.

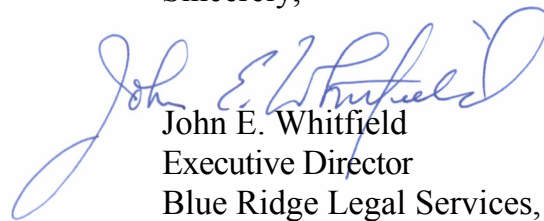
**Lack of Standards.** The proposal lacks sufficient standards governing the imposition of sanctions. While the proposal sets forth 5 factors to be considered in determining whether a "substantial violation" has occurred, the standards do not limit LSC's discretion. There is a glaring lack of guidance and clarity as to which violations might be considered more serious. When you consider the many different LSC manuals, guidelines, Program letters, handbooks, instructions, rules, regulations and statutes that govern an LSC grantee's conduct, this lack of clarity is disquieting. There is no explicit limit to LSC's discretion in equating a violation of a sensitive, Congressionally imposed restriction with a failure to follow an obscure provision of an accounting guide.

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For these reasons, we urge the LSC Board to decline to pursue this regulatory proposal, and instead focus on better communication with and training for its grantees on issues of concern. If the Board is compelled to pursue the concept, we encourage the Board to refashion any proposal to minimize impact on client services, provide due process to the grantees, and develop clear and reasonable standards to protect the grantees from the potential for future arbitrary action by an LSC administration that might not be as supportive of the field programs and their mission as is the current one.

Thank you for considering these views, which I submit on behalf of the following Legal Aid programs in Virginia. With warm regards, I am

Sincerely,



John E. Whitfield  
Executive Director  
Blue Ridge Legal Services, Inc.

And on behalf of:

Virginia LSC grantees:

Blue Ridge Legal Services, Inc.  
Central Virginia Legal Aid Society, Inc.  
Legal Aid Society of Eastern Virginia, Inc.  
Legal Services of Northern Virginia, Inc.  
Southwest Virginia Legal Aid Society, Inc.  
Virginia Legal Aid Society, Inc.

Virginia Non-LSC programs:

Legal Aid Justice Center  
Legal Aid Society of Roanoke Valley, Inc.  
Legal Services Corporation of Virginia  
Rappahannock Legal Services, Inc.  
Virginia Poverty Law Center, Inc.