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From: Michael O'Connor <moconnor@pslegal.org>
Sent: Monday, July 09, 2012 3:29 PM
To: LSC Strategic Plan
Cc: Jim Sandman
Subject: comments on LSC Strategic Plan
Attachments: Directors Letter to LSC July 9.docx

Attached please find comments submitted jointly by the Midwest Project Directors association. Thank you for the opportunity to review and comment on the draft strategic plan. Sincerely-

Mike

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July 9, 2012

Mr. James Sandman, President
Legal Services Corporation
3333 K Street, N.W., 3rd Floor
Washington, D.C. 2007

RE: LSC Draft Strategic Plan, Midwest Directors' Response

Dear Jim:

The Midwest Project Directors group (MW Directors) is a group of Executive Directors of 21 LSC-funded legal aid programs throughout the plains states, the Midwest, and nearby regions. The group meets regularly over the phone and in-person to share successful strategies, respond to common challenges, and discuss a variety of issues related to managing free civil legal services programs. The MW Directors read and discussed the Draft LSC Strategic Plan (Plan). The MW Directors have decided to file a response on those areas of concern for which a consensus among the members was reached. The MW Directors support the Plan's acknowledgement of a broad-based reduction in funding that is concurrent with a significant increase in legal needs of the poor. The MW Directors similarly concur with the Plan's initiative to "[i]dentify, promote, and spread best practices in meeting the civil legal needs of the poor." However, we share significant concerns with the Plan's statements regarding changes in program performance evaluation, national quantitative metrics, and access issues in rural areas. Our concerns are described below. We hope that you will consider incorporating these concerns as you move forward on a final strategic plan for LSC.

I. A national system of quantitative metrics should not be considered

As part of "Initiative Two – Implement[ing] a new performance management system," the Plan, page 6, calls for "meaningful performance standards and metrics" with "quantitative metrics" designed to measure "outcome metrics," "efficiency metrics" and "needs assessment metrics." While the MW Directors agree with the Plan's call to "ensur[e] high quality legal services," we are concerned that the push toward a national system of quantitative metrics will, in fact, result in a "one-size-fits-all" approach that cuts against local priority-setting and local control.

There are 135 LSC-funded programs. Each program's service area contains a mix of demographics, economies, and resultant civil legal needs that is unique to that service area. As a result, the LSC Act and implementing regulations, and the 2006 Performance Criteria, have encouraged programs to perform needs assessments, set priorities, and engage in strategic planning in a manner that best serves the service area's client population given the resources available to the program.

It is the MW Directors' concern that implementing standard, quantitative metrics will deter this form of local control and priority-setting, resulting in a numbers game which will encourage a homogenization of legal services delivery throughout the country. Much like the well-intentioned, but ultimately disappointing, "No Child Left Behind" education law, we are concerned that quantitative metrics will be used to drive a preference for particular forms of legal services. Much as school instructors are forced to "teach to the test" to improve student scores and preserve funding, legal aid programs will re-align their priorities and service delivery models to perform well, compared to whatever metrics are established.

While the plan does contemplate that LSC will "collaborate with grantees" to develop these national standards, we think that, instead, LSC should invest resources in assisting programs to develop and implement *local standards* for evaluation based on local priority-setting and strategies. For example, assume Program A decides, through needs assessment, strategic planning, and priority setting, that its service area's poverty population's legal needs are best served through impact advocacy and major litigation. LSC should support and encourage Program A's efforts in evaluating the impact and outcomes from this approach. The same would be the case for Program B, which goes through the same type of process, but decides instead that a hotline/advice model would best serve its service area, with little or no extended representation afforded to local clients.

Indeed, we support the idea that effective impact evaluation must take place with both Program A and Program B. However, we do not see how standard, or national, quantitative metrics can actually do this. Moreover, we are concerned that national metrics would have a much easier time evaluating and measuring a nation of Program B's, and this would certainly not be an optimal result for effectively resolving the civil legal needs of the poor.

II. A monetary reward and penalty system based on merit would be ineffective and would adversely affect equal justice under law

The Plan, in Initiative Two, page 7, states:

- > Rewards for grantees exceeding a standard (e.g., a high percentile ranking on established quantitative metrics) might include:
 - * * *
 - Increased access to funds or projects generated through LSC's own advancement efforts; or,
 - Ability to compete for special grant programs that LSC may administer.

The Plan also describes "[c]orrective actions for grantees consistently falling below a minimum standard." The corrective actions listed do not expressly include the withholding of funds, and

this is a good thing. But LSC already has considerable authority to defund or reduce funding for programs under existing law and regulations, and we urge that those tools not be used in this context. What is apparent is that lower-performing grantees will *not* have increased access to funds or be able to compete for special grant programs. This is unfortunate, as lower-performing grantees may be those most in need of additional funds to correct their problems.

We urge that LSC not adopt a merit-based system of monetary rewards and penalties, for the following reasons: First, financial rewards are not what drive us in legal services. Our motivation is to be able to say “yes” to more applicants for service, and to provide the highest-quality representation to those whom we are able to accept as clients. We want to do this for all of the people in our service areas, not just for a smaller group of clients that can be funded by a special grant. We will strive for this ability to serve more people with high-quality representation whether or not we have access to funds or projects generated through LSC’s own advancement efforts and whether or not we have the ability to compete for special grant programs that LSC may administer.

Any significant LSC reduction in Basic Field funding to aggregate a sizable “rewards funding” line item would work against equal justice under law. When Basic Field funding is substantially reduced, the poor people in the service territory of a grantee that LSC determines is “consistently falling below a minimum standard” will have fewer dollars allocated to them (dollars per poor person) in order that “rewards for grantees exceeding a standard” will be greater. Thus, clients of “weak” grantees will get less when those grantees need more, and clients of “strong” grantees will get more. This is unequal justice. While it is good to see that LSC recognizes in its draft strategic plan that “[p]erformance measures cannot alter the legislatively-determined funding formula that sets the level of Basic Field grants,” that formula operates on fewer dollars whenever more dollars are set aside for “funds or projects” or “special grant programs.”

Also, to the extent rewards are tied to special projects or grants, our local control and local determination of need are undermined.

Finally, it is alarming to see on page seven the example of a standard phrased in quantitative terms, “. . . e.g., a high percentile ranking on established quantitative metrics,” rather than qualitative terms, such as high quality brief writing or oral argument. This appears to be heading toward a quota system, a stressing of numbers over quality. Such an emphasis results in legal services which are a mile wide and an inch deep, and a second class system of justice for poor people.

III. Given the national investment in the LSC Performance Criteria, and the successful experience in using them to improve quality, the Performance Criteria should be retained

The Strategic Plan speaks, on pages 6 and 7, of a “new performance management system,” with “meaningful performance standards and metrics,” once “clear, evidence-based standards of performance are established.” There is no mention of the LSC Performance Criteria. Are these to be retained or jettisoned? To jettison them would be terribly wasteful, inefficient, and disruptive.

The LSC Performance Criteria were first promulgated in around 1994 or 1995, and significantly revised in 2006. They proved to be quite helpful, and were applied in many peer reviews, not just by LSC, but by IOLTA boards in their own evaluations of grantees. Many of us have applied the Performance Criteria internally. LSC has conducted panel discussions on the Performance Criteria at NLADA and other conferences. The LSC grant application process utilizes the Performance Criteria. OPP has applied them in its visits, which were the first LSC visits to take a serious look at program quality, not just program compliance.

The legal services community has invested significant resources in learning the Performance Criteria, including the “Indicators” and the “Areas of Inquiry.” After we learned them, we invested time and resources in applying them. Performance Area Three has been especially important to us, looking as it does at the quality of lawyering we provide to our clients. This Performance Area incorporates the ABA Standards for the Provision of Civil Legal Aid, particularly Sections 2, 3, 4, 6, and 7 of those Standards.

Now all of this experience may be tossed aside, including the ABA Standards, in favor of some “quantitative metrics” that can’t distinguish a good appellate brief from a bad one? This would be a tremendous waste of an entire body of experience, a rejection of governing standards that work and that pay attention to the quality of legal representation. The LSC Performance Criteria should not be eliminated in favor of metrics.

If there are some people, within LSC or elsewhere, who believe that the Performance Criteria contain imperfections, then time should be spent in eliminating those imperfections and improving the Criteria. They should not just be dropped, in favor of a new set of standards, especially a set of metrics that measure only the “identified benefits for individual clients, as well as other social benefits and governmental savings,” the LSC cost-per-case, or congruity with “needs assessment metrics.”

IV. Legal Services Programs are *not* abandoning the rural poor

Page 2 of the Plan includes the statement: “Twenty-four programs reported that they expect to close offices in 2012. Because many of these closures will occur in rural areas, eligible clients will lose the ability to access lawyers within their communities. *This will mean effectively no access to legal assistance for an increasing number of America’s rural poor*” (emphasis added).

This statement gives the mistaken impression that LSC-funded programs are abandoning the rural poor, and that the absence of an office in a community is synonymous with the absence of access and service. This is certainly not true, as rural programs use a variety of approaches to provide both access and service in more remote areas.

We think it would be more helpful to include a statement noting that the funding reductions affect all the populations we serve, and that LSC is committed to doing everything in its power to increase funding. Further, we think the Plan should emphasize that we continue to serve clients in rural areas even if the nearest office closes. Following is language that you may wish to substitute:

“The need for legal services on critical issues far exceeds the capacity of legal aid programs to provide assistance. The recent decreases in funding have drastically reduced access to legal aid across all demographics, rural and urban, minority and majority, young and old. Twenty-four programs reported that they expect to close offices in 2012. Many of these closures will occur in rural areas. Rural programs strive to provide equity of service throughout their counties through hotlines, satellite interview sites, courthouse help desks, and private attorneys. But there is no doubt that the increased distances between potential clients and legal aid offices present yet another barrier to effectively serving these isolated populations.”

V. Conclusion

The MW Directors share a passion for high-quality legal representation for the poor. We have struggled with increased need, an extended economic recession, and declining resources. While we do agree that evaluation of our programs and services is essential for maintaining and improving the services we provide to people who have nowhere else to turn, we hope that LSC will rethink those sections of its Draft Strategic Plan which seem to preference national quantitative standards over actual improvement of legal services.

Respectfully submitted,

Michael O’Connor
Executive Director of Prairie State Legal Services
Chair of Midwest Project Directors Group

On behalf of

Douglas Cummings, East River Legal Services
Cheryl Three Stars Valandra, Dakota Plains Legal Services
John Ebbott, Legal Action of Wisconsin
Rosemary Elbert, Wisconsin Judicare
Jim Fitzsimmons, Legal Services of North Dakota
Dan Glazier, Legal Services of Eastern Missouri
Dennis Groenenboom, Iowa Legal Aid
Marilyn Harp, Kansas Legal Services
Douglas Kays, Legal Services of Southern Missouri
Cathy Haukedahl, Mid-Minnesota Legal Assistance
Jean Lastine, Central Minnesota Legal Services
Gregg Lombardi, Legal Aid of Western Missouri
David Lund, Legal Aid Services of Northeast Minnesota
Susan Lutton, Mid-Missouri Legal Services
Norman Metzger, Indiana Legal Services

Jessie Nicholson, Southern Minnesota Regional Legal Services
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