

March 21, 2011

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

Dear Ms. Cohan:

We are writing to voice our deep concern over the recently proposed rule which would authorize LSC to impose additional or “lesser” sanctions on LSC-funded programs. While we anticipate that objections raised by grantees who would be subject to these rules will be viewed with a degree of skepticism, our concern is based on the serious harm that these sanctions could cause to the very clients whom LSC exists to serve.

The proposed sanctions are described by LSC as being less onerous than existing tools at LSC’s disposal. However, the fact remains that these sanctions are very significant and could severely impact the operations of a grantee and disrupt client services. In the case of the LSC-funded programs in Illinois, 5% of our combined LSC grants is almost \$600,000. Because of declining LSC and IOLTA funding, our programs have all had layoffs and are spending their reserves to maintain services even at reduced staffing levels. As a result, an additional funding loss of this magnitude would require that we immediately lay off as many as ten more attorneys or paralegals. Without question, this further staff cut would force us to deny services to many eligible clients. And because such a cut could be imposed with very little warning, we would have great difficulty fulfilling our obligations to those clients whose cases we have already accepted.

Moreover, we do not understand what problems the “lesser sanctions” rule is meant to address. If there are pervasive problems with grantee compliance with LSC requirements, LSC should tell us what those problems are and how it wants to see them resolved. If they are the result of honest differences of opinion about what is required, we should discuss and resolve those differences. If additional training is required, it should be provided.

In addition, it appears to us that LSC already has a number of ways to use funding to encourage compliance, such as required corrective actions, special grant conditions, month-to-month funding, questioned costs, suspension of funds in whole or in part for up to 60 days, termination and debarment, and decisions not to refund a program in the competition process. Without any indication that these tools in LSC’s arsenal are inadequate to address actual problems, it is hard to see why another rule is necessary – particularly a rule that provides so little due process to the grantee and gives LSC such unfettered ability to redirect the funds recovered to any “basic field purposes at its sole discretion.”

LSC exists to direct funding to grantees to enable them to provide desperately needed legal assistance to low-income clients. Particularly at a time when funding has declined substantially, from LSC and from other sources, and when the need for the services grantees provide has never been greater, the idea of focusing on new ways to penalize grantees seems incongruous. Moreover, LSC itself has convened a pro bono task force (to which some of us have devoted large amounts of time and effort) to explore ways in which grantees can attract more private attorneys to provide help in these critical times. Everyone on the task force believes that this effort depends critically on grantee programs having the resources to screen, evaluate, and follow up on the outcome of cases they ask private attorneys to handle. Tightening the regulatory screws on programs that are doing their best to address the “justice gap” seems counterproductive.

For the foregoing reasons, we urge LSC to withdraw the proposed rule.

In the event that LSC is determined to adopt a “lesser sanctions” rule, we urge you to reformulate it to clearly define the circumstances under which the sanctions may be imposed, to lay out how the “lesser sanctions” rule relates to the numerous other tools LSC already has to obtain satisfactory compliance with its requirements, and to insure that adequate due process protections are afforded to grantees before any “lesser sanctions” are actually implemented.

Thank you for considering our comments.

Sincerely,

Michael O'Connor (dow)

Michael O'Connor
Executive Director,
Prairie State Legal Services

Lois Wood (dow)

Lois Wood
Executive Director
Land of Lincoln Legal Assistance Foundation

Diana White

Diana White
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cc: John G. Levi
James Sandman