

LEGAL SERVICES ASSOCIATION OF MICHIGAN

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March 26, 2012

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Kenneth Penokie

Secretary/Treasurer

Re: Notice of Proposed Rule making
45 CFR Parts 1606, 1618, and 1623

Ms Cohan:

I write on behalf of the Legal Services Association of Michigan (LSAM) to comment on the proposed amendments to 45 CFR Parts 1606, 1618 and 1623. LSAM is a support organization for legal services programs in Michigan which has thirteen member organizations including all six LSC funded programs.

At LSAM's March 14, 2012 meeting the members voted unanimously to oppose the proposed rule making. In general our concerns center around the fact that the proposals create sanctions that will have a significant negative impact on programs but contain inadequate due process protections. We would note that these potentially damaging sanctions are sought to address a problem that doesn't appear to exist, as no examples have been noted where existing sanctions have not, or would not, be sufficient.

Specifically our objections to the proposed rule making include:

- **Lack of Due Process.** Creation of a new sanction that allow LSC to reduce a programs grant by up to 5% (1606.15(b)) and increasing the potential time limit for suspensions from 30 days to 90 days. For a two million dollar program a 5% reduction is a loss of \$100,000 in funding. And for that very same program a 90 day suspension means that they will have to find a way to float \$500,000 in funds- for most that means a bank loan. Yet the due process mandated for these sanctions is an esoteric right to an informal meeting and a review by an unidentified LSC employee. There is nothing in the proposed

rules that would require the reviewing personnel to be neutral or even different than those that made the initial sanctioning decision. What lawyer would allow a client to enter such an arrangement?

-Lack of Standards. Exacerbating the due process issue noted above is that fact that the proposed new sanctions fail to provide any standards for their implementation. There is a facial standard that a “substantial violation” be found for a sanction to be imposed. While there is a list of factors to be considered when determining a substantial violation, the factors do not limit the discretion of LSC. For example, one of the factors is whether or not the violation was knowing and willful. However, that is merely a factor, and not requirement, so it is entirely possible for LSC to impose hundreds of thousands of dollars in sanctions for a “violation” that is unknown to a program or which happened even though the program was acting in good faith. During recent years it has not been uncommon for a program to violate a LSC rule unintentionally because the rules have been a moving target. Most programs have experienced a LSC review where they are written-up for a practice or procedure that had been approved in a previous review.

-Failure to Protect Clients. Most importantly, the proposed sanctions do not protect the interests of clients. A significant change is that LSC will no longer guarantee that funds removed from a service area will remain in that service area. The impact is that the poverty population, which is already being grossly under served, will suffer the most. Financial sanction, which can be imposed with no due process and for unintentional violations, will impact clients through staff and service reductions. Since Congress mandated that funds be distributed based upon poverty populations, this provision contravenes Congressional intent.

The members of LSAM request the proposed rules be withdrawn and reconsidered because they are detrimental to clients and programs. The sanctions will have a significant impact on programs and yet provide no due process.

Respectfully submitted

Kenneth Penokie
Executive Director
Legal Services of Northern Michigan



Joan Howard
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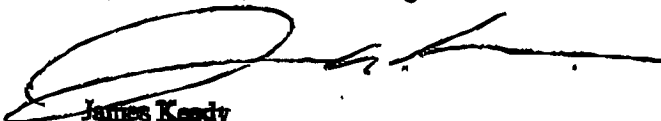
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Non-LSC Funded Program Members

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Michigan Migrant Legal Assistance Program
Michigan Legal Services
Elder Law of Michigan
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