

LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN

*"...there can be no equal justice where
the kind of trial...(one) enjoys depends on
the amount of money (one) has."*

--Hon. Hugo Black
Griffin v Illinois
351 US 12 (1956)

Washtenaw County Office: 420 N. Fourth Avenue, Ann Arbor, MI 48104-1104 • phone (734) 665-6181 • fax (734) 665-2974

June 17, 2005

Mattie C. Condray
Senior Assistant General Counsel
Legal Services Corporation
3333 K St., N.W.
Washington, D.C. 20007

re: Notice of Proposed Rulemaking
45 CFR 1611

Dear Ms. Condray,

I am writing to comment on this proposed rule.

I am the Executive Director of Legal Services of South Central Michigan (LSSCM) an LSC funded program serving thirteen Michigan counties; LSSCM also provides statewide services to migrant farmworkers under an LSC migrant grant and statewide "state support" services under a state grant. I have served in my present capacity since 1983.

I am writing in support of the proposed regulation. I am aware of and appreciate the tremendous amount of work that has gone into the draft— by LSC staff, by the LSC Board, and by the program representatives who participated in the negotiated rulemaking process that led to an earlier version of this rule. I see the rule as an effort to retain the basic administrative process required of programs in determining and documenting client eligibility— but to do so while updating, simplifying, streamlining, and clarifying the current regulation.

I have reviewed the comment submitted by the Center for Law and Social Policy (CLASP) on behalf of the National Legal Aid and Defender Association (NLADA) and I agree with that comment. I am writing separately to make three additional points not directly addressed in the CLASP comment.

1611.9 (Retainer Agreements). For the past four years, I have served as the Chair of the Pro Bono Initiative (PBI) of the State Bar of Michigan. In this role, I have spoken with hundreds of lawyers about their duty to provide pro bono legal services to the poor. I have also reviewed the results of numerous pro bono surveys conducted by state and local bar associations. It has been the goal of the Michigan's PBI to understand the various barriers that may discourage or prevent lawyers from doing pro bono work and to seek to eliminate or reduce those barriers.



A member agency of the Jackson County, Monroe County, Capitol Area and South Central Michigan United Ways

Over and over again, the PBI has heard from lawyers who are frustrated by the “bureaucratic barriers” imposed by legal services programs. The specific barriers identified include the attestation and retainer requirements imposed by LSC regulations.

From a program point of view, these requirements often add delay or confusion to the intake and referral process. They also require programs to “reject” many cases where lawyers have performed extensive and valuable pro bono service because the file does not comply with LSC CSR standards.

I encourage LSC to take whatever reasonable actions it can to facilitate pro bono work. For this reason, I applaud the provision of 1611 that eliminates the requirement of retainers in pro bono cases.

1611.5(a)(4) (Waiver ceiling). I also wanted to comment favorably on the increase in the waiver ceiling from 187.5% FPL to 200% FPL. I agree with the reasons stated for making this change— it makes the eligibility calculation much more straightforward and will assist programs in addressing the needs of the working poor.

However, in addition, this provision will also assist many programs in working with other partners in the effort to expand access to justice. In Michigan, the Title III-B programs (some LSC funded, some independent) have long utilized 200% FPL as their poverty guideline— thus this change will assist collaboration between LSC and Title III-B funded programs. Also, the State Bar PBI has long used 200% FPL as its guideline for recognition of pro bono work targeted to low income persons. Also, 200% FPL is used by the state of Michigan as the upper limit for several of its public assistance programs.

So while the change from 187.5% to 200% may appear minor (financially speaking), it will make a significant improvement in facilitating service collaboration and referrals among LSC and non-LSC providers in many states.

1611.6 (Group Representation). I fully support this change and wanted to add an additional perspective on its importance and benefits.

I have worked as a legal services program staff person since 1976— when LSC was just beginning as a national program. There have been dramatic changes in the role that legal services plays in its local communities over this time period. These changes are due to many forces— including the acceptance of the program by the Bar, the courts, and local government; and LSC’s own state planning process.

As an institution, today legal services programs are a hybrid between a traditional civil law office and a community-based human services agency. In the latter role, our ability to collaborate with local community agencies is critical to our local communities. Within LSSCM, we speak about collaboration with other community organizations on three levels— joint advocacy for a common client; joint advocacy addressing community service needs; and direct legal representation of non-profits. (LSSCM is permitted to accept these cases under the group

eligibility criteria of our state funder.) While most of LSSCM's group legal representation is on non-litigation matters, these cases have had a tremendous positive impact on our communities. As examples of these cases, LSSCM has assisted in the creation of an indigent health care plan that provides comprehensive, free services to over 7,000 persons per year; has successfully represented domestic violence shelters in defending the confidentiality of DV victims' client counseling records; has performed the real estate work necessary to develop and site several homeless and DV shelters and hundreds of units of permanently affordable housing owned and managed by non-profits; etc. As you can see, these group cases have resulted in direct positive benefits to thousands of client eligible individuals.

In my view, the ability to provide legal assistance to human services agencies is a key role for legal services in our local communities. Rather than being controversial or divisive, this work is, in the main, valued and appreciated by local communities. Often, the benefits received by clients through this representation are tremendous. The group eligibility criteria, as proposed, are extremely important to programs and their clients.

Thank you for the opportunity to comment on the draft regulation. If you have any questions or if you would like any additional information, please contact me.

Respectfully submitted,

Robert F. Gillett
Director