

**Standing Committee on
Legal Aid and Indigent
Defendants**

321 N. Clark St.
Chicago, Illinois 60610
Fax: 312-988-5483

Chair

Bill Whitehurst
Whitehurst Harkness
Ozmun & Brees
PO Box 1802
Austin TX 78767-1802

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San Francisco, CA

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Atlanta, GA

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Board of Governors

Liaison

Alice E. Richmond
Boston, MA

Committee Counsel

Terry Brooks
312-988-5747
tbrooks@staff.abanet.org

June 22, 2005

Mattie C. Condray
Senior Assistant General Counsel
Legal Services Corporation
3333 K. St NW
Washington, DC 20007-3522

RE: 45 CFR Part 1611

Dear Ms. Condray:

The American Bar Association, by its Standing Committee on Legal Aid and Indigent Defendants, submits these comments in response to the proposal to amend 45 CFR Part 1611, "Financial Eligibility."

We believe that the proposed amended rule will be a significant improvement over the current rule, and support its adoption as proposed.

The proposed rule provides useful guidance on when retainer agreements are necessary, and on the requisite elements of such agreements. We are not convinced that retainer agreements are necessary in all extended service cases, but accept the rule's requirement of written agreements in such cases as a reasonable balance between the various perspectives on this point. We fully support the elimination of any requirements of use of retainer agreements by private lawyers operating within a private attorney involvement program. Burdensome and unnecessary administrative requirements of that nature make it difficult to recruit private lawyers to provide pro bono service, and should be avoided wherever possible.

The ABA also strongly supports the decision not to incorporate into the rule the statutory provisions relating to auditor access to eligibility records and client information. The language of the relevant legislation pertaining to these issues raises extremely complex issues which will be more appropriately addressed through separate processes.

The ABA also supports the proposed rule's treatment of group representation. Often, the most effective and cost-efficient way to address the common needs of eligible clients is through representation of an appropriate group that is seeking to address those common needs. Community economic development and similar strategies can provide eligible clients with the assistance they need to climb out of poverty and become productive members of the community. We believe that the proposal in a prior version of this rule requiring an LSC grantee to "reasonably demonstrate that the group" meets eligibility criteria was an adequate mechanism to assure eligibility, since grantees have very limited resources and are unlikely to use them to serve inappropriate groups. The language substituted in this version of the proposed rule seems less clear, and could lead to needless disputes in any enforcement proceedings. We are, however, willing to accept these as a compromise between competing perspectives, and on the whole to support the approach taken to group representation.

We appreciate the opportunity to provide these comments, and would be happy to provide additional clarification if such is required.

Sincerely,

A handwritten signature in cursive script that reads "Bill Whitehurst".

Bill Whitehurst
Chair

cc: Robert J. Grey, Jr., President, American Bar Association