

LSC PRO BONO TASK FORCE WORKSHOP

Proposal for Allowing the Training and Supervision of Law Students, Law School Graduates, and Deferred Associates to Count Toward an LSC Recipient's PAI Funding.

I. Background

The LSC PAI requirement stipulates that “a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance.” **1614.2(a)**. The purpose and mission of the PAI requirement is “to generate the most possible legal services for eligible clients from available, but limited, resources” **1614.1(c)**. According to the LSC Pro Bono Task Force, engaging students and instilling a lasting commitment to pro bono work is wholly consistent with the aims of the PAI regulation.” **LSC Pro Bono Task Force Recommendation 2, PAI Revision, Topic 1** (pg. 20 of report)

II. New Categories of Volunteers that Can Be Engaged by Legal Service Providers and How Public Interest Organizations Can Meet These Volunteer Needs

A growing number of law students, recent graduates, and new attorneys are in need of opportunities to gain real-world legal experience and skills. This is due to increasing competition in the legal field, where firms and legal organizations desire future hires that already possess some practical skills. Also, a substantial proportion of graduates decide to become solo practitioners, and do so without any support system or post graduate training; instead they rely only on what they learned in law school. Most often, law schools do not offer students opportunities to be exposed to actual cases that would allow them to gain practical skills for the legal job market.

These law students, recent graduates, and new attorneys can turn to public interest organizations to gain real-world experience working with clients and cases. Public interest organizations provide an opportunity to meet with clients, appear in front of a judge, manage a caseload, and apply practical skills they will be required to use in their job or solo practice. Through incubator programs, students can continue working for a public interest organization after graduating, and even as they begin to establish their own solo practices.

Incubator programs can meet the specific needs of each new category of volunteers. Students need exposure to different areas of law during their education and to gain experience in areas where they may choose to practice. Training at a public interest organization provides students with exposure to many areas of law, including family and bankruptcy law, as well as housing, consumer, and government benefits issues.

Prior to passing the Bar, graduates need a job, but public interest organizations are reticent to hire students who have not passed the Bar. Incubators allow for students who wish to pursue a career in public interest to work at public interest organizations and not feel pressured to find a job at a firm strictly for financial reasons.

Future solo practitioners need the requisite skills to effectively execute the practice of law. Since these new attorneys often seek to establish their solo practice immediately upon graduation, in order to gain clients and bill for income, it is not economically feasible for them to undergo volunteer training to obtain these needed skills. An incubator, with paid positions, provides new attorneys with practical training and mentors to help them develop their skills as they concurrently establish their solo practice.

III. The Current Obstacles to LSC Grant Recipients' Full Use of These Volunteers

Under the current PIA scheme, there are a number of obstacles that restrict public service organizations from fully using the aforementioned groups of volunteers. For example, public service organizations currently lack a competitive edge in attracting and retaining volunteers. Law students face debt upon graduation and many cannot go without an income. Paid positions during summer for current students and/or new graduates will attract many more highly competent law students to public

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interest organizations. Increasing the amount of highly competent law student volunteers will increase the amount of people legal aid organizations are able to help.

Additionally, the current structure of PAI only allows funding for attorneys, so long as it does not comprise more than fifty percent of their total income. This creates a high level of uncertainty, as it is hard to predict one's annual income, and the income ratio of a volunteer attorney is not accounted for until the end of the year. As a result, public interest organizations may be reticent to give a volunteer attorney more cases if they believe they are close to providing the attorney with more than fifty percent of their income. Restricting the use of PAI funds to volunteers means fewer legal services will be provided to the low income individuals.

Further, volunteer attorneys serve as the mentors who train law students to their full potential. Limiting work done by volunteer attorneys for fear of exceeding the fifty percent threshold will also limit mentoring resources for law students. Proponents of incubators believe that the only thing standing between "public-interest-minded" law students who want to serve low-income communities is "a lack of proper training opportunities." (*"Law school incubators and training firms: Reviving the apprenticeship model in the legal profession."* October 12, 2012. [http://lawschooldisrupt.com/2012/10/02/799/.](http://lawschooldisrupt.com/2012/10/02/799/))

IV. Reasons Why LSC Should Implement Conditions and Guidelines Allowing LSC Recipients to Claim PAI Credit for Supervision and Training of These Volunteers

Providing more resources to law students and new attorneys interested in public interest will not only encourage more private attorney involvement, but most likely recruit more attorneys to a public interest career.

For example, deferred associate programs are becoming more common, and many of these deferred associates find they prefer their public interest jobs. (*Ferguson, Russ. American Spectator, "After the Crash."* February 15, 2010. <http://spectator.org/archives/2010/02/15/after-the-crash>).

Providing more resources to these deferred associates increases the likelihood that they will continue to assist LSC recipients even when they return to their firm. These deferred associates are also the spokespersons for the legal aid society at their firms. Their positive experience, especially in an incubator setting, will incite an interest in public service for other attorneys at their firm.

Further, proper and in-depth training of law students allows them to perform duties the attorneys would be tasked with if the students were unable. As a result, the attorneys are able to spend more time helping clients, providing them with legal advice and representing them in court.

V. Incubators are Deserving of PAI Funds

Incubators can be effectively utilized to deliver legal service to low-income individuals. In fact, the majority of incubator programs in the country contain an access to justice component in their incubator model. Most incubators require their participants to commit a certain number of hours or cases to pro or low bono work. Many incubators' purpose is specifically to serve the low-to-moderate income communities.

For example, PILI is an incubator program in Chicago with a stated mission to cultivate a commitment to public interest and pro bono service. Their vision is a community of law students and lawyers at different stages in their career engaged in public interest, where they remain committed serving the legal needs of the underserved. CUNY's Community Legal Resource Network and Incubator for Justice prepares students for embarking on their own solo practice by teaching them necessary business skills. The program mentors and teaches the students to provide for successful businesses and individual justice missions. Participants must complete 12 hours a month of low bono work. California Western School of Law modeled their program after CUNY. The incubator is specifically for new

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graduates seeking to start their own solo practice or small firm that represents the poor. The Chicago Bar is also setting up an incubator that targets students wanting to establish a community practice that serves low-to-moderate income residents.

Further, incubators encourage private attorney involvement with public interest organizations. Law students and new attorneys participating in public interest incubators tend to enjoy the work performed in the incubator that they remain committed to serving the unrepresented. These participants are more likely to continue serving in a community-based practice after the incubator. After an incubator, an attorney can establish their own solo practice or join a small firm, but with a greater likelihood that they will continue to volunteer with an LSC recipient because they committed themselves to public interest work.

Incubators thoroughly train students and new attorneys to provide highly competent assistance to pro bono organizations and their clients. More students are "hanging out their own shingles" upon graduation, but lack the proper skills. Incubators create transferable skills to community-based practices that students would not obtain at a firm. It is easier for students to go from an incubator to a community-based practice than from a firm because they learn different skills at firms and at times must unlearn those skills to succeed in a public interest setting. (*"Law school incubators and training firms: Reviving the apprenticeship model in the legal profession."*)

IV. How LSC Can Ensure against fraud, waste or abuse related to implementing this recommendation?

1. Concern: Too many PAI funds will go toward law student hours and not private attorneys.
 - Resolution 1: Create a required proportion of number of law students to attorneys, where the number of law students cannot exceed a certain ratio.
 - Resolution 2: Designate a maximum percentage of PAI funds being attributed to law student and deferred associate efforts. This is not a required percentage, only a cap.
2. Concern: Legal Aid staff attorneys being let go for purposes of counting their volunteer efforts toward PAI funding.
 - Resolution: If a staff attorney leaves an organization, time accrued within two years after their leave can be counted toward PAI in only certain volunteer circumstances, particularly for incubators. If they serve as law student supervisors or incubator mentors, they will create monthly or quarterly reports about their performed responsibilities. Any duties performed in incubator or clinic settings can be attributed to PAI funds.
3. Concern: An attorney earning 51+% of their income from an LSC recipient.
 - Resolution: For attorneys seeking employment, or in the process of establishing solo practice, LSC recipients should be able to credit their time to PAI funds if the attorneys are actively applying to jobs or making regular steps toward setting up their practice. An attorney can document, monthly or quarterly, their employment activity. Even if they earn more than 50% of their income by the LSC recipient, the LSC can still claim PAI funds through their activity because they can prove they do not consider themselves staff attorneys.