



Northwest Justice Project

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César E. Torres
Executive Director

MEMORANDUM

To: Mark Freeman, Legal Service Corporation PAI Rulemaking Workshop Coordinator

From: Joan Kleinberg and Deborah Perluss

Date: June 25, 2013

Re: Qualifications and Proposed Outline of Key Points re PAI Rulemaking Workshop Topics (CORRECTED)

Qualifications of Proposed Panelists: *Joan Kleinberg* is the Northwest Justice Project's Director of Strategic Initiatives and Private Bar Involvement. She has over 30 years of experience working in legal aid programs in Washington and over 20 years of experience managing private bar involvement programs. From 1982 through 1995, Ms. Kleinberg was the director of the Evergreen Legal Services Private Attorney Involvement Contract Attorney Program, which operated in nine counties throughout Washington State. In 1996, Ms. Kleinberg became the Director of the Northwest Justice Project's (NJP's) Coordinated Legal Education, Assistance, and Referral (CLEAR) hotline system, as well as NJP's Director of Private Bar Involvement. Ms. Kleinberg's responsibilities recently shifted to developing strategic initiatives related to NJP's implementation of specific objectives set out in our Strategic Plan. These include expanding use of targeted pro bono services to support NJP's advocacy efforts, planning-based data analysis, evaluating service outcomes, developing mentorship programs, and other objectives. Ms. Kleinberg continues as Director of Private Bar Involvement. In that capacity she is responsible for development and implementation of NJP's PAI plan, interacting with Washington's many bar association-based pro bono programs and their coordinators, and continuing to exercise authority and supervision over NJP's Contract Attorney Program.

Deborah Perluss is NJP's Director of Advocacy/General Counsel. She too has over 30 years of experience working in legal aid programs in Washington. She has served in her current position since 1996. Ms. Perluss is responsible for overseeing NJP's LSC compliance systems and related program policies. Ms. Perluss is also responsible for overseeing NJP's risk management and professional ethics systems, and, along with the Executive Director, various other programmatic functions. In her capacity as Director of Advocacy, Ms. Perluss also supports NJP attorneys and advocates in promoting program excellence, undertaking strategic advocacy, and in their professional development.

Key Points to be Addressed Topic 2: **Grantees should be allowed to spend PAI resources to enhance their screening, advice and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.**

NJP supports this recommendation. Ms. Kleinberg proposes to address the following points:

- 1. How are recipients currently using integrated intake and referral systems?**
 - Programs and delivery systems are configured in many different ways and there should be latitude for activities that achieve LSC's private attorney involvement goals to count toward the PAI requirement.
 - Washington has a long history of independent pro bono programs. Local lawyers are highly motivated by and relate to their own community-based volunteer program efforts to provide services for low-income persons in their communities. NJP has developed a collaborative system of support for the 17 small independent volunteer lawyer programs (VLPs) located throughout Washington and fosters efficient and effective service by local lawyers who volunteer with those programs.
 - Pursuant to Washington's *State Plan for the Delivery of Legal Services to Low-Income Persons*, NJP has been assigned responsibility to "serve as the primary client entry point into the legal services delivery system, employing existing and emerging technologies to expand and integrate client intake, screening and referral capacities to serve all primary service delivery components of the system." NJP undertakes this responsibility by providing pro bono attorney and VLP support through its CLEAR hotline services.
 - NJP's CLEAR screens prospective clients for eligibility, priority-and problem type. Referral is based on information provided by the VLPs regarding the types of cases their attorneys are open to taking.
 - CLEAR attorneys provide case analysis, advice, and as appropriate limited legal assistance to eligible clients who then may be referred for additional help to one of the 17 VLPs.
 - VLP staff manage services for people who are eligible for their programs and connect eligible clients with pro bono lawyers in their communities through a variety of service settings. Because intake and screening for these programs is centralized at NJP, prospective clients are freed from having to duplicate intake and screening effort throughout the state.
 - NJP and the VLPs use an integrated (but not unified) case management system. NJP is able to electronically refer clients to the volunteer lawyer program. NJP is able to easily learn whether the VLP accepts the referral.
 - Based on a recent survey by a VLP funder, VLP staff report that CLEAR support serves low-income client needs as follows:
 - Clients with urgent legal problems referred from CLEAR benefit from being able to speak with an attorney and receive legal advice sooner than they can get an appointment to speak with a volunteer attorney. CLEAR provides an essential guide regarding the legal problem and need for legal help that assists the executive director's efforts to assist the client post-referral.
 - CLEAR's intake significantly reduces the amount of time required by VLPs to conduct intakes thereby allowing more time to be devoted to client services and program needs.

2. Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?

- Current interpretation inhibits integration of staffed programs with independent volunteer lawyer programs because: (1) NJP's intake and referral efforts have been determined by LSC to not "support" the VLP efforts to provide legal assistance to eligible clients as "support" in 45 C.F.R. § 1614.3 has been interpreted by LSC; (2) NJP does not operate an in-house pro bono program and is loath to compete with community-based pro bono efforts that otherwise occur statewide in Washington; (3) as currently interpreted the PAI regulations impair NJP's assigned role under our *State Plan* and hence impair the highly integrated legal aid delivery system developed in Washington; (4) the need to replace the locally-based VLP effort in Washington with an in-house pro bono/private attorney involvement program would provide little value-added to the pro bono services currently available to low-income persons in Washington, and would likely threaten to reduce those efforts.

3. Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to create and staff integrated intake and referral systems?

- Yes. Such systems can achieve LSC's goal of "generating the most possible legal services for eligible clients from available, but limited, resources."

4. How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?

- LSC can require recipients to certify that the activity allocated to the PAI requirement is consistent with the regulation. LSC can rely on the Independent Audit requirements to ensure that the allocation is based on generally accepted accounting principles and can be supported by a mechanism such as percentage of cases referred to external VLPs, percentage of time spent on intake and referral, and other similar criteria that justifies the allocation.
- LSC can require recipients to confirm VLP program acceptance of referrals and/or percentages of referrals resulting in assistance by a pro bono attorney.

5. To the extent applicable, discuss your organization's ability to execute any recommended approaches.

- NJP's accounting systems and accounting efforts are highly regarded and offer substantial program accountability and integrity. NJP has always received an unqualified audit, including prior to 2007 when NJP was advised that it could not allocate a percentage of CLEAR staff time used for the intake and referral process to PAI. NJP has no doubt that it can meet independent auditing standards for appropriate allocation of this support time to PAI.
- In response to LSC's concerns articulated in 2007, NJP built additional functionality into the case management systems used by NJP and the volunteer lawyer programs to

receive reports of whether a referred client received legal assistance from a volunteer lawyer.

Key Points Addressed to Topic 3: LSC should examine the rule, as currently interpreted, that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

NJP supports this recommendation. Ms. Perluss proposes to address the following points:

- 1. How do recipients currently use or support pro bono volunteers in brief service clinics?**
 - NJP currently supports pro bono volunteers by: (a) sponsoring one in-house limited assistance clinic for immigrant and refugee victims of domestic violence; (b) supporting several courthouse-based limited assistance Housing Justice Projects (HJPs) operated by the local VLP, for tenants facing eviction, through referring prospective clients to HJPs, training HJP volunteers, and being available to provide technical assistance and indirect support to HJP volunteers on-site; and, (c) providing intake screening and referral of prospective clients to VLP-based brief service clinics through CLEAR. NJP also supports a courthouse-based debt clinic serving defendants in collection actions through volunteer attorneys.
- 2. What are the obstacles to recipients' use of pro bono volunteers in brief service clients?**
 - NJP has no obstacles to assisting pro bono volunteers in VLP-based clinics, except that currently NJP is not able to allocate resources for the intake and referral services to its PAI obligation. This is because NJP does not count these referrals as "cases" for PAI or CSR purposes. Hence, LSC loses the benefit of being able to demonstrate how its resources are highly leveraged through a broad reach of community-based services to the extensive benefit of low-income persons throughout the state.
- 3. Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics?**
 - Yes. Current language of the PAI regulation would appear to allow this, except for the narrow interpretation that LSC has superimposed on the language of the regulation.
- 4. If LSC were to allow recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics under circumstances where the users of the clinic are not screened for LSC eligibility or accepted as clients of the recipient, how could that change be implemented in a manner that**

ensures compliance with legal restrictions on recipients' activities and uses of LSC funds?

- For NJP, prospective clients are screened for LSC eligibility before they are referred to VLP brief service clinics. NJP is able to document referrals to such clinics for persons who are LSC eligible and could relate the percentage of referrals to a reasonable and justifiable percentage of costs associated only with those referrals, subject to Independent Auditor review.
- Persons referred to the NJP-sponsored domestic violence clinic are LSC eligible.
- Training and support provided to the Housing Justice Projects or Debt Clinic are not specifically client-based but “support” the pro bono work of private lawyers serving persons assisted by these clinics. That “support” time serves LSC eligible low-income persons and should be appropriately allocated to PAI.

5. How can LSC ensure against fraud, waste or abuse related to implementing this recommendation?

- Same as above, with appropriate guidance for Independent Auditors and use of generally accepted accounting principles to support the allocation. This could be based on a percentage of time related to the number of persons referred to the clinics who are LSC eligible, or time spent by NJP staff attorneys on training and support of pro bono clinic services based on time records. However, it would be extremely burdensome and inappropriate to require recipient staff attorneys to inquire into the eligible status of every person the clinic serves prior to providing training or technical assistance to a pro bono lawyer.

6. Discuss your program's ability to execute any recommended approaches.

- Same as above.

NJP also supports the recommendation of Topic 1, that would authorize the counting of resources spent supervising and training law students, law graduates, deferred associates and other volunteers toward recipients' PAI obligations. NJP spends significant time to ensure that law students and other volunteers, including Fellowship volunteers, have a valuable experience and develop significant skills through direct assistance of eligible clients in a range of legal proceedings. In our experience, these opportunities, the skills gained, and the cultural connection to the equal justice community that comes from this service, inculcates a life-long commitment to pro bono service among cadres of legal aid volunteers.

C: César E. Torres, Executive Director

Name	Joan Kleinberg / Deborah Perluss
Topic 1: LSC Pro Bono Task Force Recommendation 2(a) - Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in "incubator" initiatives.	
	How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?
	What are the obstacles to LSC grant recipients' full use of these volunteers?
	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?
	How can LSC ensure against fraud, waste, or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
	To the extent applicable, discuss how any approaches you recommend might be implemented.
	Other issues related to Topic 1 (please specify in your submitted outline).
Topic 2: LSC Pro Bono Task Force Recommendation 2(b) - Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.	
✓	How are recipients currently using integrated intake and referral systems?
✓	Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?
✓	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to create and staff integrated intake and referral systems?
✓	How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
✓	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
	Other issues related to Topic 2 (please specify in your submitted outline).
Topic 3: LSC Pro Bono Task Force Recommendation 2(c) - LSC should reexamine the rule, as currently interpreted, that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.	
✓	How are recipients currently using or supporting pro bono volunteers in brief service clinics?
✓	What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?
✓	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics?
✓	If LSC were to allow recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics under circumstances where the users of the clinics are not screened for LSC eligibility or accepted as clients of the recipient, how could that change be implemented in a manner that ensures compliance with legal restrictions on recipients' activities and uses of LSC funds?
✓	How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
	Other issues related to Topic 3 (please specify in your submitted outline).