

Panelist Information and Comments

- Silvia Argueta, Chair, National Legal Aid and Defender Association's Regulations and Policies Committee (NLADA)
- Steve Gottlieb, Executive Director, Atlanta Legal Aid Society
- Judge Mary Katherine Huffman, Greater Dayton Volunteer Lawyers Project
- Joan Kleinberg, Director of Strategic Initiatives and Private Bar Involvement, Northwest Justice Project
- Kenneth Penokie, Executive Director, Legal Services of Northern Michigan
- Lisa Wood, Chair, American Bar Association's Standing Committee of Legal Aid and Indigent Defendants (SCLAID)



National Legal Aid & Defender Association

June 25, 2013

EQUAL JUSTICE.
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Sent by email to PAIRULEMAKING@lsc.gov and by regular U.S. mail

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K St., N.W.
Washington, DC 20007

Re: Expression of Interest in Participating in July 23, 2013 PAI Rulemaking Workshop; Comments

Dear Mr. Freedman:

The National Legal Aid and Defender Association respectfully requests the opportunity for Silvia Argueta to participate as a panelist on behalf of NLADA in the July 23, 2013 PAI Regulatory Workshop in Denver. In addition, Don Saunders and Chuck Greenfield from NLADA hereby register for in-person public participation at the same workshop.

The following is a brief outline of NLADA's key points and comments, followed by a statement of summary of qualifications and a completed checklist of the topics and items that NLADA will address at the workshop.

Brief Outline of NLADA’s Key Points and Comments Related to the Three Topics Identified in the Federal Register Notice

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.

NLADA is fully supportive of this recommendation. Legal aid programs often spend considerable time training and supervising law students, law graduates, paralegals, attorneys not admitted in the program’s state, in-house counsel and others. Programs have found that their investment in training and supervising these volunteers has generated increased involvement in pro bono activities during later periods of time.

Two opinions of LSC’s Office of Legal Affairs, OLA External Opinion # EX-2005-1001 (staff attorney time spent working with and supervising volunteer law students volunteering may not be counted toward PAI requirement) and OLA Advisory Opinion # AO –2009-1007 (payments provided to an attorney as part of an “incubator program” cannot be considered towards PAI requirement if the attorney has been employed as an attorney with the program for any portion of the last two years) unduly restrict the type of activities in which an LSC-funded program can engage that can be considered towards the 12.5% PAI requirement. We urge LSC to make it clear that 45 CFR Part 1614 does not have these limitations and barriers to effective, efficient and innovative pro bono efforts.

LSC should make clear what activities can be included toward the PAI requirement, but also allow enough flexibility for programs to create innovative PAI approaches. The use of “including, but not limited to” language where appropriate is encouraged.

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.

NLADA is fully supportive of this recommendation. Screening, advising and referring LSC-eligible applicants in support of the effective use of pro bono resources should be an allowable activity counted towards the PAI requirement. Through intake, referrals and other supportive efforts, LSC-funded programs provide invaluable support to local pro bono programs and develop close working relationships and collaborations with the organized bar and other groups. Their relationships with the private attorneys in their service areas is also greatly enhanced.

LSC Office of Legal Affairs Advisory Opinion AO-2011-001 (the dollar amount of time spent on advice and referral of LSC-eligible applicants cannot be counted toward the PAI obligation) is inconsistent with the underlying requirements of Part 1614 and fails to accommodate the flexibility provided grantees under Part 1614. (See attached August 4, 2011 letter from NLADA to Victor Fortuno, Vice President and General Counsel). LSC should ensure that the revised regulation rejects the approach of this opinion, much of which appears to be based on an unclear LSC policy determination.

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.

NLADA is fully supportive of this recommendation. Mandating that PAI activity must be connected to LSC case requirements in order for the activity to be counted toward the PAI requirement constricts the ability of programs to operate effective, efficient and innovative pro bono projects.

LSC Office of Legal Affairs External Opinion EX-2008-1001 (persons served by pro bono clinics must be screened for eligibility in order for related expenses to be counted towards the PAI requirement) places significant limitations on an LSC-funded program's ability to develop creative and successful pro bono models. By requiring the program to consider clinic clients to be program clients, LSC would be acting to limit the legal assistance available to low-income individuals in the areas served by the clinics. This is counter-productive to, and inconsistent with, the goals of the PAI rule. (See attached May 14,

2008 memo from Linda Perle and Alan Houseman of CLASP to Karen Sarjeant and Victor Fortuno). LSC should ensure that the revised regulation rejects the approach of this opinion.

Protection against fraud, waste or abuse related to implementing the above recommendations.

Protection against fraud, waste or abuse with respect to each of these recommendations can and should be effectively addressed through the Independent Auditor procedures and compliance reviews otherwise utilized with respect to compliance activities. NLADA urges LSC to not create burdensome and unnecessary requirements in the name of protection against fraud, waste or abuse. It is particularly important to not discourage pro bono/private attorney involvement in effective programs and services that often occurs when burdensome documentation and detailed compliance requirements are imposed.


Summary of Qualifications of Silvia Argueta

Silvia Argueta is the Chair of the Regulations and Policies Committee of the NLADA. In this position, she works with committee members who are executive directors and senior managers in legal services organizations. The committee analyzes and makes recommendations to regulatory bodies regarding proposed new rules, regulations and policies as well as any amendments to those already in existence. Ms. Argueta is the executive director of the Legal Aid Foundation of Los Angeles since 2009. She has been an attorney for 23 years.

NLADA will be providing additional written comments to LSC on revising 45 CFR Part 1614 prior to October 17, 2013.

Please let me know if you have any questions. Thank you.

Sincerely,



Chuck Greenfield
Chief Counsel for Civil Programs



1140 Connecticut Avenue NW, Suite 900
Washington, DC 20036
T: 202.452.0620
F: 202.872.1031
www.nlada.org

MEMORANDUM

TO: Victor Fortuno, Vice President and General Counsel

FROM: Deierdre Weir, Chair, Civil Policy Group, NLADA
Don Saunders, Vice President, Civil Division, NLADA
Linda E. Perle, Director of Legal Services, CLASP

DATE: August 4, 2011

RE: Request to Withdraw OLA Advisory Opinion #AO 2011-001

This memorandum is written in our capacity as representatives of national legal services grantees and in particular those numerous grantees that are negatively affected by the conclusions reached in the Office of Legal Affairs "Advisory Opinion" #AO 2011-001. We write to add our support to the July 14, 2011 request of the American Bar Association (ABA) Standing Committees on Legal Aid and Indigent Defense (SCLAID) and Pro Bono and Public Service (the Pro Bono committee) that the opinion be withdrawn.¹ In doing so, we recognize that asking for the withdrawal of an advisory opinion is an unusual and rare request. However, given the depth of concern expressed by the ABA committees and the strength of their analysis and the adverse impact on grantees, it is critical that this request be given serious consideration.

Many LSC grantees have worked over the years in close collaboration with independent local bar associations and other service organizations, including interfaith groups, within their services areas to develop creative, efficient, and effective ways to involve private attorneys in the delivery of legal services to low-income clients. For example, in rural areas with few private attorneys, grantees have worked with these groups to develop creative models (*e.g.*, limited scope representation, self-help "plus" programs, same-day courthouse based advice clinics, advice clinics sponsored by faith-based entities, etc.), to encourage private attorneys to participate in the delivery of legal services to low income persons. While LSC grantees may mentor and support these programs, they do not uniformly operate or manage them. Often they are operated and managed by independent bar sponsored program bono programs.

One model that has proven effective in both rural and urban areas is to have LSC grantees do intake and referral of clients (including screening for eligibility and type of case) to bar

¹ To the extent that OLA External Opinion #EX-208-1000 takes the position that "cases referred to a recipient's PAI program remain cases of the recipient and the clients in those cases remain clients of the recipient," we also reiterate CLASP's 2008 objection to that opinion and seek once again to have it withdrawn as well.

sponsored pro bono programs, which then take over the direct delivery of legal assistance and representation. In these situations, the cases are not considered to be grantee cases for CSR purposes, and the grantee does not do continuing oversight of the cases.² Management and coordination of the pro bono programs and the cases that are referred by the LSC grantees remain the responsibility of those independent pro bono programs and the bar associations that sponsor them. Many grantees, particularly statewide grantees that are administered centrally, have found that private attorneys are far more willing to participate in pro bono programs operated and managed by their local bar associations (with which they relate professionally and share locally based affinities) than if the program is operated from a geographically distant LSC grantee location.

Through intake and referrals and other efforts, LSC grantees provide invaluable support to these local pro bono programs and develop close working relationships and collaborations with the organized bar and other groups as well as with the private attorneys in their service areas. This represents an innovative and creative approach to private bar involvement that relies on local bar investment in the pro bono commitment to our client service goals. In addition, these intake and referral efforts involve significant efficiencies by greatly simplifying the intake process for eligible clients who cannot be served directly by the grantee. They save time and effort for the pro bono programs, the private attorneys, as well as the clients who then only have to go through one intake process and eligibility screening before being referred to an attorney.

We believe that Advisory Opinion #AO 2011-001 (and EX 208-1001) fails to accommodate the flexibility provided grantees under Part 1614. We further believe that lack of flexibility will impair grantee private bar involvement efforts, particularly where support for pro bono participation is locally driven or hostile to the idea of having pro bono work managed or overseen by LSC grantees. This is especially true in those jurisdictions where LSC funding is not a primary source of financial support for the local private bar pro bono program.

We also believe that this opinion, which seems to be premised on a deliberately determined (but not previously published) LSC “policy”, is inconsistent with the underlying requirements of Part 1614 (see §1614.3(c)) of the LSC regulations, and undermines the goals of the December 20, 2007, LSC Program Letter 07-2. Program Letter 07-2 urges programs to use “effective, strategic, and creative engagement of private pro bono attorneys” and further urges grantees to “...evaluate how those resources that do exist could be used effectively,” notwithstanding the varied needs and resources of service areas. Specifically, LSC writes: “This Program letter encourages grantees to undertake renewed, thoughtful and strategic efforts to leverage private attorney resources in order to address more of the civil legal needs of low income persons and communities... and [urges that] LSC programs be encouraged to create a range of options that allow private attorneys to volunteer efficiently and effectively, and that produce successful outcomes for clients.”

² This is similar to when grantee programs provide support to clinics run by local bar associations and religious groups, but do not manage or run the clinic and the clients are the clients of the clinic and the private attorneys who participate in the clinics.

In light of the diminishing resources available nationwide to meet the increasingly varied legal needs of low-income persons, it is critical that Part 1614 be interpreted in a way that gives LSC grantees the greatest flexibility possible to expand the capacity and involvement of private attorneys in the delivery of legal services to low-income communities. By differentiating and mutually excluding the direct delivery of legal services from support for private attorney involved services, Advisory Opinion #AO-2011-001 frustrates and inhibits the capacity building goals underlying Part 1614. LSC grantees should be permitted to meet their required private attorney involvement obligations in a wide variety of ways that they and the organized bar and private attorneys in their service areas have determined will be most effective.

For all of the reasons stated, and for the reasons presented by the ABA SCLAIID and Pro Bono Committee, we join them in asking that Advisory Opinion #AO-2011-001 be withdrawn.

cc: James Sandman
John Levi

Memo

To: Karen Sarjeant
Victor Fortuno

From: Linda Perle and Alan Houseman

Date: 5/14/2008

Re: OSLSA Finding on PAI

We are writing this memo on behalf of Ohio State Legal Services Association (OSLSA). OSLSA is questioning the conclusions reached by the LSC Office of Compliance and Enforcement (OCE) and the Office of Legal Affairs (OLA) with regard to whether OSLSA is permitted to count certain costs associated with its pro bono clinics toward its PAI allocation, and we urge you to reconsider these conclusions.

Background

In order to set the context for this memo, it should be noted that OSLSA operates in a rural area of Ohio where there are few private attorneys and where it has been difficult to establish successful PAI programs in the past. In recent years, in coordination with local bar associations, judges, religious organizations, and other local entities such as local departments of job and family services, OSLSA has been able to help organize a number of pro bono clinics (including many "interfaith clinics") where private attorneys provide limited services to residents of these rural areas on a pro bono basis.

OSLSA's participation in these clinic activities is not intended to be viewed as "the direct delivery of legal assistance to eligible clients..." under 45 CFR 1614.3(a), which is only one aspect of PAI activity.¹ Rather, OSLSA's participation is limited to the kind of support activities intended to be provided under 45 CFR 1614.3(b)(2) which states that "[a]ctivities undertaken by recipients to meet the requirements of this part may also include, but are not limited to ...[s]upport provided by

¹ OLA External Opinion #EX-2008-1001 presumes that OSLSA's support activities are the direct delivery of legal assistance to eligible clients under §1614.3(a), ignoring the fact that Part 1614 clearly recognizes that support activities under §1614.3(b)(2) are a separate category of PAI activities that may also be allocated to fulfill a program's PAI requirement.

the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources....”

OSLSA provides a variety of support services to the clinics such as training the private attorneys, providing reference materials and pro se packets, answering questions from private attorneys about poverty law, providing laptops with frequently utilized court forms, and providing access to legal research as needed. These support services are generally not related to legal assistance to specific eligible clients. They are, however, clearly the kind of support services that are anticipated to be provided under 45 CFR 1614.3(b)(2). OSLSA’s support for the clinics is very limited in scope and remains “behind the scenes” so that the sponsorship and “ownership” of the clinics rests firmly in the hands of the local bar and the interfaith community that recruits the lawyers who agree to participate as members of the local legal communities or as congregants of the local churches that sponsor the interfaith clinics.

These pro bono clinics meet the mandate of 45 C.F.R. 1614.2 that PAI funds be “expended in economic and efficient manner.” They also represent precisely the kind of effective, strategic, and innovative effort to engage the private bar in the delivery of legal services to members of the low-income community that President Barnett encouraged LSC recipients to undertake in her December 20, 2007 Program Letter (07-2). That letter specifically encouraged programs “to undertake renewed, thoughtful and strategic efforts to leverage private attorney resources in order to address more of the civil legal needs of low-income persons and communities.” These pro bono clinics have succeeded in engaging private attorneys to provide legal assistance in an area of the state where, in the past, that has been very difficult to do using conventional PAI techniques. Even when OSLSA has tried to contract directly with private attorneys to take cases at a reduced rate, few responded and those that did only agreed to handle domestic relations cases. In contrast, the clinics have resulted in numerous private attorneys providing advice and brief service in a wide range of legal areas.

Because OSLSA’s role has been limited to the kind of support anticipated in §1614.3(b)(2) of the LSC regulations, the local bars and religious entities that sponsor the clinics have had much more success in recruiting their members to participate than would be true if OSLSA had tried to do that directly and if OSLSA ran the clinics. In part because its participation in the clinics is so limited, and in part because of the issues discussed below, OSLSA has not claimed the clinic cases as PAI cases for CSR purposes and seeks only to continue to have the time spent in its support efforts count toward its 12.5% PAI allocation.

OLA Opinion

OCE has ordered OSLSA to stop allocating the staff time that the program devotes to supporting the pro bono clinics to PAI unless the clinics do eligibility screening of the clients who are assisted by the private attorneys through the clinics and the program “counts” the cases handled by the private attorneys as OSLSA cases. OSLSA objected to the imposition of these requirements and sought an opinion from OLA on whether they were appropriate. OLA recently

responded to OSLSA's inquiry with an External Opinion (EX-2008-1001) that concluded that "in order for OSLSA to allocate toward its Part 1614 requirement the resources it provides to the clinics, the persons served by the clinics must be screened for eligibility, determined to be eligible and considered clients of OSLSA."

The OLA opinion focused its analysis on the requirements of 45 CFR §1614.3(a) which says that "[a]ctivities undertaken by the recipient must include the direct delivery of legal assistance to eligible clients...." The opinion does not even mention §1614.3(b)(2) which is the section on which OSLSA relies. That section does not specifically mention eligible clients but does describe the kinds of support activities that OSLA provides to the clinics. If §1612.3(b)(2) is not designed to encompass these kinds of support activities, it is unclear why the provision is in the rule at all and what kinds of activities it was meant to include.

Requiring Clinic Participants to Be Treated as OSLSA Clients

Even assuming the clinics were willing and able to screen for financial and alien eligibility and priorities,² OCE and OLA have also taken the position that OSLSA cannot count its support for the clinics as part of its PAI allocation unless the clients whose cases are handled by private attorneys as part of the pro bono clinics are considered to be OSLSA's clients, claiming that it "has been the longstanding interpretation and practice of LSC that cases referred to private attorneys pursuant to a recipient's PAI program remain cases of the recipient and the clients in those cases remain clients of the recipient." The opinion does not cite any regulatory provisions to support this proposition. In fact, the only support given by either OLA or OCE is a footnote in the OLA opinion that references the preamble to the 2005 revision of Part 1611. However, this preamble discussion deals only with the question of whether retainer agreements are required in PAI cases where clients are referred by LSC recipients to private attorneys. It is not relevant to the question at issue and does not address the situation of clinic clients whose only relationship is with the private pro bono attorneys who serve them.

These individuals were never clients of OSLSA, and for those who may have originally sought help from OSLSA, the program has no continuing relationship with them after referral to the clinic. For those who sought assistance directly from the clinics or were referred there by the courts or other entities, OSLSA has had no direct contact with them at all. OSLSA's role is limited to helping the bar associations and religious organizations that sponsor the clinics to organize them, to providing technical support, training and materials, and to answering questions from the private attorneys regarding poverty law issues that may arise during the clinics. This support is generally not related to the specific clients who are helped by the private attorneys who volunteer their time to the clinics.

² While OSLSA has decided not to contest the issue of screening for eligibility at this time, I note that numerous other programs have contacted CLASP in response to the OLA opinion to indicate that they also provide support to a variety of pro bono clinics that do not screen those who seek help from the clinics for eligibility and do not count the clinic clients as their own. They have indicated that this opinion will have a major impact on their ability to fulfill their PAI obligations and to continue their support for these clinics.

OSLSA considers the issue of whether clinic clients are OSLSA clients to be crucial to the continued success of the pro bono clinic effort, primarily because of conflicts issues that arise whenever an individual enters into an attorney-client relationship with OSLSA. As was noted above, the areas served by these clinics are very rural, with a limited number of private attorneys who practice there, and no legal services providers other than OSLSA. In some instances, there are so few private attorneys practicing in the local areas served by the clinics that the attorneys who volunteer as part of the clinics constitute the great majority of the private attorneys who practice there. If the clinic clients are considered to be OSLSA clients, conflicts of interest would be created that would severely limit the availability of legal assistance to the low-income community in the areas served by the clinics.

Although the clinic attorneys provide assistance on a wide variety of subjects, the biggest demand for legal assistance in the areas served by the clinics is for help with domestic problems. Most often both parties in a domestic dispute are poor and unable to afford legal counsel. Every time OSLSA assists one poor parent in a domestic case, a potential conflict is created that bars the program from advising or representing the other poor parent on a range of legal problems, including, but not limited to that particular domestic issue.

As the clinics presently work, each side in a domestic case can get some free legal assistance from either OSLSA or the local clinic. If LSC were to require the clinics to be structured so that clinic participants had to be considered to be OSLSA clients, there would be only one source of free legal assistance, because the conflict rules would prevent OSLSA from providing legal assistance to an individual where the opposing party has been helped by the clinic and vice versa.

Perhaps a couple of examples would be instructive. If all of the clinic participants had to be considered OSLSA clients, OSLSA would be precluded from later representing any person with interests adverse to a clinic client. Thus, if a man goes to the clinic and gets advice from a private attorney about a divorce, custody, visitation, or support issue and his wife or girlfriend subsequently seeks assistance from OSLSA alleging domestic violence, OSLSA would be prevented from helping her if her husband or boyfriend were considered an OSLSA client because he had received assistance from the clinic. Similarly, if one party to a dispute over the sale of a used vehicle went to a clinic for advice on his rights regarding the transaction and the other party tried to get help from OSLSA, he or she would be turned away because there was a conflict of interest.

On the other side of the issue is the situation where OSLSA cannot accept a case in the first instance because of an existing conflict of interest. In that situation a referral to the clinic is usually the only alternative that the program or the local community can offer to that person. Thus, if OSLSA is representing a woman in a custody case and her ex-husband comes to the program seeking advice as to what his rights are in the custody matter, referral to the clinic is all that OSLSA or the local judiciary can now offer. If that avenue is barred because it would be

considered to be a conflict of interest when all clinic clients are considered OLSLA clients, then in most areas served by the clinics there are no other alternative private attorneys or other providers of legal assistance to whom he can be referred.

Section 1614.3(c) makes it clear that “[t]he specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient’s taking into account the following factors:… (3) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients....”

Conclusion

By requiring OLSLA to consider clinic clients to be program clients, LSC would be acting to limit the legal assistance available to low-income individuals in the areas served by the clinics. This is counter-productive to, and inconsistent with, the goals of the PAI rule as well as Program Letter 07-02 which was intended to enhance private attorney involvement and to increase the number of low-income people helped by the private bar. It was certainly not intended to simply increase the number of OLSLA clients, and LSC has provided no compelling reason why these individuals should be required to be treated as program clients.

Over the years since the PAI rule has been in effect, OLSLA and many other rural civil legal aid programs have struggled hard to develop effective PAI programs, often without much success. Once OLSLA realized that the key to a successful PAI program in its service area was to give “ownership” of the program to the local bar and to other local institutions, including faith based organizations, with much closer relationships to the private attorneys in their areas, private attorneys have been much more willing to participate in the effort and to provide pro bono services.

However, if LSC were to require that all of the clients served by both OLSLA and the clinics be considered to be OLSLA clients, much of the progress of the last several years would be undermined. Conflicts of interest rules would severely limit the ability of OLSLA to serve individuals where an adverse party had been served by one of the clinics and vice versa. The sense of ownership of these clinics by the bar and faith-based community that has contributed so greatly to their success would be significantly reduced. Rather than narrowing the justice gap by leveraging the resources of the private bar to handle additional clients, this requirement would have the effect of excluding many individuals who are now able to receive assistance from either OLSLA or the clinics.

LSC should be flexible in interpreting Part 1614 and should permit programs to use their creativity and imagination in order to achieve the goals of the PAI program to expand the availability of legal assistance through the involvement of private attorneys.

We urge LSC to reconsider this issue and to permit OLSLA to count the costs associated with its support for the pro bono clinics for purposes of its PAI allocation. We would like to have an opportunity to discuss this issue with both of you. Please contact Linda to set up a time for a meeting. She can be reached at 202-906-8002 or at lperle@clasp.org.

Name	NLADA – Silvia Argueta
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.	
X	How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?
X	What are the obstacles to LSC grant recipients' full use of these volunteers?
X	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?
X	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?
X	To the extent applicable, discuss how any approaches you recommend might be implemented.
X	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.	
X	How are recipients currently using integrated intake and referral systems?
X	Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?
X	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?
X	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?
X	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
X	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.	
X	How are recipients currently using or supporting pro bono volunteers in brief service clinics?
X	What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?
X	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?
X	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?
X	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?
X	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
X	Other issues related to Topic 3 (please specify in your submitted outline).

ATLANTA LEGAL AID SOCIETY, INC.

151 SPRING STREET NW
ATLANTA, GEORGIA 30303-2097
(404) 524-5811

Steven Gottlieb
Executive Director

Cheri Tipton
Deputy Director

Charles R. Bliss
Director of Advocacy

Donald M. Coleman
Jacqueline L. Payne
Margaret Hayman
Susan C. Jamieson
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Lori E. Quesada
Jessica Felfoldi
Angela Vela Ramirez
Pam Kraidler
Cristina Dumitrescu

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K. Street, NW
Washington DC 20007

Dear Mark:

I wish to participate at the PAI workshops as a panelist—preferably in the first workshop in Denver.

The key points that I would like to make as a panelist involve having the regulation either be interpreted or amended to allow for a less restrictive and longer long term view of what it means to have private attorney involvement and support for the work of LSC recipients.

The appropriate (and I believe original) purposes of the PAI regulation are to insure that private attorneys have a stake and investment in the provision of legal services to low income people while at the same time doing so within a framework which makes it likely that the services they provide are as much as possible in priority areas. An underlying purpose of the regulation is to help develop coordination between local legal services providers and private attorneys, both to better organize the provision of the services and also to build bridges between legal aid programs and the private bar. The present regulation or the way it has been interpreted undercut these purposes in each of areas that LSC wishes addressed.

Topic 1. Presently LSC does not give credit toward the PAI requirement for resources spend supervising law students, law graduates or deferred associates because they are technically not attorneys eligible to practice. This view is shortsighted. Many if not most of these aspiring attorneys will become licensed and training provided to them before they practice gives them a stake and investment in providing legal services to our clients. It also gives them additional ability to do so once they become licensed. And it ties them more closely to our programs and makes it more likely that when they do practice, they will continue to provide services through our programs and will be supportive of our work and of our programs.

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Chad Allan Shultz
Secretary

Michael W. Rafter
Immediate Past Pres

June 25, 2013

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
June 25, 2013
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Topic 2. While we normally think of private bar involvement as the provision full representation, in fact many private lawyers who want to volunteer want to take on more limited services. They may be hesitant about time commitments or they may be nervous about full representation of clients in areas outside their specialty and often they are reticent to go to court. To make best use of private attorneys to help our clients we need to encourage more limited commitments like screening, advice and referrals. We have also learned that these services have value for our clients, and are a necessity given our limited resources.

Topic 3. While in theory the best use of private attorney resources would be on the cases that programs considered the highest possible priorities--those cases that staff attorneys would take. In fact, it is often not possible to persuade private attorneys to take those cases, and often the cases that they will take are ones that are less complicated and require less urgent action. However, these cases are nonetheless important to our clients even though we do not have the in house resources to handle them. In addition it is not always possible to determine exactly how much of the support provided to private attorneys results in support to eligible clients. And if the provision of the services are in clinics or hotlines, trying to determine eligibility undercuts the purposes of providing quick services.

I understand that giving PAI credit does not determine whether programs will necessarily use private attorneys in a particular way. Our program for instance has many mechanisms for involving the private bar in our work and we well exceed the 12 and 1/2 percent requirement regardless of how LSC interprets 1614. However whether a particular practice is counted undoubtedly does skew what some programs do, and the present limited application of the PAI requirement pushes program not to use the resources of the private bar in a way which bests conforms to the desires of private lawyers or best meets the needs of our clients.

My current resume is attached. I would add that our program has long been in the forefront of private attorney involvement. Our Saturday Attorney program has been in continuous operation for over 40 years. And in addition to traditional pro bono programs, we have had signature projects with various law firms to do eviction protection, unemployment compensation and wills. One law firm actually founded and is still the primary referral source for our grandparent (now relative caregiver) project through which adoptions and guardianships are done for relatives taking care of children. We also have had over 50 associate fellows from law firms, and were the first (and perhaps still the only) legal aid program to get a fellow from the corporate legal department; UPS is

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
June 25, 2013
Page 3

now on its third fellow. Finally, we had the honor of have the former governor of Georgia, Roy Barnes, volunteer for 6 months on our staff after he was defeated for reelection.

I have also attached the checklist.

Thank you for considering me as a panelist.

Sincerely,



Steve Gottlieb
Executive Director

Name	Steve Gottlieb
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.	
x	How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?
x	What are the obstacles to LSC grant recipients' full use of these volunteers?
x	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?
x	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?
x	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.	
x	How are recipients currently using integrated intake and referral systems?
x	Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?
x	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?
x	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?
x	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.	
x	How are recipients currently using or supporting pro bono volunteers in brief service clinics?
x	What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?
x	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?
x	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?
x	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?
x	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).

STEVEN GOTTLIEB

Professional

- Executive Director, Atlanta Legal Aid Society
July 1980 – Present

Responsible for an organization of about 120 employees at multiple locations, with a budget over \$8.5 million. Atlanta Legal Aid provides civil legal services to low-income persons in the five county metro Atlanta area. In addition to five core legal areas (family law, housing, healthcare, consumer finance and government benefits), Atlanta Legal Aid has ten special practices: Senior Citizens Law Project, Long-Term Care Ombudsman Program, Disability Integration Project, Home Defense Program, AIDS/ALS/Cancer Initiative, Hispanic Outreach Law Project, Grandparent/Relative Caregiver Project, Georgia Senior Legal Hotline, TeamChild Atlanta and the Health Law Partnership.

- Deputy Director, Atlanta Legal Aid Society
January 1977 – July 1980
- Managing Attorney, Savannah Regional Office
Georgia Legal Services Program
July 1974 – December 1976
- Staff Attorney and Managing Attorney
Atlanta Legal Aid Society
July 1969 – June 1974

Education

University of Pennsylvania Law School, LL. B. 1969
Hamilton College, Clinton NY – B.A. 1963

Awards

American Bar Association, 1994 John Minor Wisdom
Public Interest and Professionalism Award
Anti-Defamation League, 1999 Elbert P. Tuttle Jurisprudence Award
Atlanta Bar Association, 2000 Leadership Award
Emory University School of Law, 2007 EPIC Inspiration Award
State Bar of Georgia, 2009 Justice Thomas O. Marshall Professionalism Award
Georgia Bar Foundation, 2009 James M. Collier Award
Georgia State University College of Law, 2009 Ben F. Johnson, Jr.,
Public Service Award
Management Information Exchange, 2010 Lifetime Achievement Award
2012 Turknett Leadership Character Award, 2012



COURT OF COMMON PLEAS

GENERAL DIVISION
MONTGOMERY COUNTY COURTS BUILDING
41 NORTH PERRY STREET
P.O. Box 972
DAYTON, OHIO 45422-2150

MARY KATHERINE HUFFMAN
JUDGE

(937) 496-7955
FAX (937) 824-7995
E-MAIL: huffmanm@montcourt.org

June 25, 2103

PAIrulemaking@lsc.gov

Attn: Mark Freedman
Senior Assistant General Counsel

Dear Mr. Freedman:

Please consider this correspondence as my request to participate, on behalf of the Greater Dayton Volunteer Lawyers Project (GDVLP), as a panelist in Denver at the Workshop to revise the LSC Private Attorney Involvement (PAI) Regulation to enhance pro bono service. I am the immediate past president of GDVLP and have served on the Board of Trustees of that organization since approximately 2005. The GDVLP is an independent pro bono program first established in 1988 and is an LSC sub-grantee of Legal Aid of Western Ohio (LAWO). The program has approximately 850 attorneys registered with it to provide legal services in a seven county region in western Ohio. Since 1988 the attorneys providing service through GDVLP have donated over \$13.7million in legal services in the region.

The outline of my discussion is as follows:

Topic 1 - Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted to PAI obligations, especially in "incubator" initiatives

Before LSC allows the dilution of the 12.5% already designated, LSC should:

- a. Insure that the LSC grantee **first** has a viable pro bono program. An expansion of programs, without ensuring that the programs are well-organized and managed, could dilute available funds for existing PAI programs where programs are now minimal. It is not additional programs, in and of itself that is necessary, it is the support of existing viable programs. Having volunteers is not necessarily the problem. It is the viable nature of the structure of the pro bono program that is key to the delivery of services. If the program structure is not adequate, even in light of significant volunteers, services cannot be delivered. Engaging new volunteers is rather easy for the GDVLP because of a culture in the community that expects pro bono service from

attorneys and law students and a predictable structure to the program that ensures volunteers that their services will be utilized for those that are vulnerable and in need.

- b. Require that every pro bono program receiving funding have a dedicated employee committed to volunteer management. This should not be a secretary that also covers the reception area, nor an attorney who also carries a case load but a **qualified manager of the volunteers**. A pro bono professional should be viewed as a volunteer management position. The care and feeding of legal community volunteers serves to expand resources that are available to the low income community. It is not the delivery of services that is at issue, but the coordination of the referral of cases to the appropriate volunteer.
- c. Encourage the private bar to take ownership in its pro bono program. When the private bar perceives itself as the owners of a pro bono program, that program becomes a complement to legal aid. The Public and Private bar working hand in hand can go far in providing services to those in need. GDVLP is a stand-alone program which complements Legal Aid.
- d. Before expanding what PAI money can be spent on, it is important to consider what makes a successful pro bono program and whether the grantee is working to create one or working to enhance its existing programs.
 1. Ownership by the private bar – the private bar has many attorneys experienced in family law, consumer law, employment law, bankruptcy. These are the cases that should be referred through a pro bono program. Public Interest law is the expertise of the legal aid lawyer. When you consider the above as the primary relationship, pro bono can expand exponentially.
 2. If PAI money is spent on supervision and training of volunteers, although of value for some well established PAI programs, this could be a dilution of the 12 ½% in programs that do not have well established programs. Perhaps the expansion to supervision and training could be tied to satisfactory PAI statistics from previous years, or documentation of a pro bono professional working with an board or advisory board.
- e. Many successful PAI programs are stand-alones or are located within the Bar Association. It is important to work closely with those programs rather than create a different program that would be in competition with the Bar program. Programs such as GDVLP which are administered by the private bar are very valuable assets in the delivery of pro bono services and cannot be disregarded nor left out of the discussion about pro bono work.

Topic 2 - Enhance screening, advice and referral programs

Before LSC allows the dilution of the 12.5% already designated, LSC should:

- a. Recognize that integrated intake and referral systems are already being used but are inadequately funded to meet customer needs. The greatest impediment to the delivery of services for GDVLP is the lack of referrals from the integrated system – GDVLP has the capacity to serve many more clients than it does, but without sufficient referrals, the volunteers who are eager to do pro bono work are left without the opportunity to serve those in need.
- b. LSC's current PAI regulations inhibit full use of integrated intake and referral systems – while there are 850 attorneys in our program, they often do not get assigned cases because of the inadequate nature of the referral system.
- c. Recognize that LSC's current regulations do not inhibit full use of integrated intake and referral systems.
- d. Again, diluting the use of PAI monies needs to have some restrictions if we are to insure a viable complementing PAI program for an LSC Grantee.
- e. Recognize that volunteers could also be utilized to do screening and intake. We have begun a project with a very large firm whereby their attorneys will volunteer to do screening and intake outside of the referral system through Legal Aid, which will increase the number of individuals who obtain service because they are not captive to the existing integrated referral system.

GDVLP has a very dedicated and committed Board of Trustees and Advisory Board which is fully prepared, with the assistance of our full-time staff members, to implement any recommended approaches. GDVLP, and its 850 very dedicated attorney volunteers, stands ready, willing and able to provide many more hours of volunteer services on an annual basis, but are hampered in our ability to do so because of the referral process. However, we will continue to attempt to find innovative ways to provide service even in light of the referral system.

Topic 3 – 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.

I do not intend to address this topic.

Very truly yours,


Judge Mary Katherine Huffman

Name	Mary Katherine Huffman
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.	
X	How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?
X	What are the obstacles to LSC grant recipients' full use of these volunteers?
X	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?
X	To the extent applicable, discuss how any approaches you recommend might be implemented.
X	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.	
X	How are recipients currently using integrated intake and referral systems?
X	Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?
X	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?
X	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?
X	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
X	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).

Judge Huffman has been a General Division Judge since 2002. She serves as the Chair of the Personnel Committee, and serves on the Budget, Civil Practice, and Executive Committees. From 2007-2010 Judge Huffman Presided over the Common Pleas Court's Drug Court and presided over the court's Non-Support Court from 2005-2006.

Judge Huffman received her B.A. in political science from Wright State University and her J.D. from the University of Dayton School of Law, graduating summa cum laude from each institution. She is currently enrolled in a Masters program in judicial studies at the University of Nevada. In 2007 Judge Huffman was honored with the Distinguished Alumni Award from the University of Dayton School of Law Alumni Association.

Prior to judicial service, Judge Huffman was a partner in the law firm of Huffman, Landis & Weaks, and served as Special Counsel to the Ohio Attorney General. She was also an active participant in the Volunteer Lawyer's Project.

Judge Huffman is a member of the American, Ohio and Dayton Bar Associations, the Ohio Common Pleas Judges Association, and is a Master at the Carl Kessler Inn of Court, serving as that organization's President from 2011-2013. She serves on the Judicial Advisory Group as well as the Specialized Courts Committee of the Ohio Judicial Conference. In 2007 Judge Huffman completed mediation training at the National Judicial College.

Judge Huffman has taught continuing legal education seminars for the Dayton Bar Association, the Family Law Forum, the University of Dayton School of Law Alumni Association, and the Inn of Court. She also is an adjunct faculty member at the University of Dayton School of Law, teaching a variety of courses including Interviewing, Counseling and Negotiation, Criminal Trial Practice, Business Organizations, Criminal Sanctioning and Adoption Law.

Judge Huffman serves on the Board of Trustees of the Greater Dayton Volunteer Lawyers Project and serves as President of the Board of Trustees of the University of Dayton School of Law Alumni Association. She serves as Vice-President of the Board of Trustees of the Dayton Bar Association and will assume the presidency of that organization in June, 2013. Until recently Judge Huffman was actively involved in youth soccer, serving as a coach, and for almost twenty years as a member of the Board of Directors of the Miami Valley Youth Soccer Association and for twelve years on the Board of Directors of the Ohio South Youth Soccer Association. In 2013 she was awarded the Miami Valley Youth Soccer Association Lifetime Achievement Award.

MARY KATHERINE HUFFMAN

1732 Haley Drive
Centerville, Ohio 45458
(937)212-1605
katehuffman61@gmail.com

Education: B.A. Political Science, *summa cum laude*, Wright State University, 1985

Juris Doctorate, University of Dayton School of Law, *summa cum laude*, May, 1990; Pi Sigma Alpha; Member, 1988-1990, and Executive Editor, 1989-1990, University of Dayton, Law Review

Additional graduate work, University of Virginia, 1985-1986

Currently enrolled at University of Nevada, Reno in Masters Program in Judicial Studies, projected graduation June, 2014

Additional Professional Training: Comprehensive Drug Court Judicial Training
Mediation Training

Professional Experience: Judge, Montgomery County Common Pleas Court, February, 2002 - present

Current Court Committee membership:
Personnel Committee (Chair)
Budget Committee
Executive Committee
Criminal Practice Committee

Non-Support Court Judge, January, 2005 – December, 2006
Drug Court Judge, January 2007 - December, 2010

Partner, Huffman, Landis & Weak Co., LPA
Trial Attorney; practice included domestic relations, appellate practice, medical malpractice, personal injury, consumer actions, felony and misdemeanor criminal matters, probate matters; November, 1990 - February, 2002

Special Counsel to the Attorney General

Bar Admissions:

Ohio, November 1990 - present

Current Professional Organizations
and Committees:

Ohio State Bar Association
Dayton Bar Association, First Vice President
Common Pleas Judges' Association
Inns of Court, Chair
Specialty Courts Committee and
Judicial Advisory Group of the Ohio Judicial
Conference
Greater Dayton Volunteer Lawyers Project,
Immediate Past President
University of Dayton School of Law Advisory
Council
Ohio Supreme Court Lawyer to Lawyer Mentoring
Program Member

Published Articles:

"Tort Law: Social Host Liability for the Negligent
Acts of Intoxicated Minors," 14 University of
Dayton Law Review 377 (1989).

"Immunity and Mental Health Professionals," 33
University of Dayton Law Review 265 (2008).

Teaching Experience:

Adjunct Faculty, University of Dayton School of
Law, Fall, 2003 - present (courses taught include
Landlord/Tenant Law, Business Organizations,
Interviewing, Counseling and Negotiation, Family
Law, Criminal Sanctions, Adoption and Assisted
Reproduction Law, Criminal Trial Practice, The
Death Penalty).

Adjunct Faculty, Sinclair Community College, Fall,
2005 – present (courses taught include Business
Law, Real Estate Law, and Contracts Law for
Paralegals).

Professional Achievements

University of Dayton School of Law, Outstanding
Academic Achievement Award; Dean Richard L.
Braun Award for Outstanding Legal Authorship;
Lawyer's Lawyer Award; Montgomery County
Domestic Relations Court Law Day Award;
Distinguished Alumni Award, University of Dayton

School of Law, 2007; University of Dayton School of Law Commitment to the Community Award, 2008

Other Past Professional Activities:

Criminal Justice Council, Domestic Violence Subcommittee; Participant, Volunteer Lawyer's Project; Presenter, People's Law School; Presenter of continuing legal education for the Dayton Bar Association, Ohio State Bar Association, Ohio Judicial Conference and Family Law Forum; Reader, Ohio Supreme Court, Bar Examination, 1995 - 1999; 2004 Co-Chairman Dayton Bar Association Bench-Bar Conference; Montgomery County Alcohol and Other Drug Abuse Task Force, Co-Chair Drug Court Committee; Montgomery County Alcohol and Other Drug Abuse Implementation Advisory Team, Co-Chair Drug Court Implementation Committee

Community Activities:

President, Board of Trustees, University of Dayton School of Law Alumni Association; Miami Valley Youth Soccer Association, Board Member, 1994-2012, President, 1999-2009; Ohio South Youth Soccer Association, President, 2007 – 2010, Board Member, 2000 - 2012; Youth recreation and select soccer coach 1990 - 2001; Former Board Member, Kids' Turn; Volunteer, Habitat for Humanity; Nominee, Miami Valley's Finest, Cystic Fibrosis Foundation, 2002



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?
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✓	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).

LEGAL SERVICES OF NORTHERN MICHIGAN, INC.

806 Ludington Street, Escanaba, MI 49829

(906) 786-2303

Toll Free 1-888-786-2303

Fax (906) 786-4041

May 9, 2013

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington, DC 20007

RE: Rule making workshops July 23, 2013 & September 17, 2013

Mr. Freedman:

I would like to express my interest in participating as a panelist for either or both of the rule making workshops listed above. Legal Services of Northern Michigan has been a pioneer in using the internet to allow private attorneys to provide counsel and advice services to low income individuals (IRP project). LSNM's IRP project went live in June of 2006 and since then the private attorneys servicing the site have responded to question from 3,706 low income individuals. Several other programs have replicated LSNM's project, but the project and the replication are being restrained by LSC's current interpretation of 45 CFR 1614.

In addition to my involvement with the internet based delivery, I am intimately familiar with the unique challenges faced by rural programs in establishing pro bono delivery models. LSNM is a program that covers 36 counties in Michigan and it is exclusively rural. I have been with the program for 34 years (15 as a staff attorney) and am a life time resident of the region so I have experienced the issues and attitudes of the private bar regarding pro bono services. LSNM is involved in several different PAI models which include: contract attorneys, a traditional clinic program, "how to" workshops and old fashion local arm twisting. Many of these efforts go unreported under present day LSC rules.

Please consider me as a panelist for the upcoming workshops. I believe I can provide a unique and informed prospective on the issues surrounding PAI delivery and reporting rules.

Sincerely,

Kenneth Penokie
LSNM Director



Funded in part by the Legal Services Corporation, Michigan
State Bar Foundation and Area Agencies on Aging regions 9,10 & 11.



LSC PAI Workshop

Key Points

Topic 1

In rural communities there are several obstacles to the recruitment of pro bono legal services that are missed by the Report of the Pro Bono Task Force. Some of these are:

A. Conflict of Interest. Start with an understanding that rural communities have few attorneys.¹ The firms are small and have modest incomes. These firms/sole practitioners are very concerned that they will lose cases because they are handling a pro bono case which conflicts them from taking a paying case. In addition, the very same attorneys who are willing to do pro bono will be opposing parties in cases handled by the legal services program.

B. Limiting exposure. Traditionally we think of an attorney's exposure in terms of the time required to handle a case or legal issue. That exposure is limited by a careful screening and selection of cases referred. However, in rural areas exposure also includes "becoming the town's free attorney" and the "attorney for life" syndrome. Once a rural attorney handles one or two pro bono cases in an effective matter, word of mouth spreads throughout the area and s/he receives a torrent of requests for free work. The exposure is not just during work hours, but at community and social events. In addition, because the communities are small the client who was assisted will treat the attorney as his/her personal attorney (and for that of his/her friends) for life.²

C. Record keeping. If rural attorneys take pro bono cases, they don't want to be bothered by a lot of follow-up work, phone calls or other paper work. They just want to do the case and not be bothered. Amazingly, our experience is that most claim not to want public thanks or acknowledgment of their good work. Perhaps this is because of the factor listed above.

D. Accounts receivable. The prevalent feeling among small firms and solo practitioners in rural areas is that their accounts receivables are their pro bono work. Most attorneys practicing in rural areas struggle to make a modest living. Their clients are likewise struggling and are sometimes unable to pay their bills fully. These factors taint the waters for pro bono recruitment. State Bar Associations work hard to encourage pro bono and to dispel the notion that accounts receivables meet pro bono standards, but the fact is the attitude persists.

¹33 of LSNM's 36 counties have between 10 and 25 attorneys. Of those only about 2/3's would be available for pro bono.

². LSNM's Board Chair assisted one client in his early days of practice and has received four or five requests for help from her each year for the past 40 years.

There is an adage that all pro bono is local. No where is that more true than in rural areas. Most of the pro bono case placement within our service area is accomplished by local staff attorneys because of their relationship with local bar members. The same goes for recruiting attorneys to assist with clinics or similar efforts. The recruitment requires an understanding of the limitations of rural practice and the ask must have built in safe-guards for the attorneys.

Topic 3

Current rule interpretations place some troubling hurdles to the implementation of pro bono services. Most of the hurdles surround the collection of data and reporting requirements. It is noted above that conflict of interest is a potential obstacle for private attorneys when considering pro bono legal work. It is also a serious issue for legal service programs.

Conflict: To be able to count a case under 45 CFR 1614 the current interpretation of the regulations require a program to perform a full intake on the potential pro bono client and to maintain that information in a case management system data base. These intakes include, income and asset information and issue identification information. Many bar associations deem this information confidential and enough to create a conflict if an opposing party were to contact the program for services. In full service, rural legal services programs, this conflict can cause a major problem with the delivery of core priority legal representation. The most obvious example is with domestic violence cases. Many programs, such as LSNM, have the protection of domestic violence victims as a top priority. However, if that program is involved in a clinic program with the required screening and data collection, it can easily be conflicted by the abuser's attendance at the clinic. In urban areas this might not be an issue as there are various alternative programs to assist domestic violence victims. In rural areas, the LSC funded legal aid program is often the only alternative.³ A pro bono effort that allows core priorities to be exposed to a conflict of interest is one that is defeating the purpose of adding resources for the low income community.

Avoidance of conflicts are not difficult. With a clinical program, necessary data can be collected in a data base accessible only to the clinic and reporting can be stripped of identifying information (unique numerical identifiers used instead of names etc...). Online services can likewise be set up to preserve anonymity while still collecting necessary reporting data.

Cost: The current paradigm is for a legal services program to completely own anything that is reported as pro bono case. Owning the case includes a full intake with income, asset and subject matter screening, targeted referrals, regular follow-up, timely closing and outcome measures. There should also be good stories collected. As noted above this paradigm limits a programs range of pro bono involvement because of potential conflicts. It is also true that the paradigm is expensive requiring an extensive investment of program capital. The more capital

³It should be noted that, because of the time consuming and difficult nature of domestic violence cases, they are very difficult to place with pro bono attorneys.

invested in the pro bono, the less is available for staff who perform core services. The steeper the cost/benefit curve the less valuable the pro bono services.

The question with many of the issues identified is what is required by 45 CFR 1614. Sections 2(a), 3(c), and 4(a)(2) all require the plan and delivery system to meet the clients needs in an “effective”, “efficient” and “economical” manner. Section 19(c) specifically requires: recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

The directives of 1614 should then be overlaid on top of 45 CFR 1611.7 which requires that “a recipient shall make reasonable inquiry regarding sources of the applicant’s income, income prospects and assets.” The question then is: What is reasonable in light of the resources being utilized in a particular pro bono “case”? If a case is being directed to a private attorney for service, the legal services community is not providing any “legal service” to that client. So the risk under any particular pro bono delivery model is that a person who is not financially qualified may get free advice from a private attorney. The exposure is much less than the same client being seen in-house by a program attorney. Since the exposure is less it would follow that a “reasonable” screening process could be less robust and more cost effective.

We are well into the digital age and technology exists to screen potential “clients” for eligibility and placement with a pro bono attorney without the necessity of costly personnel. While it is true that these systems cannot detect every nuance in an answer or potential prevarication, it is also true that they are not subject to human error. Given the very small amount of program investment for these electronic dating systems, electronic screening does represent a “reasonable inquiry.” Especially if they are coupled with some basic instructions to the pro bono lawyers to flag irregularities.

Name	Kenneth Penokie, Director Legal Services of Northern Michigan
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?
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	Other issues related to Topic 3 (please specify in your submitted outline).

Summary of Qualifications

For LSC PAI Workshop

Kenneth Penokie

Director of Legal Services of Northern Michigan since 2001.

Deputy Director of Legal Services of Northern Michigan from 1994 to 2001.

Staff attorney in an office mostly staffed by one attorney and responsible for three to five counties from 1979 to 1994.

Legal Services of Northern Michigan service area is exclusively rural and contains over 60% of the land mass of Michigan. The area contains over 27,000 square miles of mixed agricultural and forest land and extends almost 500 miles from one end to the other. The entire service area has less than 2,000 licensed attorneys. Despite these challenges, LSNM has an effective and diverse pro bono component. LSNM's pro bono component includes:

- A weekly walk-in clinical program
- Pro se family law clinics
- Paid PAI contract attorneys
- A reduced fee referral program
- An internet based pro bono counsel and advice program (Pioneered and developed by LSNM)
- Informal case referrals

In addition to LSNM's in-house pro bono efforts I have been involved in various efforts spearheaded by the State Bar of Michigan.

In short I have knowledge, based upon many years of experience, of what pro bono efforts work and what doesn't work in rural areas. The diversity of experience and the years of interaction with LSC PAI rules give me an intimate understanding of the issues surrounding PAI reporting.

Outline of ABA Presentation

General Observations/Introduction

Private bar is an important partner with LSC in providing services

ABA has encouraged pro bono service through a variety of programs and policy statements

Providing grantees with flexibility will be critical in enabling the programs to develop creative and collaborative approaches for engaging pro bono volunteers

Examples:

Dealing with partner organizations

Addressing intake and priority variations

Finding ways to utilize volunteers in innovative capacities

LSC must take care to avoid providing too much specificity in the revisions

Potential to inhibit new approaches essential for increasing pro bono opportunities

Topic 1: Should resources spent supervising and training law students, law graduates, deferred associates, and others be counted toward grantees' PAI obligations, especially in "incubator" initiatives?

Law Students, Law Graduates, Deferred Associates and Others

Law students, law graduates, deferred associates and others play an important role in assisting to provide legal services to the poor - to conduct intake interviews, gather documents, engage in research, and draft documents such as simple wills and pleadings

Budget cuts have forced programs to reduce staff - the ability to utilize these volunteers has been of enormous benefit

LSC recipients benefit in less tangible ways - many of law students, law graduates and deferred associates will become dedicated pro bono attorneys through exposure they receive to the critical legal needs of the poor; some will become leaders within the legal community and will become strong advocates on behalf of the program.

Utilizing these volunteers requires a substantial dedication of time and resources by the LSC recipients.

The interpretation of the PAI rule in External Opinion #EX-2005-1001 had a negative impact on the willingness of some programs to fully utilize volunteers

The ABA believes LSC recipients should be able to receive PAI credit for training and supervising these volunteers.

“Incubator” Initiatives

As a result of recent retrenchment in the legal industry, some law schools and bar associations have created incubator programs to assist new attorneys in establishing their practices. Some LSC recipients have been asked by law schools or bar associations to become a partner in these efforts.

Under Advisory Opinion # AO- 2009-1007, any attorney participating in an incubator program who earns more than one half of his or her professional salary from a recipient is considered a “staff attorney” under 45 CFR Part 1600. Pursuant to 45 CFR 1614.1(e), the recipient is not permitted to count as PAI any payment made to an attorney who is considered a staff attorney for two years after the attorney no longer serves in that capacity with the recipient.

New attorneys who are just beginning a practice will not know if more than 50% of their income in the first year or two will come from the LSC recipient through the referral of clients. And even if they did, the best policy would be to make an exception to the current restriction at least for lawyers who interned through an incubator program with an LSC grantee.

The ABA recommends that the PAI Rule be amended to permit LSC recipients to receive PAI credit when they refer cases on contract to attorneys who are participating in incubator programs affiliated with the recipients, even if those contracts represent more than 50% of an attorney’s income in the first two years of practice. This will make maximum use of needed and available resources within the spirit of the PAI rule.

Topic 2: Should grantees 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?

There are several models of integrated intake and referral systems utilized by LSC recipients. Pro bono programs and volunteers that participate in integrated screening and referral systems benefit by receiving carefully screened cases, saving both time and resources.

LSC has encouraged its grantees to collaborate with pro bono programs and to integrate them fully into the statewide delivery system. Integrated intake and referral systems are an excellent example of how grantees have heeded that call.

Advisory Opinion #AO 2011-001 set forth an interpretation of Part 1614 that severely inhibits LSC recipients from participating in such systems, because they cannot count towards PAI the value of the time spent in intake, screening and referral of LSC-eligible clients unless they counted the case as their own and engaged in oversight and follow-up.

Oversight and follow-up on cases referred to pro bono attorneys is essential for quality assurance, but that is not a function that has to be carried out by the LSC recipient.

The ABA supports an interpretation of 45 CFR 1614 or its amendment, if necessary, to enable LSC recipients to count towards their PAI spending requirement the time spent to: create an integrated intake and referral system; conduct intake; screen callers; and refer eligible clients to private attorneys regardless of whether the recipient considers the case to be its own or provides oversight or follow-up to the volunteer attorney who accepts it.

Topic 3: Should LSC 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?

There are a wide range of brief service approaches that have been developed over the past few years that use volunteer lawyers.

Many are sponsored by bar associations, community groups or the local courts.

Some focus on a specific group such as veterans or battered spouses

Others focus on a specific area of the law such as divorces or evictions.

Many are held in locations that are convenient for clients such as community centers, schools or churches, as well as at times (evenings and weekends) that respond to the needs of working people

These approaches can be popular with volunteer lawyers because they may limit the scope of work and time commitment required.

LSC grantees often play an important roles in assuring the success of these brief service approaches; this enables LSC grantees to work collaboratively with the bar, the courts and community groups to extend needed legal help

To the extent that eligible clients are being assisted through such approaches, LSC grantees should receive PAI credit for any support they provide

Because these approaches sometimes do not include client eligibility screening, the question of PAI credit becomes much more complex. We want to participate in discussions as a part of these regulatory workshops to see if we can collaborate on developing reasonable approaches that do not run afoul of the purpose or letter of the law governing LSC.

Name	Lisa Wood, Chair, ABA Standing Committee on Legal Aid and Indigent Defendants
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.	
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X	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.	
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	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
X	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.	
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	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).

Lisa Wood
Bio and Qualifications

Lisa is the Chair of the ABA Standing Committee on Legal Aid and Indigent Defendants, having served in that post since 2012. She previously served 2 years as a member of the Committee.

Lisa is a partner and Chair of the Litigation Department at Foley Hoag LLP in Boston, where she handles complex litigation matters involving accounting, securities and antitrust issues. Throughout her 29 years of practice, Lisa has been active in access to justice issues. Lisa served as a member of LSC's Pro Bono Task Force. Lisa served as Chair of the Massachusetts IOLTA Committee for the past 6 years, and served as a member of that Committee for four years previous to that. She has served as a Trustee and Grant Committee Member of the Boston Bar Foundation, one of the charities to whom the Massachusetts IOLTA Committee disburses funds for grant making purposes. Lisa has also served on the Board of the Volunteer Lawyers Project for 25 years, including three years as its Chair. VLP is currently the largest LSC recipient in Massachusetts, and was one of the first organized pro bono programs in the United States (funded in its early years by an ABA start-up grant). Lisa has also been active in access to justice issues through the local chapter of NCCJ and the Boston Bar Association.

Lisa has served in the Leadership of the ABA's Sections of Litigation and Antitrust for more than 15 years. She currently pens a regular column in the Antitrust Section's Magazine called, "Notes from the Field" which addresses practical litigation issues. For the Litigation Section, Lisa has focused her leadership efforts on access to justice issues, previously chairing the Section's Access to Justice and Pro Bono and Public Interest Committees, and serving as a Litigation Section liaison to the ABA Civil Right to Counsel Working Group. Early in her Section leadership years, Lisa founded and oversaw the Section's annual in-house counsel pro bono award.

Foley Hoag has an exemplary pro bono program of which Lisa is very proud. Lisa has focused her pro bono case work on child abuse cases involving special needs children.

AMERICAN BAR ASSOCIATION

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

321 N. Clark Street
Chicago, Illinois 60654-7598
www.abalegalservices.org

Chair

Lisa C. Wood
Foley Hoag LLP
Seaport World Trade Ctr West
155 Seaport Boulevard
Boston, MA 02210-2600
LWood@foleyhoag.com

Members

Jacquelynn Bowman
Boston, MA

Pamela Enslin
Kalamazoo, MI

Maureen Essex
Singapore, Singapore

Daniel Goyette
Louisville, KY

Stephen Hanlon
Washington, DC

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Albany, NY

Ada Shen-Jaffe
Seattle, WA

Robert Stein
Washington, DC

E. Jane Taylor
Columbus, OH

Board of Governors Liaison

Josephine McNeil
West Newton, MA

Committee Counsel

Terry Brooks
312-988-5747
terry.brooks@americanbar.org

Associate Counsel

Bev Groudine
312-988-5771
bev.groudine@americanbar.org

Assistant Counsel

Tori Jo Wible
312-988-5753
tori.wible@americanbar.org

June 21, 2013

Mr. Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K Street, NW
Washington, D.C. 20007
Via e-mail to: PAIRULEMAKING@lsc.gov

Re: Comments on Revising the LSC Private Attorney Involvement (PAI) Rule,
45 CFR Part 1614

Dear Mr. Freedman:

The American Bar Association, through its Standing Committee on Legal Aid Aid and Indigent Defendants (SCLAID) and with substantial input from its Standing Committee on Pro Bono and Public Service (Pro Bono Committee), submits these comments regarding possible revisions to the Legal Services Corporation's (LSC) PAI requirement.

In addition to its longstanding support for ongoing federal funding of LSC, the ABA has a strong commitment to and keen interest in the full and robust involvement of the private bar in the delivery of legal services to the poor. While recognizing that pro bono volunteers can never replace the vital services provided by LSC grantees, the ABA views the private bar as an important partner with LSC in providing much needed services to those who cannot otherwise afford legal assistance.

The ABA has encouraged pro bono service through a variety of programs and policy statements for more than a century. The ABA Canons of Professional Ethics, adopted in 1908, as well as the ABA Model Code of Professional Conduct, adopted in 1969 both addressed the issue.¹ The ABA Private Bar Involvement Project (now known as the Center for Pro Bono) was established in 1979 to assist with the creation and development of pro bono programs.

In more recent times, the ABA adopted Model Rule of Professional Conduct 6.1 in 1983, which urged lawyers to "render public interest legal services." In 1993,

¹ Canon 4 of the ABA Canons of Professional Ethics provided that "a lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason and should always exert his best efforts on his behalf." EC2-25 of the Model Code of Professional Conduct stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer.... Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged."

the ABA amended MRPC 6.1 to define pro bono in a multi-tiered and prioritized way, placing emphasis on the representation of low income people with no cost to the client.

The ABA has also been at the forefront of establishing criteria for effective pro bono programs. In 1996, the ABA adopted *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means (Pro Bono Standards)* to provide guidance regarding the most effective and efficient ways for pro bono programs to operate. The ABA is in the process now of revising the *Pro Bono Standards*, and the revised version is scheduled to be considered by the ABA House of Delegates at its Annual Meeting in August.

Several compelling reasons led to the revision of the *Pro Bono Standards* including new forms of delivery of pro bono legal services that were not prevalent in 1996, such as limited scope representation, assisted pro se models, and neighborhood and court-based clinics. In addition, the use and availability of technology by pro bono programs have grown exponentially since the adoption of the original *Standards*. Furthermore, as pro bono has become increasingly integrated into access to justice and legal aid initiatives, the need to provide adequate resources and infrastructure to support pro bono activities has expanded. Some of these same factors are no doubt influencing LSC's decision to consider amending its PAI Rule at this time.

As LSC moves forward with this process, providing its grantees with flexibility will be critical in enabling the programs to develop effective approaches for engaging more pro bono volunteers. As a result, LSC must take care to avoid providing too much specificity in the revisions. Otherwise, there is the potential to inhibit new approaches that may be developed in the future, thereby stifling the creativity and collaboration that is essential for increasing pro bono opportunities for volunteers.

Below are the ABA's comments on the specific topics regarding the PAI Rule for which LSC requested input in the Federal Register Notice of May 10, 2013:

Topic 1: Should resources spent supervising and training law students, law graduates, deferred associates, and others be counted toward grantees' PAI obligations, especially in "incubator" initiatives?

Response: The ABA, for the reasons stated below, recommends that the resources spent by LSC grantees supervising and training law students, law graduates and deferred associates be counted towards fulfilling the PAI requirements. In addition, the ABA recommends for the reasons stated below that the PAI Rule be amended to permit LSC recipients to receive PAI credit when they refer cases on contract to attorneys who are participating in incubator programs affiliated with the recipients, even if those contracts represent more than 50% of an attorney's income in the first two years of practice.

A. Law Students, Law Graduates, and Deferred Associates

Law students, law graduates, and deferred associates play an important role in assisting LSC funded programs to provide legal services to the poor. LSC recipients have utilized these groups of volunteers in a variety of ways including to conduct intake interviews, gather documents,

engage in research, and draft documents such as simple wills and pleadings. Given that a number of programs have had to reduce staff due to cuts in LSC and other funding sources, the ability to utilize these volunteers has been of enormous benefit to those programs.

LSC recipients benefit from the use of these volunteers in other, less tangible ways, as well. Due to the exposure that the law students, law graduates, and deferred associates receive to the critical legal needs of the poor, as well as to the excellent service provided by the LSC program's staff, many will become dedicated pro bono attorneys with the program, as well as financial supporters, once they are engaged in private practice. In addition, some will become leaders within the legal community and the community at large and based on their experience will become strong advocates on behalf of the program.

Utilizing these volunteers is not without a substantial dedication of time and resources by the LSC recipients. The volunteers require training in a wide range of areas including client interview skills, substantive areas of the law, and the workings of various governmental agencies with which clients interact. These volunteers also need to be closely supervised so that there is no doubt that clients are receiving the high level of service they deserve.

Currently, as interpreted by External Opinion #EX-2005-1001, the PAI Rule does not permit the time spent by program staff training or supervising law students or law graduates who are not yet members of the bar to count towards LSC grantees' PAI requirements. This interpretation has had a negative impact on the willingness of some programs to utilize these categories of volunteers. Given the time and effort that is needed to fully utilize law students, law graduates, and deferred associates, as well as their potential to become long term volunteers and supporters of LSC programs, the ABA believes LSC recipients should be able to receive PAI credit for training and supervising these volunteers.²

We recognize that the term private "attorney" is used in the title and throughout 45 CFR Part 1614. While not defined in that regulation, 45 CFR 1600.1 states that "[a]ttorney means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where the assistance is rendered." As a result, it likely will be necessary for LSC to change the name of the rule and the terminology used throughout or otherwise amend its regulations to enable law students, law graduates, deferred associates, and other volunteers to be included. The ABA urges LSC to use whatever terminology it deems appropriate to ensure that grantees can count these groups of volunteers towards fulfilling the PAI requirement.

B. "Incubator" Initiatives

It is well known that as a result of the financial crisis of 2008, many law firms cut back substantially on new hires. Many newly admitted attorneys found themselves without employment and decided to start a solo practice, but lacked the practice skills or substantive expertise needed to do so successfully. Recognizing the needs of these new attorneys, some law schools and bar associations have created incubator programs to assist these attorneys in

² For many of the same reasons outlined above, the ABA recommends that LSC recipients receive PAI credit for training and supervising other categories of volunteers including paralegals and in-house counsel licensed to practice in another jurisdiction.

establishing their practices. In some cases, LSC recipients have been asked by law schools or bar associations in their areas to become a partner in these efforts.

Under Advisory Opinion # AO- 2009-1007, any attorney participating in an incubator program who earns more than one half of his or her professional salary from a recipient is considered a “staff attorney” under 45 CFR Part 1600. Pursuant to 45 CFR 1614.1(e), the recipient is not permitted to count as PAI any payment made to an attorney who is considered a staff attorney for two years after the attorney no longer serves in that capacity with the recipient.³

New attorneys who are just beginning a practice will not know if more than 50% of their income in the first year or two will come from the LSC recipient through the referral of clients. And even if they did, the best policy would be to make an exception to the current restriction at least for lawyers who interned through an incubator program with an LSC grantee. They have been trained specifically in issues of poverty law and are committed to serving the low income community. Few members of the private bar are thus better positioned to provide needed services to the clients that LSC recipients will be referring on a low-fee contract basis.⁴ As a result, the ABA recommends that the PAI Rule be amended to permit LSC recipients to receive PAI credit when they refer cases on contract to attorneys who are participating in incubator programs affiliated with the recipients, even if those contracts represent more than 50% of an attorney’s income in the first two years of practice.

Topic 2: Should grantees 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?

Response: The ABA, for the reasons stated below, fully supports an interpretation of 45 CFR 1614 or its amendment, if necessary, to enable LSC recipients to count towards their PAI spending requirement the time spent to: create an integrated intake and referral system; conduct intake; screen callers; and refer eligible clients to private attorneys, regardless of whether the recipient considers the case to be its own or provides oversight and follow-up to the volunteer attorney who accepts it.

There are several models of integrated intake and referral systems utilized by LSC recipients. In some geographical areas (cities, counties, or states) there is one number that is called by anyone seeking free legal services. Staff screen the calls for income and other eligibility criteria, obtain pertinent facts and then determine to which legal aid or pro bono program the case should be referred. In some cases, this type of intake system also includes brief advice for those eligible

³ Under the envisioned incubator program that was the subject of # AO 2009-1007, new attorneys would serve three or four internships for the LSC recipient for which they would be paid. Following that period of employment with the recipient, the attorneys might have other internships with other organizations. Once the internships were completed, the attorneys were expected to establish an independent private practice providing legal services to low income persons in the community. During the following internships and once the practice was established, the recipient wanted to be able to refer eligible clients to the attorneys for which the attorneys would be paid a low fee and the LSC recipient would count those towards the PAI requirement.

⁴ The same logic applies to former LSC staff attorneys who leave the program to begin a private practice. As a result, the ABA recommends that as LSC reviews the entire PAI Rule, it consider eliminating the policy set forth in 45 CFR 1416(e).

clients for whom brief services suffice. Another integrated intake and referral system is one that is specific to a given LSC recipient. In that case, the LSC recipient conducts intake and screening and then determines if the eligible client matter is one that should remain in-house or be referred to the pro bono volunteer lawyer program in the service area. In either type of integrated screening and referral system, pro bono programs and the volunteer lawyers that participate in them benefit by receiving carefully screened cases, saving both time and resources.

LSC has encouraged its grantees to collaborate with pro bono programs and to integrate them fully into the statewide delivery system. Integrated intake and referral systems are an excellent example of how grantees have heeded that call. However, given the views expressed in Advisory Opinion #AO 2011-001, some LSC recipients likely will reconsider the value of expending their resources on these systems, and others that may have considered taking part may reconsider participating. This is the case because under that opinion, recipients cannot count towards PAI the value of the time spent in intake, screening, and referral of LSC-eligible clients unless they counted the case as their own and engaged in oversight and follow-up.

In a memorandum to Victor Fortuno dated July 14, 2011, Robert Stein and A. Michael Pratt, the then chairs of SCLAID and the Pro Bono Committee, respectively, requested that the opinion be withdrawn because it "... misrepresents 45 CFR 1614, makes broad statements that are likely to be misread, and inappropriately relies upon poorly conceived and otherwise unarticulated policy. The overall impact of the opinion will be to discourage and impede the delivery of pro bono legal services by pro bono lawyers, at a time when Congress and others are calling for an increase in such services." The memo contains a detailed analysis of the problems with the opinion and why it should be withdrawn. A copy of the memorandum is attached.

There is no doubt that providing oversight and follow-up on cases referred to pro bono attorneys is valuable for quality assurance purposes, but that is not a function that has to be carried out by the LSC recipient. The ABA believes that most pro bono programs that refer cases to members of the private bar engage in these practices, as recommended in the *Pro Bono Standards*. Specifically, *Pro Bono Standard 4.5-Tracking and Oversight* provides that "A pro bono program should establish a system for obtaining information regarding the progress of matters placed with volunteers. Based upon the information received, the program should provide the assistance required, subject to any limitations imposed by rules of professional conduct."⁵

The ABA fully supports an interpretation of 45 CFR 1614 or its amendment, if necessary, to enable LSC recipients to count towards their PAI spending requirement the time spent to: create an integrated intake and referral system; conduct intake; screen callers; and refer eligible clients to private attorneys. That is our position regardless of whether the recipient considers the case to be its own or provides oversight or follow-up to the volunteer attorney who accepts it.

⁵ *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*, American Bar Association (1996).

Topic 3: Should LSC 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?

Response: The ABA recommends that LSC re-examine said rule, as currently interpreted, but recognizes this topic involves nuances and requires more detailed analysis as set forth below.

Our response to Topic 2 above also contains our response to the question posed by this topic as it pertains to integrated intake and referral systems in which eligible clients are referred to pro bono programs. However, based upon the items for discussion listed under this topic in the Federal Register Notice of May 10, 2013, it appears that the emphasis here is on brief service clinics, which will be discussed below.

There are a wide range of brief service clinics that have been developed over the past few years that are sponsored by bar associations, community groups, or the local courts. Some focus on a specific group such as veterans or battered spouses; others focus on a specific area of the law such as divorces or evictions. Many are held in locations that are convenient for clients such as community centers, schools or churches, as well as at times (evenings and weekends) that respond to the needs of working people.

These clinics are often popular with lawyers because they are for a discrete period of time (an evening or an afternoon) and a discrete matter. In addition, some of the clinics focus in an area of the law that lawyers have expertise in, such as wills or divorce, rather than an area of the law for which specialized knowledge of poverty law is required.

A number of LSC grantees have played important roles in assuring the success of these brief service clinics in a variety of ways including taking part in the clinic's development, providing training of staff and volunteer lawyers who staff them and being available for consultations onsite, as needed. This involvement has enabled LSC grantees to work collaboratively with the bar, the courts and community groups to extend needed legal help to those who cannot otherwise afford it.

The ABA believes that to the extent that eligible clients are being assisted at these clinics, LSC grantees should receive PAI credit for any support they provide to the brief service clinics under the same reasoning expressed in response to Issue 2 above. As to permitting LSC recipients to obtain PAI credit for assistance provided to brief service clinics that do not engage in client eligibility screening, the ABA plans to study the issue further and provide comments at a later date. While we are supportive of the development of these clinics and view them as an innovative approach to engaging pro bono lawyers and serving the low-income community, we also recognize the complexities of permitting LSC recipients to count them as PAI, due to a number of considerations, including possible statutory constraints. Hearing the views of others during the Regulatory Workshop to be held in Denver on July 23, 2013, will help to inform the ABA's views, which will be provided to LSC at a later date.

Mr. Mark Freedman

June 21, 2013

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The ABA appreciates the opportunity to present these comments and looks forward to participating in the upcoming Regulatory Workshops at which these issues will be further explored.

Sincerely,



Lisa C. Wood

Attachment

cc: Laurel Bellows, ABA President

AMERICAN BAR ASSOCIATION**Standing Committee on Legal Aid
and Indigent Defendants**321 N. Clark Street
Chicago, Illinois 60654-7598
www.abalegalservices.org**Chair**Robert E. Stein
4945 Brandywine Street, NW
Washington, DC
restein@verizon.net**Members**Erek Barron
College Park, MDHon. James Duggan
Concord, NHJean Faria
Baton Rouge, LARobert Hirshon
Ann Arbor, MILillian Moy
Albany, NYRobert Parks
Coral Gables, FLRobert Rothman
Atlanta, GAHon. Vanessa Ruiz
Washington, DCRobert Weeks
San Jose, CALisa Wood
Boston, MA**Board of Governors Liaison**Robert N. Weiner
Washington, DC**Committee Counsel**Terry Brooks
312-988-5747
tjbrooks@staff.abanet.org**Associate Counsel**Bev Groudine
312-988-5771
bgroudine@staff.abanet.org**Assistant Counsel**Georgia Vagenas
312-988-5765
vagenasg@staff.abanet.orgTori Jo Wible
312-988-5753
wible@staff.abanet.org**MEMORANDUM****To:** Victor M. Fortuno, General Counsel, Legal Services Corporation**Cc:** James M. Sandman, President, Legal Services Corporation**From:** Robert E. Stein, Chair, ABA Standing Committee on Legal Aid and Indigent Defendants
A. Michael Pratt, Chair, ABA Standing Committee on Pro Bono and Public Service**Re:** Advisory Opinion # AO – 2011-001**Date:** July 14, 2011

We write on behalf of the ABA Standing Committees on Legal Aid and Indigent Defendants (SCLAID) and on Pro Bono and Public Service (the Pro Bono Committee) to request withdrawal of LSC Office of Legal Affairs Advisory Opinion # AO – 2011-001. We believe that the opinion misinterprets 45 CFR 1614, makes broad statements that are likely to be misread, and inappropriately relies upon poorly conceived and otherwise unarticulated policy. The overall impact of the opinion will be to discourage and impede the delivery of pro bono legal services by private lawyers, at a time when Congress and others are calling for an increase in such services.

At the outset, we want to emphasize that the ABA fully supports an effective, but flexible, system for involving private lawyers in the delivery of legal services to the poor. To achieve this goal, LSC must allow recipients of its funding the ability to innovate and adopt creative approaches. The applicable regulations should be interpreted to permit flexibility in program design, so long as good-faith efforts are made to involve private lawyers with reasonable assurances of quality service for clients.

The situation described in the opinion constitutes a direct delivery system that complies with the regulation, and therefore recipient expenditures in connection with participation in that system are properly included within the recipient's PAI requirement.

The opinion, on page three, describes “a situation in which the recipient participates in a system with a number of volunteer lawyer programs in its service area.” It provides some details of how that system operated. It states that:

“The volunteer lawyer programs to which the recipient refers cases do not necessarily have case acceptance criteria that are consistent with the program’s priorities...The recipient does not consider these applicants as clients accepted for service by the recipient and provides no oversight over the cases, and does not track whether the applicant is ultimately provided any service through the referral. As such, the volunteer lawyer programs to which the recipient makes referrals are 1614 non-compliant direct delivery systems.”

We do not believe that the facts recited are sufficient to establish that the system described is “1614 non compliant.” 45 CFR 1614.3 (a) specifically contemplates that the requirements of the regulation may be met by activities that will be considered “direct delivery” if they are programs “...such as organized *pro bono* plans...and/or organized referral systems.” (emphasis added). Part 1614.3(d) establishes minimum necessary components required for a system to be considered a direct service system, including intake and case acceptance procedures consistent with the recipient’s priorities, and elements necessary to assure quality control and support for private attorney volunteers. Notably, this subsection of the regulation does not require that the recipient itself must provide these components. Nor does it require that the clients referred must be considered clients of the recipient. Clearly, the regulation contemplates that a recipient may participate in a system, and receive PAI credit for the costs of such participation, so long as the system as a whole (both those portions of it undertaken directly by the recipient, and those portions of it that are undertaken by organizations receiving referrals) includes the necessary components.

The facts recited in this opinion merely state that the case intake and acceptance procedures of the volunteer lawyer programs “are not necessarily consistent” with the recipient’s priorities. There is no specific finding that these procedures were inconsistent. And there are no findings that the volunteer lawyer programs fail to meet the other requirements of Part 1614.3(d). Therefore, the bald statement in the advisory opinion that the volunteer lawyer programs are “1614 non-compliant direct delivery systems” is unsupported and should be reconsidered.

Moreover, the implications of this portion of the opinion will have serious consequences for many, many pro bono delivery systems across the nation. The opinion can be read to imply that persons served must be considered clients of the recipient if the recipient is to consider the costs of referring those clients within its PAI requirement.¹ The opinion can also be read to require the recipient to itself conduct all the other quality assurance components set forth in Part 1614.3(d), when this is not in fact required by the regulation and is not practical.² This opinion, by its terms and by the implications it suggests, will put into doubt the regulatory validity of a substantial number of legitimate PAI programs nationwide.

¹ In fact, LSC External Opinion EX-2008-1001 takes exactly this position in a similar context, and we find that aspect of the earlier opinion to be equally troubling and inconsistent with the regulation.

² What is considered a “case” or “client” for purposes of recipient reporting via the CSR system should be differentiated from the requirements of Part 1614.

Alternatively, the recipient's participation in the referral system is a valid activity within Part 1614.3(b), and therefore costs of such participation are properly included within recipient's PAI requirement.

The opinion gives a very narrow and confusing interpretation to Part 1614.3(b) that is inconsistent with the plain language of the regulation and the policy the regulation is designed to achieve. On page 4, the opinion suggests that this subsection does not contemplate any activity that might result in direct client services and that it only authorizes activities similar to "support." We believe that this is an unfortunate and restrictive reading of the regulation that violates both the plain language and purpose of the regulation.

The opinion states that since the word "support" is used in subsections 1614.3 (b)(1) and (2), that word must be intended to be used in connection with all the activities contemplated within 1614.3(b). This is not the case. Principles of regulatory construction do not require that specific words used in subsections must then be read into all portions of the general section of the regulation. The introductory portion of 1614.3(b) specifically says "Activities ... may also include, but are not limited to..." (emphasis added). The construction adopted by the opinion flies in the face of these words, and adopts the view that indeed the activities are "limited to." The preamble to the regulation clearly contemplated a broader approach, stating that "Under new paragraph (b), at the option of recipients, PAI programs may also include support activities and other forms of indirect delivery of service." (emphasis added).

Further, Part 1614.3(b)(2) authorizes PAI credit for "Support...in furtherance of activities undertaken pursuant to this Section including ...technical assistance,...use of recipient facilities..." There is no reason that recipient activity to refer a case to private attorneys could not be considered to be either "technical assistance" or "use of recipient facilities." Also, it can be argued that intake and referral are similar in nature to the other "support" activities described, so may well be considered to be within the activities contemplated by the word "including."

Lastly, the statement in the opinion that subsection (b) "...is not intended to allow for activities beyond a range of non-direct delivery support activities..." is inconsistent with the very examples given in subsections (1) and (2), as many of those examples do involve elements of direct delivery such as research and advice and counsel.

The opinion inappropriately states, and relies upon, an otherwise unarticulated LSC policy that some types of referral activities are not appropriately allocated toward a recipient's PAI requirement.

LSC policy is expressed through its published regulations, as well as through other publicly available written documents such as program letters and board adopted protocols.. We are unaware of a set of additional unwritten policies that may affect the assessment of recipients. To the extent that such policies exist, they are inconsistent with requirements of government transparency and accountability expressed in the Sunshine Act and other sources. If a regulation is extremely unclear or ambiguous, the solution is to engage in public rulemaking to clarify the language and, in the process, to seek input on what the policy determination ought to be. In the

meantime, the language of the regulation should be enforced as written, and not as interpreted based on an otherwise unarticulated LSC “policy” as announced in an advisory opinion by the Office of Legal Affairs, particularly when that policy is inconsistent with the regulatory language and its purpose.

SCLAID and the Pro Bono Committee believe that there are both tangible and intangible benefits that result from the involvement of private attorneys in the work of legal aid programs. The activities of recipients to involve private attorneys must certainly be consistent with the clear requirements of the regulation, and should be in pursuit of the goal of quality service to clients. But local programs and governing boards should be allowed extensive flexibility in designing good-faith approaches to PAI.³ The approach should not be one based on an enforcement ideology that asks “can LSC be assured that such activities” effectuate the regulation. Instead, interpretation of Part 1614 should examine whether an activity that has been conducted in a good-faith effort to involve private attorneys and is consistent with the purposes of the regulation, is permitted by the plain language of the regulation. Moreover, this regulation should not be interpreted and applied in a manner that is inconsistent with its plain language and purpose.

For all the reasons set forth above, we urge that Advisory Opinion # AO – 2011-001 be withdrawn.

Thank you for your consideration.

³ See Part 1614.3(c), stating “The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient’s taking into account the following factors...” (emphasis added)