

August 28, 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 National Association of Pro Bono Professionals (NAPBPro) is an independent organization of pro bono professionals who are devoted to the promotion of pro bono services to the poor and the professional development of pro bono managers, professionals, and others interested in the field. Our members include professionals from LSC-funded legal services programs, as well as independent legal aid organizations, stand-alone pro bono programs, bar associations, law firms, law schools, and state-wide access to justice organizations.

NAPBPro's viewpoints on the proposed regulations are valuable to this discussion because our membership is comprised of pro bono professionals, including a large number who are engaged in the work LSC funds. We regularly communicate with our membership and are therefore uniquely positioned to bring forth the wisdom, experience, needs and concerns of the pro bono professionals who will be charged with the task of carrying out the objectives of LSC grantees within the parameters laid out in 45 CFR Part 1614. Our membership is deeply concerned about the future of pro bono. We care about the needs of low-income people and relationships we cultivate with the private bar that ultimately makes pro bono possible.

In order to represent best the viewpoints of our membership, we pooled information collected and discussed over the last few years. We have three primary sources of information. First, we conducted an email survey that specifically addressed these LSC recommendations. Second, we have performed several other telephone and email surveys over the last few years that have gauged our member's attitudes, opinions, and events that have occurred with their pro bono programs. Third, we routinely gather information from NAPBPro members during webinars, our virtual conference, our annual meeting, and through formal (Beyond the Basics trainings) and informal discussions at the Equal Justice Conference and within our own States.

It is with our members' interests in mind that we submit these enclosed comments regarding the possible revisions to LSC's PAI requirements. NAPBPro appreciates the opportunity to provide comments and respectfully requests the opportunity to participate in the upcoming Regulatory Workshops.

Introductory Remarks

NAPBPro applauds LSC's initiative in investigating and seeking to strengthen the role pro bono plays in the civil legal services delivery model. I believe we can all agree that pro bono has tremendous potential. When pro bono's full potential is realized, pro bono and staff model legal services complement each other to provide comprehensive legal service to low income people in need of lasting solutions. In this way, pro bono can have a real and tangible impact in a community.

At the same time, pro bono also faces many challenges that can limit its potential for impact. Those challenges are both external (faced with the private bar) and internal (faced within the legal services program). External challenges cannot be overcome where internal challenges are overwhelming. Internal challenges compound and perhaps even create insurmountable hurdles for programs that are not invested in or supportive of pro bono as a valuable partner in the service delivery model.

Some of our members have expressed frustration because they work in programs where pro bono is misunderstood or perhaps only tolerated, as it is viewed as diverting limited resources away from staff. In those programs, pro bono can be marginalized, with support falling far short of what is necessary for running a quality pro bono program. Some pro bono programs spend their 12.5% in ways that have no hope to realize the potential in pro bono. Our members have communicated numerous internal challenges that negatively impact a pro bono program's development.

Internal Challenges in Pro Bono Program Development¹

- Programs that are understaffed and expect a part-time pro bono professional to build and maintain a program (unrealistic expectations);
- Programs where pro bono professionals wear multiple hats that marginalize pro bono (i.e. case handlers that are also pro bono professionals have professional obligations to clients that push pro bono development into a secondary position);
- Programs that lack an understanding that pro bono professionals need a different skill set than other legal services staff or that re-assign unskilled staff to pro bono because they were unable to perform at an acceptable level in other parts of program;
- Programs where pro bono professionals are disenfranchised and lack authority to make decisions that impact pro bono development;
- Programs with boards of directors that fail to consider the impact of decisions on pro bono because they are only focused on the staff attorney program;
- Programs where staff attorneys keep "easy" or routine cases for themselves and send difficult clients and cases to pro bono staff to "pawn off" on pro bono attorneys;

¹ The internal challenges listed are not universal. These challenges exist to varying degrees in programs around the county. Some programs have one or more of these internal challenges, but maintain a successful pro bono program. The more of these internal challenges that exist or the extent to which they permeate a program has a critical impact on a pro bono professional's ability to cultivate a culture of pro bono in a legal community.

- Programs where the intake system is not operated with the unique needs of pro bono in mind;
- Programs where pro bono staff lack training and have limited opportunities to collaborate or train with other pro bono professionals;
- Programs that fail to afford pro bono professionals the opportunity to participate in the limited pro bono specific training that is available;
- Programs that fail to expect pro bono programs to operate in the same professional manner that staff attorneys do;
- Programs that spend significant portions of their LSC allocation on a finite number of private attorney contracts, rather than pro bono staff that could exponentially grow a program;
- Programs who inappropriately and excessively bill PAI for activities (such as bar events for staff attorneys) when supporting pro bono is not the primary objective in engaging in the activity;
- Programs where the board, executive director, staff attorneys, and others view dollars spent on pro bono are dollars foolishly diverted from service delivery.

NAPBPro supports LSC’s proposed Recommendations with the caveat that LSC should ultimately craft the Regulations in a manner that allow for freedom and creativity, while enforcing them in a manner that ensures full compliance and prevents fraud, waste, and abuse. Our support is provided with dual interests in mind. First, we hope that pro bono will be unleashed to become an equal partner in the service delivery system² and consequently empower the private bar to take more responsibility in delivering access to justice issues. Second, we hope programs that underutilize or even marginalize pro bono are held accountable to maximize the use of their funds to build and sustain viable pro bono programs.

NAPBPro believes there are four fundamental elements essential to building and sustaining robust pro bono programs. If LSC crafts the Regulations in a manner that allows for freedom and creativity, programs could be more robust and vital in meeting the legal needs of low-income people. However if LSC fails to properly enforce the Regulations, there is increased opportunity for programs to dilute resources and ultimately fail to meet objectives. NAPBPro respectfully encourages LSC to craft regulations that promote the following:

Fundamental Elements for Robust Pro Bono Programs

1. **Dedicated Pro Bono Professionals** - A pro bono program should have at least one full-time pro bono professional, whose primary responsibility is the pro bono program^{3 4} and who possesses a skill set that is conducive to promoting and administering pro bono.⁵

² NAPBPro is not proposing equal funding for pro bono programs. While the private bar plays a critical role in providing access to justice, legal services programs must be funded to meet the needs the private bar is not equipped and/or willing to provide.

³NAPBPro’s recent survey indicated that only 53.3% of survey respondents worked in a program that had at least one full-time pro bono professional who does not carry a case load and whose primary job is

2. **Empowered Pro Bono Professionals** - Pro bono should be an equal partner in the service delivery model and fully involved in decisions about intake and service delivery. Pro bono programs should have a separate board of directors, or alternatively that a shared board has an active advisory committee for pro bono that supports and promotes pro bono.
3. **Collaborative, Trained Pro Bono Professionals** - Pro bono professionals occupy a small niche in the legal field, so they should be afforded opportunities to collaborate with other pro bono professionals and attend training that is relevant to their jobs.⁶
4. **Professional Standards for Pro Bono Programs** - A pro bono program should embrace the American Bar Association's "Standards for Pro Bono" and aspire to operate in a manner consistent with the principals enunciated in those standards.

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.

NAPBPro Survey Highlights Regarding Topic 1

A slight majority of survey respondents favor the recommendation in Topic 1, but only if certain conditions are required and satisfied. Specifically, the majority of respondents indicated that if LSC adopts the recommendation that the Corporation:

- Place on a condition that a program must first demonstrate that they meet the hallmarks of an strong pro bono program before receiving permission to expand the use of funds in this way;

coordinating pro bono. 73.3% of respondents felt their program was understaffed and only 6.7% felt their pro bono program was staffed appropriately.

⁴ NAPBPro submits that pro bono must be the primary objective for a pro bono professional because where there are conflicting responsibilities; those other responsibilities often take priority. As an example, pro bono professionals that carry case loads have professional obligations tied to their license that demand that the needs of the client come first, therefore making pro bono secondary. This marginalizes pro bono.

⁵ The skill set needed to build and maintain a pro bono program is different than the skill set needed to support a client or litigate a case. That does not mean the skill sets are mutually exclusive, it simply means that the unique skills needed in a pro bono program must be considered in the hiring process.

⁶ Pro bono specific training is very limited. The primary training opportunities available to pro bono professionals in or connected to legal services programs are at the Equal Justice Conference, the NLADA Conference, NAPBPro's free webinars, and NAPBPro's Virtual Conference. Traveling to conferences limits training for some financially strapped programs. Currently, pro bono professionals can become a member of NAPBPro, attend all the webinars, and attend the virtual conference for a total cost of \$110.00.

- Place a condition that the program have at least one full-time pro bono professional who doesn't carry a case load and whose primary responsibility is to coordinate pro bono; and
- Limit the proportion of the 12.5% LSC grant that can be used to support this recommendation.

Almost 22 percent of those responding to the survey expressed concern that pro bono staff would be reduced, while about 15 percent expressed concern that other existing pro bono programs would be downsized or eliminated should this recommendation be adopted. Close to 30 person thought their programs would use the funds to supervise and train only.

One-quarter of those returning surveys indicated that no limits or conditions be placed on the use of LSC funds if this recommendation were adopted.

Bullet Point 3: Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?

Law students, law graduates, deferred associates and others can add capacity to stretched pro bono delivery systems, as well as laying a strong foundation for future pro bono service.⁷ It seems likely that allowing pro bono programs to claim PAI credit is likely to expand pro bono in successful programs. Although NAPBPro wants to encourage the expansion of pro bono and allow for as much freedom and creativity as possible, it should not be at the cost of existing pro bono in already struggling programs.⁸

First, NAPBPro proposes that LSC consider a cap on the percentage of PAI funds that can be used for training and supervising the work of law students, law graduates, etc. While these volunteers have potential to add capacity, they are not licensed and able to represent clients in court. It is important to invest in pro bono for licensed attorneys because their work can lead to a more lasting impact for clients. Although this seems evident, a cap may be necessary to ensure a program doesn't invest 90% of its PAI funds in law students and leave only 10% of its PAI funds to support extended service representation. The majority of funds should target Private Attorney Involvement.

Second, NAPBPro proposes that a condition must be met before an LSC-funded program can claim PAI credit for supervision and training of the above noted volunteers. Specifically, NAPBPro proposes that LSC require programs to demonstrate their pro bono programs have the four "Fundamental Elements" outlined in our Introductory Remarks before allowing for an expanded list of permissible activities. If a condition

⁷ One of our member's pro bono program had determined that "[a]pproximately 89% of our student volunteers continue to volunteer with us once they are licensed attorneys."

⁸ One of our members commented that "PAI efforts need to involve more pro bono attorneys to assist clients. Experience has shown that to coordinate the pro bono efforts of more pro bono lawyers, you need more dedicated staff. While "incubator" initiatives can serve good purposes, including long term benefits, allowing PAI funds to be diverted to supervising such efforts to "incubate" law students and law graduates will necessarily lead to less funds being available to coordinate the needed efforts of pro bono attorneys."

must be met, a reward is created. Programs that cannot meet the conditions have some foundational elements to work on prior to being authorized to expand its uses of PAI funds. Allowing those programs to focus on the developing a strong foundation (instead of expanding the scope of their billable work) will strengthen the program and better ensure success when the scope of work is expanded. At the same time, creating a condition does not prohibit programs from engaging in this type of activity, but it requires the program to have another source of funds to pay for it.

One may ask how a program could be marginalized by training and mentoring law students, new grads, etc. One NAPBPro member explained that "...it sometimes comes down to training interns or being able to have time to assist applicants. We do not have the resources to allocate one person to do this full-time. It is done by staff in addition to their regular duties. Most of our staff are already doing more now than ever because of cuts to funding." Another member expressed this concern by explaining that "students, law graduates, recently licensed attorneys, and deferred associates all require extensive, close supervision, which can be a negative net impact and further strain limited resources. At the same time, some of these types of volunteers are excellent and contribute a net positive impact." Programs that can demonstrate they meet the "Fundamental Elements" have the tools needed not only to determine if the program can stretch further but also to handle the additional responsibility professionally.

Pro Bono is not free, regardless of whether it is being done by a law student or an attorney. It takes time, training, decision making authority, and high standards to support volunteers. If a program lacks a strong foundation, then diversifying opportunities for billing could lead to problems. Consider the consequences to clients if they are "helped" by untrained and unsupervised law students or new lawyers. A hospital would not accept responsibility for training and supervising medical residents if it was already swamped and lacked the resources to provide proper training and supervision. Simply, the consequences for patients would be too dire. NAPBPro's proposal encourages LSC to ensure that grantees are equipped to handle the additional responsibility of supervising and training these young professionals before paying for it.

Bullet Points 4 and 5: Ensuring against fraud, waste, and abuse. Discuss how any approaches you recommend might be implemented.

NAPBPro proposes that LSC consider requiring programs to demonstrate they meet the four "Fundamental Elements" outlined in the Introductory Remarks before being granted permission to expand permissible billing activities. One of the key reasons for requiring satisfaction of a condition is to prevent fraud, waste, and abuse. Based upon our members' reports, we submit that most pro bono programs already properly allocate 12.5% of their grant to PAI. These are not the programs that NAPBPro is concerned about, as these programs already demonstrate program integrity and a commitment to pro bono and would be less likely to engage in fraud, waste of funds, or abuse if the Regulations were expanded. Regulations that allow flexibility would likely encourage creativity and freedom in those programs.

On the other hand, programs that currently struggle with the internal challenges outlined in the Introductory Remarks may be more likely to intentionally or unintentionally engage in fraud, waste, or abuse. If a program has unrealistic expectations about what their half time pro bono professional can do, how would adding significant training and supervision responsibilities add value to a program? If a program encourages staff attorneys to bill PAI for every bar event (regardless of intent to promote pro bono), would that same staff attorneys also bill for training and supervising law interns that work with them (not on pro bono)? Programs that lack the fundamentals need to focus on building their foundation first before adding on if the goal is to expand pro bono, rather than replace one type of pro bono with another. Pro bono cannot grow properly where there is fraud, waste (or misuse of funds), and abuse. NAPBPro's proposal encourages LSC to assure that programs are already utilizing current PAI funds appropriately before granting permission to expand the list of approved activities to bill PAI.

LSC could implement NAPBPro's suggested approaches fairly easily, with little burden on grantees that are already in compliance. Although the process would need refinement, LSC could allow programs to complete an application for expanded use of PAI funds. The application would need to demonstrate compliance with each of the "Fundamental Elements." LSC's current auditing and evaluation processes could be used to ensure continued compliance and that a program does not exceed the cap (as suggested by NAPBPro) of funds that can be used for this purpose. Potential application materials for each element are suggested below.

1. **Dedicated Pro Bono Professionals** – The program could provide time records that demonstrate that at least one employee is assigned to pro bono full-time. (For large programs, clearly the number of dedicated pro bono professionals should comport with program size and budget.) The program could also attest that the employee's full responsibility is pro bono and that the employee does not carry a regular case load. LSC's current auditing and evaluation processes are sufficient to ensure compliance.
2. **Empowered Pro Bono Professionals** – The program could show that the pro bono professional is (preferably) part of the management team or that the pro bono professional is regularly afforded opportunities to participate in service delivery decisions. Additionally, the program could show that the pro bono program has a separate Board of Directors for pro bono. Alternatively, the program could produce Board minutes that demonstrate that the Board has an active Advisory Committee assigned to support and promote the pro bono program. LSC's current auditing and evaluation processes are sufficient to ensure compliance.
3. **Collaborative, Trained Pro Bono Professionals** – The program could submit proof that the pro bono professional engaged in an adequate amount of pro bono training each year and that the pro bono professional is a member of a professional pro bono organization that offers

opportunities for collaboration and mentoring. LSC's current auditing and evaluation processes are sufficient to ensure compliance.

4. **Professional Standards for Pro Bono Programs** – A program could demonstrate it is operating within the American Bar Association's "Standards for Pro Bono" by integrating minimum standards (as required by LSC) into PAI Plans or work plans. LSC's current auditing and evaluation processes are sufficient to ensure compliance.

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.

NAPBPro Survey Highlights Regarding Topic 2

A majority of survey respondents favor the recommendation in Topic 2, but only if certain conditions are required and satisfied. Specifically, the majority of respondents indicated that if LSC adopts the recommendation that the Corporation:

- Place on a condition that a program must first demonstrate that they meet the hallmarks of an strong pro bono program before receiving permission to expand the use of funds in this way;
- Place a condition that the program have at least one full-time pro bono professional who doesn't carry a case load and whose primary responsibility is to coordinate pro bono; and
- Limit the proportion of the 12.5% LSC grant that can be used to support this recommendation.

Approximately 14 percent of those responding to the survey expressed concern that pro bono staff would be reduced, while about 21 percent expressed concern that other existing pro bono programs would be downsized or eliminated should this recommendation be adopted. About 21 percent of respondents were concerned that if the recommendations were adopted that their program would focus on brief services, rather than finding volunteers to engage in full representation of clients.

Nearly 29 percent of those returning surveys indicated that no limits or conditions be placed on the use of LSC funds if this recommendation were adopted.

Bullet Point 3: Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for resources to enhance screening, advice, and referral programs?

Screening, advice, and referral programs can offer creative and attractive pro bono opportunities to pro bono attorneys. Weaving these programs into existing programs offer also enhance existing programs by expanding assistance to people who would otherwise not receive assistance. Although NAPBPro wants to encourage the expansion of pro bono and allow for as much freedom and creativity as possible, it should not be at the cost of existing pro bono in already struggling programs.

First, NAPBPro first proposes a cap on the percentage of PAI funds that can be used for screening, advice, and referral programs. Second, NAPBPro proposes that programs must first demonstrate they meet the four “Fundamental Elements” outlined in the Introductory Remarks. The reasons for these proposals are explained above in Topic 1.

Third, NAPBPro proposes that LSC prohibit PAI funds from being used to conduct general intake screening. Legal services programs have no shortage of clients. Intake systems are necessary to streamline intake and allow staff attorneys the time necessary to engage in litigation. Intake systems serve the same function for pro bono programs. Intake systems must be responsive to the needs of pro bono programs, just as they are designed to provide staff attorneys with certain information. If pro bono related problems exist in general screening it is unlikely that the root cause is the inability to use PAI funds, but rather that pro bono professionals are not actively engaged in decision making for intake where pro bono is concerned. If PAI funds can be used for general intake screening, there is significant potential for abuse.

Rather, NAPBPro proposes that PAI funds used for screening are appropriate in the following situations:

1. Pro bono professionals should be allowed to use PAI funds when working to integrate intake and pro bono.
2. PAI funds should be available when screening at outreach clinics or other pro bono events, where screening is necessary to comply with LSC Regulations.

Clearly, these events are not the day-to-day general intake screening needed for program operations.

Bullet Points 4 and 5: Ensuring against fraud, waste, and abuse. Discuss how any approaches you recommend might be implemented.

NAPBPro’s first and second proposals for this topic can be implemented in the manner described in Topic 1.

NAPBPro’s third proposal would also be fairly easy for LSC to implement, with little burden on grantees that are already in compliance. In order for LSC to implement the prohibition on using PAI funds for general screening, it would need to review time records for employees assigned to screening as their primary job responsibilities. So long as those screeners are not utilizing PAI funds for their screening work, the program would be in compliance. Likewise, employees who are assigned to pro bono as their

primary responsibilities would be capped on the percentage of their time they could bill to screening activities.

Topic 3

LSC Pro Bono Task Force Recommendation 2(c) – LSC should reexamine the rule, as currently interpreted, that mandates the adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

NAPBPro Survey Highlights Regarding Topic 3

A significant majority of survey respondents favor the recommendation in Topic 3. Although the percent of people who felt conditions were needed was less than for Topic 1 and Topic 2, there was still a slight majority that felt conditions should be required and satisfied. Specifically, the slight majority of respondents indicated that if LSC adopts the recommendation that the Corporation:

- Place on a condition that a program must first demonstrate that they meet the hallmarks of an strong pro bono program before receiving permission to expand the use of funds in this way;
- Place a condition that the program have at least one full-time pro bono professional who doesn't carry a case load and whose primary responsibility is to coordinate pro bono; and
- Limit the proportion of the 12.5% LSC grant that can be used to support this recommendation.

Nearly 8 percent of those responding to the survey expressed concern that existing pro bono programs would be downsized or eliminated should this recommendation be adopted. About 23 percent of respondents were concerned that if the recommendations were adopted that volunteers for their program would be upset if clients were not determined eligible for service.

About 27 percent of those returning surveys indicated that no limits or conditions be placed on the use of LSC funds if this recommendation were adopted.

What are the obstacles to recipient's use of pro bono volunteers in brief service clinic?

Using volunteers in brief service clinics has numerous advantages, including providing different pro bono opportunities to volunteers, serving more people in different settings, developing relationships with other community organizations, and increasing visibility for pro bono in the community. Even though brief service clinics have advantages, there are also obstacles that make brief service clinics difficult. A few of those obstacles are listed below.

- Getting sufficient paperwork completed when using several volunteer attorneys.
- Convincing some volunteers to turn away clients who are slightly over income and convincing others that just because the client has some minimal income they are still financially eligible.
- Getting volunteers to adequately document “legal advice” instead of “legal information.”
- Ensuring volunteers have adequate background for the type of clinic they are volunteering at. This is particularly difficult in community based advice clinics, where clients could come in with a range of different types of legal problems.
- Doing conflict checks.
- Turning away undocumented people or trying to obtain appropriate documentation in a brief service setting.

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?

NAPBPro members feel less strongly that conditions and guidelines should be implemented for the recommendations in Topic 3. However, if conditions are implemented, then NAPBPro would recommend the same conditions as described in Topic 1 and Topic 2.

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?

If a pro bono program were to forego eligibility screening, but maintain compliance with legal restrictions on activities and uses of LSC funds, the program would first need to identify the critical information that must be obtained and reviewed (i.e. citizenship). A program could create an “intake” form that requests necessary information from clients (i.e. citizenship signature) and prompts clients to briefly describe their legal problem to ensure it is not a legal problem that would violate LSC Regulations. Other information may need to be collected and reviewed as well. Simply, limited screening would still be necessary.

Additional Topics and Items for Discussion

A. Scope of Part 1614

Topic 1

1. **Please provide specific suggestions for definitions, limits, or guidelines relating to the potential addition of law students, pre-admission law graduates, or paralegals to the scope of Part 1614 activities.**

The definitions for law students, pre-admission law graduates, and paralegals should generally be broad in order to not to exclude potential volunteers who could offer assistance. For example, a law student could be broadly defined as “a student presently enrolled in an ABA accredited law school.” If the definition is broad, more potential candidates fit the definition. Decisions about whether a potential candidate is qualified or acceptable for the volunteer position should be left to the pro bono programs.

2. Are there any other categories of non-lawyers whose work should be considered for inclusion in Part 1614?

Part 1614 should include accountants who assist clients in preparing tax returns where there is also a tax dispute.

3. If you recommend changing the definition of a private attorney, then please provide specific recommendations addressing the scope of the definition and how the proposed definition relates to the purpose of the rule.

NAPBPro does not recommend changing the definition of a private attorney.

B. Tracking and Accounting for Part 1614 Work

Topics 2 and 3

1. What criteria and methods should LSC recipients use to identify and track Part 1614 services to provide sufficient information for reporting and accountability purposes about attempts to place eligible clients with private attorneys, or others, and the outcome of those efforts?

Much of a pro bono programs work is identifying appropriate cases, collecting client information and documents to build a case file for the volunteer (if located), and attempting placement (whether or not successful). In addition, even once a case is placed with a pro bono attorney, some clients fail to follow through with the volunteer. If the client did not receive advice at a minimum, that time cannot presently be billed to PAI. This is quite frustrating for pro bono professionals and the lost time makes it more difficult to meet the PAI requirement.

If LSC expands the Regulations to permit screening time to be billed to PAI, acceptable billing activities should include (at a minimum) the time spent collecting information to determine eligibility⁹, the time spent reviewing the clients eligibility, the time spent reviewing the application or screener information, the time spent interviewing the client for additional information. The criteria for allowing a screening activity to be billed should be if the “client” attended an outreach clinic or the client was transferred to the pro bono program for further investigation to determine if the client meets criteria for the pro bono program.

⁹ NAPBPro recommends that eligibility screening only be allowed in outreach clinic situations. General eligibility screening should not be allowable. Please see our explanation in Topic 2.

If LSC expands the Regulations to permit referral time to be billed to PAI, acceptable billing activities should include (at a minimum) the time spent collecting documents and additional information from clients, the time spent “advertising” the case to private attorneys, the time spent communicating with private attorneys about the case and running a conflict check, the time spent communicating with the client, the time spent copying the file and sending out referral letters, and the time spent tickling the “case.” The criteria for allowing referral activity billing should be that an eligible client was accepted into the pro bono program. At that point, both the pro bono program and the client anticipate additional efforts will be made to help the client.

Pro bono programs will have various internal ways to track which “clients” got through screening and were accepted into the pro bono program. For LSC billing purposes, it would be simple enough to allow screening and referral activities to be billed when a case was successfully placed with a pro bono attorney and the attorney provided service to the client. However, in situations where the client fails to follow through after initial screening or after referral (but before legal advice can be documented), LSC could consider creating two new closing codes to track this work. One closing code (call it “Ma” for simplicity) could track time billed for PAI screening work and the second closing code (“Mb” for simplicity) could track time that was billed where referral was attempted (which would include time for screening, as applicable).

C. Support for Unscreened work of Private Attorney Clinics

Topic 3

- 1. Should LSC permit LSC recipients to obtain some credit under Part 1614 for support for these clinics if they do not screen for LSC eligibility and the clinics may provide services to both eligible and ineligible clients? Please provide specifics about screening concerns and methods to address them.**

Yes, LSC should permit LSC recipients to obtain PAI credit for supporting these clinics, so long as the clinics are designed to serve eligible clients. Pro bono programs that offer legal clinics that are open to the public should inform the public that the clinic is targeted towards low income people, but even when that information is clear ineligible “clients” come to the clinics. LSC could require programs to include information on clinic flyers and such that informs the public that the clinics are targeted to low income people. If the clinic is not targeted to help low income people, then it should not be billable to PAI.

One concern is that if a clinic was held and a significant percentage of the attendees are ineligible, then volunteers would get upset. Additionally, providing service under these circumstances gives fodder to those who would do away with LSC funding by claiming LSC is wasting funds, diverting funds away from low income people, or funding “country club” clinics. For this reason, some minimal screening should perhaps be completed. Clinic attendees that are significantly over-income or over-asset should be informed of the purpose of the clinic and directed to their local bar association.

2. **Should eligibility screening in these clinics for Part 1614 be the same as regular intake screening for LSC recipients or different? If different, then please identify methods or criteria for screening.**

Eligibility screening should be the same as regular intake screening for LSC recipients. Most pro bono programs probably review the case after the clinic to determine if additional assistance is available. It is helpful to have all regular intake screening information collected at the clinic so subsequent determinations of eligibility can be made without contacting the client again. If the information was not collected, a program would have to contact the clinic client to complete eligibility screening and in the process, confuse the client regarding the level of service being provided. It is easier for the program and less confusing for the client to have already obtained the necessary information.

Summary

NAPBPro is supportive of the proposed changes to the regulations, so long as LSC is able to craft the regulations to allow creativity and freedom, while at the same time ensuring that high standards for pro bono programs are enforced. NAPBPro submits that the key to effectively implementing new regulations and enforcing current regulations is to ensure programs are meeting the four Fundamental Elements for Robust Pro Bono Programs. Assuming LSC is able to meet those objectives, pro bono will have an opportunity to become an equal and effective partner in providing low income people with legal assistance that achieves lasting results for individuals and communities.

Sincerely,

Jennifer J. van Dulmen
President
NAPBPro

Cc: NAPBPro Executive Committee

JENNIFER J. VAN DULMEN

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LICENSURE

Admitted to Ohio Bar November 2004; Admitted to Federal Bar (Northern District of Ohio) Summer 2005
Certificate in Dispute Resolution Received May 2004

LEGAL EXPERIENCE

Community Legal Aid Services, Inc., Akron, OH (2006 – present)

Managing: Manage the Access to Justice Team, which includes the Volunteer Legal Services Program and
Attorney the HelpLine

The Law Office of Jennifer van Dulmen, Kent, OH (2006)

Attorney: Represent clients in criminal, juvenile, and domestic relations matters.

J. P. Amourgis & Associates, Akron, OH (2005-06)

Attorney: Represent clients in criminal law, domestic relations, bankruptcy, small business incorporation, appellate work, and other civil litigation.

PROFESSIONAL INVOLVEMENT AND LEADERSHIP

National Association of Pro Bono Professionals (NAPBPro)

President (2013-15), Vice-President (2011-13), Secretary (2009-11)

Portage County Bar Association

Past President (2013-2014), President (2012-13), Executive Committee (2010-12); Norm Sandvoss Memorial Humanitarian Award Recipient (2013)

Akron Bar Association

Pro Bono Committee Chair (2008-12); Chair of the Year 2010-11

Trumbull County Bar Association

Pro Bono Committee Chair (2009 – Present)

LEGAL INTERNSHIPS AND OTHER VOLUNTEER LEGAL EXPERIENCE

CASA Guardian Ad Litem, Akron, OH - Attorney Volunteer (2006-2008)

Williams, Welsch, & Kratoski, Kent, OH (2004-05) - Law Clerk (2004-05)

Law Office of Donald Kohler, White Bear Lake, MN - Law Clerk (2002-04)

Hicken, Scott and Howard, Anoka, MN (Fall 2003 – Winter 2004)

Law Clerk (2003-04)

Anoka County Public Defender's Office, Anoka, MN - Law Clerk and Practicum (2002-03)

EDUCATION

Hamline University School of Law, St. Paul, MN

J.D. - May 2004; Certificate in Alternative Dispute Resolution – May 2004

Publication: “The Changing Face of the Death Penalty in America: The Strengths and Weaknesses of *Atkins v. Virginia* and Policy Considerations for States Reacting to the Supreme Court’s Eighth Amendment Interpretation.” 24 *Hamline J. Pub. L. & Policy* 185 (Fall 2002).

Honors: Dean’s List ▪ Outstanding Student Honors Society ▪ National Dean’s List
Larry A. Bakken Scholarship ▪ Alumni Scholarship ▪ Merit Scholarship
Completed the Law School Public Service Program

Activities: *Hamline Journal of Public Law and Policy* - Primary Editor (2003-04) ▪ Associate (2002-03)
Hamline School of Law Client Counseling Team – Coach (2004) ▪ Participant (2003)
Student Director of the Trial Practice Clinic

Minnesota Justice Foundation - Board of Directors ▪ Fundraising Committee ▪ Volunteer
Hamline University Cultural Diversity Committee (Law School Representative)

Clinical: Trial Practice Clinic, St. Paul, MN (Fall 2003). Represented clients in unemployment compensation administrative trials. Prepared and conducted discovery, client interviews, case preparation, brief writing, direct and cross exams, and closing argument. Assisted in writing appellate brief.

Fellowship: *Mansfield Fellow*. Mid-Minnesota Legal Services (Legal Aid Society of Minneapolis), Minneapolis, MN (Summer 2003). Represented clients in landlord tenant disputes. Negotiated settlements. Drafted legal memoranda, answers, motions, and other documents.

University of Minnesota – Twin Cities, St. Paul, MN

M.Ed., Family Education; Teaching License

B.S., Family Social Science; Minor, Speech Communication

Honors: High Distinction Dean’s List ▪ National Dean’s List ▪ Priscilla Rugg Scholarship ▪ Outstanding Student Award, College of Human Ecology ▪ Dean E.M. Freeman Certificate

Activities: Minnesota Educational Association Member
Family Social Science Roundtable - President, Coordinator, and Volunteer

RESEARCH AND WRITING EXPERIENCE

Legal Writing Assistant (Legal Research and Writing Department), Hamline School of Law (2003-04)

Research Ass’t: Assisted legal writing professor by editing and correcting student assignments.

Legal Research Lab Leader (Legal Research and Writing Department), Hamline School of Law (2003)

Instructor: Taught legal research skills to first year law students. Evaluated and assisted students.

Conflict Resolution in Civil Education (Dispute Resolution Institute), Hamline School of Law (2002)

Research Assistant: Researched, evaluated, and annotated academic sources and curriculum materials for international research project.

Dispute Resolution Institute (Curriculum Review Project), Hamline School of Law (2002)

Researcher: Researched and compiled course statistics for alternative dispute resolution courses.

MN/TX Adoption Research Project, University of Minnesota (1997)

Interviewer: Conducted assessments with adoptive families in a nationwide research study.

LSC PAI Rulemaking Workshop—September 17, 2013—Topics and Items for Discussion

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

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

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

LSC PAI Rulemaking Workshop—September 17, 2013—Topics and Items for Discussion

A. Scope of Part 1614

Topic 1:

1. Please provide specific suggestions for definitions, limits, or guidelines relating to the potential addition of law students, pre-admission law graduates, or paralegals to the scope of Part 1614 activities.
2. Are there any other categories of non-lawyers whose work should be considered for inclusion in Part 1614?
3. If you recommend changing the definition of a private attorney, then please provide specific recommendations addressing the scope of the definition and how the proposed definition relates to the purpose of the rule.
4. Please provide specific suggestions relating to the potential inclusion in Part 1614 of underemployed attorneys receiving reduced fees (e.g., in “incubator projects”) that may be their primary professional income.
5. Please provide specific suggestions relating to the potential inclusion in Part 1614 of attorneys who are not authorized to practice law in the jurisdiction of the LSC recipient but who may provide legal information or other Part 1614 services if permitted under local bar rules.

Topic 2:

6. Should Part 1614 include the use of non-LSC funds as a subgrant to provide support to attorneys working at a staff-attorney model legal aid program that receives no LSC funds? This question specifically addresses the situation in Advisory Opinion 2009-1004. Please identify how involving attorneys at non-LSC, staff-attorney model legal aid programs relates to the purposes of Part 1614.

B. Tracking and Accounting for Part 1614 Work

Topics 2 and 3:

- ✓ 1. What criteria and methods should LSC recipients use to identify and track Part 1614 services to provide sufficient information for reporting and accountability purposes about attempts to place eligible clients with private attorneys, or others, and the outcome of those efforts?
2. Please identify what criteria should apply to referral placement organizations, such as bar association programs, for them to qualify for Part 1614.
3. Please identify how LSC recipients can account for and track PAI services while not creating conflicts for the recipient regarding future representation of clients, consistent with local bar rules.

C. Support for Unscreened Work of Private Attorney Clinics

Topics 3:

- ✓ 1. Should LSC permit LSC recipients to obtain some credit under Part 1614 for support for these clinics if they do not screen for LSC eligibility and the clinics may provide services to both eligible and ineligible clients? Please provide specifics about screening concerns and methods to address them.
2. Should eligibility screening in these clinics for Part 1614 be the same as regular intake screening for LSC recipients or different? If different, then please identify methods or criteria for screening.
3. Please identify methods or criteria for LSC to ensure that LSC recipients providing support to these clinics, if permitted, are not improperly subsidizing either services to ineligible individuals or impermissible activities.
4. Please identify methods or criteria to distinguish between permissible activities supporting other entities and attorneys, such as general trainings, and impermissible subsidization.