

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

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June 16, 2014

Ms. Stefanie K. Davis
Assistant General Counsel
Legal Services Corporation
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Via e-mail to: PAIRULEMAKING@lsc.gov

RE: Comments on Notice of Proposed Rulemaking Regarding 45 CFR Part 1614

Dear Ms. Davis:

The California Commission on Access to Justice is pleased to submit comments regarding proposed revisions to the Legal Services Corporation's (LSC) Private Attorney Involvement (PAI) requirement.

The Commission was established in 1997 as a collaborative effort involving all three branches of government. It includes judges, lawyers, professors, business, labor, faith, and other community leaders. The Access Commission is dedicated to finding long-term solutions to the chronic lack of legal assistance available to low and moderate income Californians. The Commission's goals include increasing resources for legal services for the poor, expanding pro bono and language assistance, and increasing the availability of self-help assistance and limited scope representation.

We reviewed the proposed rulemaking with these goals in mind. As an initial matter, we appreciate that LSC is conducting a careful review of its PAI requirements with the express recognition that a "significant purpose" of the rule is "helping to meet the unmet legal needs of eligible clients."¹ In our view, this purpose should be paramount and proposed changes to the PAI rules can and should facilitate the goal of addressing unmet legal needs.

Accordingly, the Commission has comments on the following areas addressed in the proposed rulemaking:

¹Legal Services Corporation, 79 Fed. Reg. 21194 (proposed April 15, 2014) (to be codified at 45 C.F.R. pt. 1614).

Definition of Individuals Authorized to Provide PAI-qualified Services.

The Commission is pleased to see the proposal to expand the PAI rule to allow programs to include costs associated with engaging law students, law graduates, and other professionals who assist programs to provide legal information and assistance to eligible clients. Not only will this proposal help programs to leverage scarce resources, but it will encourage pro bono participation by the expanded categories of individuals. This proposal also reflects the reality that law students, law graduates, and other professionals can and do play an important role in helping to meet unmet legal needs in a cost-effective and sustainable manner.

While we support the expanded definition discussed above, we are concerned that the proposed private attorney exclusion set forth in 45 CFR 1614.3(2)(ii) is overly broad. This section excludes from the allowable PAI private attorney allocation, “an attorney employed by a non-LSC-funded legal services provider acting within the terms of his or her employment with the non-LSC-funded provider.”

The Access Commission understands LSC’s desire to encourage pro bono participation by attorneys who do not generally serve low income clients. We believe, however, that the proposed exclusion is ambiguous and overly broad and may unnecessarily restrict the pool of attorneys eligible to volunteer with LSC-funded legal services programs. Given the significant unmet needs in California and across the country, we recommend that LSC consider a different approach.

California is a large state with vast rural and underserved areas that have a limited pool of attorneys who are available to work on cases with legal services programs. It is critical that the proposed rules be flexible enough to encourage the participation of attorneys who do not usually serve low income clients while permitting LSC-funded legal services programs to recruit and work with available attorneys and organizations in their local communities. Accordingly, we recommend that LSC consider revising and narrowing the exclusion set forth in 45 CFR 1614.3(2)(ii) to exclude “an attorney employed by a non-profit organization whose primary purpose is the delivery of civil legal services to the poor during any time that attorney is acting within the terms of his or her employment with that organization.”

Exempting Incubator Programs from PAI Compensation Restrictions.

The Access Commission supports innovative programs that provide strong training and mentorship to recent law graduates and new attorneys for the purpose of helping them to set up practices that provide excellent legal assistance to low and moderate-income clients. The Commission, by providing technical assistance and seed grants, is encouraging California legal services organizations, law schools, bar associations, and others to start and expand legal incubator programs. Accordingly, we strongly support the proposed revisions

to 45 CFR 1614.5 (c)(2) exempting incubator projects from the compensation blackout period.

Screening and Referral.

The proposed revisions at 45 CFR 1614(b)(4)(i) permit programs to provide legal information at PAI clinics using private attorneys, law students, law graduates, and others without requiring client screening for eligibility. The proposed revisions at 45 CFR 1614.4(b)(5) allows programs to allocate costs associated with intake and referral of matters to private attorneys without requiring programs to accept and track such matters as CSR cases. The Access Commission supports both of these revisions as sensible and efficient proposals that promote use of private attorneys, conservation of program resources, and meeting unmet legal needs.

While the Access Commission supports these important improvements to PAI rules related to screening and referral, we do not support the proposed revisions at 45 CFR 1614.4(b)(4)(ii) and (b)(4)(ii)(C). These provisions bar programs from participating in clinics that provide legal assistance unless the clinics screen for eligibility and only provide legal assistance to individuals who meet LSC requirements. This ban exists even for “hybrid” clinics where legal information is provided to groups and individual legal information is provided separately.

In order to maximize private attorney involvement and the provision of legal information, the Access Commission recommends that programs be allowed to participate in and allocate as PAI, the legal information portion of hybrid clinics even where no eligibility screening occurs. This approach is practical and consistent with 45 CFR 1614(b)(4)(i). Programs would be permitted to provide legal information during clinics but not legal assistance to clients who have not been screened for eligibility.

The California Commission on Access to Justice appreciates the opportunity to provide these comments. Please do not hesitate to contact us with any questions or if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald B. Robie". The signature is fluid and cursive, with the first name "Ronald" and last name "Robie" clearly distinguishable.

Hon. Ronald B. Robie
Chair, Commission on Access to Justice