

Legal Services Corporation  
 PAI Rulemaking Workshop  
 September 17, 2013  
 1:30 to 4:30 p.m.  
 Legal Services Corporation  
 3333 K St., NW, 3<sup>rd</sup> Floor  
 Washington, D.C.

Panelist	Topic 1	Topic 2	Topic 3
Mark O'Brien, Executive Director Pro Bono Net	X	X	X
Patricia Z. Risser, Attorney—Coordinator Volunteer Lawyers Project Legal Action of Wisconsin	X	X	X
Melissa Skilliter, Pro Bono Coordinator Ohio State Legal Services Association	X		X
David Udell, Executive Director National Center for Access to Justice	X		
Jennifer van Dulmen, President National Association of Pro Bono Professionals	X	X	X
John Whitfield, on behalf of NLADA Executive Director Blue Ridge Legal Services	X	X	X

Commenter	Topic 1	Topic 2	Topic 3
Bruce Courtade, President, The State Bar of Michigan	X	X	X
Terry Lawson, Senior Staff Attorney Legal Services of New York City	X		
David Ackerly, former Director of Private Attorney Involvement at the Legal Aid Foundation of Los Angeles	X		

August 28, 2013

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

Via [pairulemaking@lsc.gov](mailto:pairulemaking@lsc.gov)

**Re:** Rulemaking Workshop on September 17, 2013

Private Attorney Involvement Rulemaking  
45 CFR 1614 (in response to 78 FR 48848)  
<https://federalregister.gov/a/2013-19383>

Dear Mr. Freedman,

I write to express my interest in participating as a panelist in the rulemaking workshop above. I would appreciate the opportunity to explain the reasons why I support the LSC Pro Bono Task Force's proposals being discussed as Topics 1 and Topic 2.

My views are informed by my organization's experiences in two areas: 1) short- and long-term legal relief efforts following disasters, including most recently Superstorm Sandy; and 2) technology-enabled service delivery to support pro bono engagement. This includes supporting a national network of statewide pro bono mobilization websites used by many LSC grantees to support tens of thousands of pro bono volunteers in more than 20 states; consulting with legal aid, bar and library partners in more than a dozen states that are providing real time chat assistance ("LiveHelp") to statewide legal aid website visitors, including through the use of law student and attorney volunteers; and running the national LawHelp Interactive system, which has a library of more than 4,000 online forms and creates more than 1,100 legal documents a day, many of which are used to support brief- and unbundled pro bono services.

## Outline of Key Points

### Topic 1:

Pro Bono Net supports counting resources spent supervising and training law students, law graduates, deferred associates, and others toward grantees' PAI obligations. The provision of legal assistance to those in need involves more than giving substantive legal advice. Non-lawyers perform a variety of tasks essential to legal services delivery, which include intake, triage, and providing legal information, allowing lawyers to practice at the top of their license and devote their valuable volunteer time to where they are most needed.

### Topic 2:

Pro Bono Net supports the inclusion of screening, advice, and referral programs that incur as PAI expenditures, including necessary investments in the infrastructure to support this. Many legal clinics are held in exigent circumstances that do not allow for pre-screening of applicants —many of whom are LSC-eligible. Our experience with Superstorm Sandy and similar disaster response scenarios shows that not supporting such clinics risks missing eligible clients when their need for legal services is greatest.

## Comments

### *Additional Question A: Scope of Part 1614*

From Hurricanes like Katrina and Ike, to Superstorm Sandy, to the tornadoes that devastated Oklahoma earlier this year, natural disasters create diverse and substantial legal problems for those in their path. In the immediate aftermath, critical legal issues can include obtaining emergency shelter and food benefits. In the longer term, disputes over private insurance and government benefits for property loss, contractor fraud, and a litany of other issues can make a

return to normalcy for victims years away. Legal advocacy and assistance is essential, but that does not necessarily involve individual consultation with or representation by a lawyer.

After Superstorm Sandy, law students and pre-admission law graduates played an integral role in helping individuals to navigate the many bureaucracies they must interact with, in gathering facts and data that lawyers and policymakers need to make important decisions, and much more. This is critical assistance without which victims would not be able to assert their legal rights. While lawyers supervised these services, they did not directly provide them; however, it would be a mistake to say that they were not essential legal services.

Additionally, low-income individuals increasingly receive legal services through means of technology. In the disaster relief context, for example, Pro Bono Net and other groups developed FEMAAppeals.org, a website containing an interactive online interview that helps pro se individuals to draft their own FEMA appeal.

In the context of naturalization, the Immigration Advocates Network has developed similar resources such as CitizenshipWorks.org, which not only helps individuals assess whether they are eligible for U.S. citizenship, but also allows them to draft the necessary documents and have them reviewed by legal counsel. Tech-savvy law students and graduates are ideally suited to develop these and other technologies that will serve exponentially more low-income persons in need than an individual attorney could, and funding for such work is very much in the spirit of increasing the larger legal community's commitment to increasing access to justice.

*Additional Question C: Support for Unscreened Work of Private Attorney Clinics*

Along with increasing the numbers of those served and provided legal assistance, both the disaster relief and technology-enabled service delivery models illustrate the difficulty, and potential counter-productivity, of prescreening recipients for LSC eligibility and of only allowing those who meet LSC criteria to count as PAI cases. Those seeking legal help post-disaster or online are often persons who are most in need of assistance. For example, families whose homes and possessions have been destroyed are often incapable of documenting their LSC eligibility. In

their city or region if social services are unable to provide assistance due to the disaster then having access to online legal assistance to help them find their documents is key. Funding for projects to assist these individuals should not be contingent on those persons documenting their eligibility; in many cases, their inability to do so is precisely the reason they seek legal help.

\* \* \*

Requiring under PAI rules that only cases included in an LSC's grantee be counted as a PAI case, and that only cases screened by an LSC grantee be counted as PAI is significantly dampening the ability of the field to develop successful models for large group clinics and events coordinated with others in the access to justice continuum, as the staff resources and infrastructure developed to support those activities will not count under PAI. In a time of significant budget contractions, this exclusion makes a material difference and undermines LSC's full access goal.

PAI expenses should include resources invested to maintain and support intake, screening, and triage activities even if not all those screened turn out to be LSC eligible or end up as placements with a PAI lawyer. The identification of cases that are a good match for pro bono is an art and science that is time consuming and necessary. If a case is badly matched with a volunteer attorney, the attorney might stop volunteering with a program. If an attorney is not properly matched with the needs of the client, the representation might become problematic for the pro bono coordinator and the client. Current LSC PAI rules do not allow for taking into account the expense incurred to screen and triage cases for pro bono services, and require that the screening be done by the LSC grantee unless the case is placed with a lawyer. This could be modified to include intake and triage activities as an allowable PAI expense even when a group other than the LSC grantee does that intake/triage/referral.

## Summary of Qualifications

Mark O'Brien is the co-founder and Executive Director of Pro Bono Net, a nonprofit organization that increases access to justice for the poor and other vulnerable populations through innovative uses of technology, increased participation by volunteers and better collaboration among nonprofit legal organizations working on similar issues. Founded in 1998, Pro Bono Net has built web platforms to support public interest lawyers and their clients throughout the United States: [www.probono.net](http://www.probono.net) provides online tools to support both full-time poverty law advocates and pro bono attorneys; and [www.lawhelp.org](http://www.lawhelp.org) provides referrals to legal aid and public interest law offices, community legal education information, self-help and other resources directly to the public.

Prior to starting Pro Bono Net, Mr. O'Brien directed the pro bono program at Davis Polk and Wardwell from 1992 to 1999. During Mr. O'Brien's tenure, both he and the firm won numerous awards for contribution to pro bono issues. He has served on various New York State and City bar committees dealing with pro bono and legal services issues, and has served on the advisory boards of the University of Pennsylvania Law School Public Service Program and the Public Interest Law Alliance (Ireland). He is currently an Adjunct Professor of Law at Georgetown University Law Center.

Under Mr. O'Brien's leadership, Pro Bono Net has won numerous awards for its contributions to pro bono and legal services, including the NLADA Innovations in Equal Justice Award (for contributions to private bar mobilization in the wake of September 11<sup>th</sup>), the ABA's Gambrell Professionalism Award, the College of Law Practice Management's Innovaction Award, as well as multiple Webby Awards for Best Law Website. Mr. O'Brien was a 2012 "FastCase 50" honoree for his contributions

## Checklist of Topics and Items to Be Addressed

I have attached the checklist of topics and items to be addressed.

Thank you for your consideration.

Sincerely,

Mark H. O'Brien

Mark O'Brien

**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



**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.                                                                                                                      |

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

I. Key Points—Related to three topics and Additional Items for Discussion

Legal Action of Wisconsin supports these initiatives to allow more flexibility in defining the activities that constitute PAI activity and the categories of legal professionals that can be supported with PAI funds.

But we also believe that LSC must continue to focus on getting more private attorneys involved in representation because LSC-funded programs remain the primary provider of civil legal services throughout the country.

We are reluctant to devote more resources to developing incubator initiatives rather than maintaining an emphasis on extended service and focusing on improving systems for poor people. We do not want incubator initiatives to be given greater priority than representation. As an organization, we believe that it is very important to keep focused on what we were originally charged to do. While we observe the development of a number of activities designed to get volunteer lawyers involved in providing limited legal assistance to many people, we do not see new poverty law firms and programs opening to help all those who need representation to access our legal system.

While we continue to have more and more clients who truly need representation to protect their families than we can actually serve, we need to focus on getting more private lawyers to do the work our impoverished clients need them to do-- the work that only lawyers can do--rather than designing projects that make it “easier” to volunteer but do not offer representation.

We feel that our organization and LSC must remain focused on providing high quality legal services to address the legal needs of people who cannot afford to pay for the legal services needed to achieve equal

justice, and developing methods and programs to get private lawyers involved in the work that we have been committed to for many years.

While expanding the definition of what qualifies as PAI and how the PAI allocation can be applied, I encourage LSC to look more closely at adjusting the 12.5% allocation, especially during this period while financial resources are so limited. Adopting a “reasonable” definition for the allocation would make it easier for us to manage our various and variable funding sources. It is very challenging for a program like ours that serves a varied poverty community to manage the impact of the significant variations in the amount of the PAI allocation as funding increases and decreases, almost on a quarterly basis, during the difficult economic times we’ve experienced over the past several years.

Creativity in attracting more lawyers and legal professionals is good and valuable but it should not distract us from deploying those lawyers to meet the clients’ legal needs. Collaboration works most effectively when each organization does what each does best and thereby maintains a variety of opportunities and avoids unnecessary duplication.

While 1614 should be revised to enhance flexibility, the most valuable initiative will be working with the courts and bar associations to find more effective ways to promote and support pro bono participation. Expanding the opportunities under the rule must be accompanied by getting state and local bar associations more involved in promoting pro bono as a professional standard.

## **Topic #1**

Legal Action supports counting resources spent supervising and training law students, law graduates (non-admitted), deferred associates and **paralegals** toward a grantee's PAI allocation. Allowing LSC programs to include additional categories of legal professionals will encourage flexibility and creativity in service delivery.

It will be particularly useful to include paralegals in the provision of PAI services and count the value of their hours. Many of our volunteer lawyers regularly report the number of hours invested by paralegals. Paralegals generally understand their role in the legal process and are probably the most effective of the non-lawyers. Their work is just as valuable to us as it is to the client.

Each LSC program must be mindful of admission standards, unauthorized practice of law rules and professional liability insurance requirements. Because Wisconsin is very strict about the unauthorized practice of law, the Volunteer Lawyers Project is currently reluctant to have lawyers who are not yet admitted in Wisconsin provide legal assistance including legal advice. Wisconsin also has very strict student practice rules which limit what a student can do without immediate supervision. However, it appears that our professional liability insurance (through NLADA) covers non-lawyers who volunteer on behalf of Legal Action.

Legal Action has successfully used inactive lawyer volunteers to work on case referral. They are able to assist with case evaluation and provide support to volunteer lawyers.

New categories of volunteers need more training about what they can and cannot do as volunteers. In addition, these "new" volunteers will need more oversight than many providers are able to offer. While our position is that the lawyer is in the best position to evaluate his or her competence to handle a particular case, I am not sure we can apply that standard with inactive or non-admitted lawyers.

It will be important to develop methods to track the time contributed by these other legal professionals so as to report the number of hours and services provided.

The real difficulty in recruiting lawyers for pro bono legal work is the lawyer's selectiveness about what they do as volunteers. It is challenging to get lawyers to take on the work that we need them to do for our clients.

Another possible expansion would be to include efforts by PAI staff to recruit and work with those who provide professional support services—accountants, vocational evaluators, interpreters etc.

We encourage increased support of creativity but not to the detriment of efforts to increase pro bono representation. The “care and feeding” of volunteers is expensive. Despite the attention paid to the increasing poverty population and their growing legal problems, we have not experienced an increase in the number of lawyers committing to provide pro bono legal services.

1-1 We favor almost anything that will provide more legal assistance. We understand that law students and many pre-admission law graduates need considerable oversight. Paralegals understand that their services, including advice-giving, must be supervised. A revised rule should articulate the range of services or activities to be considered and include a timekeeping requirement.

1-2 Legal Action has been involved in Unemployment Compensation Appeals Clinics at Wisconsin's two law schools. Students receive mentoring from private attorneys in representing UC claimants. The State Bar of Wisconsin's Legal Assistance Committee plans to petition the Wisconsin Supreme Court to revise our Rules of Professional Conduct to permit inactive or out-of-state lawyers to provide legal assistance under certain circumstances.

1-4 I am reluctant to make exceptions for underemployed lawyers receiving reduced fees because this requires us to make discretionary judgments relative to our loyal unpaid volunteers. What is underemployment? Why is the person underemployed? Why should we treat underemployed lawyers differently than we treat our solos?

1-5 In contrast, I support non-resident lawyers providing legal information so long as permitted by local bar rules. In fact, in Wisconsin the State Bar's Legal Assistance Committee has been working on a new rule that would permit such lawyers to register for pro bono publico status which would enable those lawyers to practice law so long as the work is affiliated with an appropriate provider and the lawyer is not compensated for the work.

## Topic #2

We believe that it is very important to communicate and collaborate with other providers so that it is also very important for LSC grantees to be allowed to spend PAI resources to work with other legal services providers to enhance screening, advice, and referral programs.

I encourage LSC to withdraw previous External Opinion 2008-1001 and encourage LSC grantees to collaborate with other programs and providers to maximize service and support volunteers. In addition to supporting these efforts, these activities also appear to be a viable source of recruitment for extended service.

Legal Action does not participate in an integrated intake and referral system. There is not such a system operating in Wisconsin despite occasional conversation about it. We also believe that various LSC requirements for eligibility and the funding requirements imposed by some of our other funding sources that focus on particular types of cases complicate the prospects of integrating intake. Our intake screening requires a significant amount of training and experience and we have found that others may not be interested in taking on our “baggage.”

As the firm’s coordinator for PAI, we are always receptive to referrals from other organizations. We regularly receive calls from some of our colleagues in other legal services organizations asking whether we have volunteer lawyers who might handle a particular type of case.

We are also concerned that LSC PAI programs might get so caught up in designing creative projects and increasing the number of “new” volunteers that we lose our concentration on the hardest part of pro bono—getting experienced lawyers to make time for pro bono work.

2-1 I cannot recommend criteria and methods to track services other than to add to the list of time codes “PAI referral activities.”

2-2 Activities sponsored by law schools, bar associations, and the courts should be included but there should also be a requirement that such sponsors estimate a particular level of income for their customers based on fact-gathering.

2-3 Tracking PAI services may not always be tied to a particular case or client. Some PAI activities are dedicated to operating/maintaining the system, so that they need not be case specific.



### **Topic #3**

This may be an appropriate time to reexamine the LSC case handling requirements as they are applied to PAI cases to determine which are essential and which should be revised.

For more than 20 years, Legal Action's Volunteer Lawyers Project in Milwaukee, has used volunteer lawyers to provide case evaluation and brief service as part of our service plan to use volunteer lawyers to expand the types of cases Legal Action handles and provide case evaluation to help recruit volunteers to take on extended service cases.

These clinics started with Bankruptcy and Consumer cases. Even 20 years ago, the VLP had difficulty getting volunteer lawyers to take on bankruptcy cases. In addition, those lawyers willing to represent bankruptcy petitioners wanted to know more about the cases before taking them on pro bono. We did not (and still do not) have staff lawyers handling bankruptcy or consumer cases in Milwaukee who could evaluate the cases for volunteers.

Through the years, we have had considerable success getting lawyers to come into the Milwaukee office on a regularly scheduled basis to interview clients, evaluate their cases and give advice. All clients must receive advice in the likely event that we are unable to refer their cases for representation. In addition, we are able to get sufficient information to determine which cases to prioritize for representation.

We have applied this same model to serve clients with unemployment compensation appeals, landlord-tenant money claims, and miscellaneous civil matters (non-probate property transfers, guardianship, etc.). Every Wednesday, the Volunteer Lawyers Project has three or four volunteer lawyers meeting with clients who called in the previous week for eligibility and case screening. These lawyers know who they will meet and the potential legal issues before the lawyer meets with the prospective client, so that the lawyer has an opportunity to prepare if necessary. We believe that our VLP lawyers like knowing

what legal problems their clinic clients will present. In a limited number of cases, the lawyer who met with the client accepts the case for further services

There's a large range of services that might be considered "support." I believe that there should be some guidelines for allocating PAI resources to support volunteer lawyers staffing brief service clinics. These guidelines would largely relate to whether the activity was for CSR work or simply support for volunteer lawyers affiliated with other providers. For casework, there should continue to be specific criteria for PAI cases to determine the outcome of the case and how the client benefited. Training pro bono lawyers can be viewed differently. It makes a lot of sense to share training resources—it's efficient and effective in generating more pro bono resources, as well as collaborating with other providers.

I believe that LSC has been quite effective in controlling fraud, waste and abuse. I would assume that LSC would apply similar standards to more flexible rules, but the ranges of flexibility still must be carefully defined.

3-1 LSC recipients should obtain some credit for supporting clinics that do not screen for LSC eligibility even in situations where the clinics provide services to eligible and non-eligible clients. Screening for eligible clients is a way of life for LSC-funded programs. Each LSC program spends a fair amount of time screening out ineligible applicants for services. The screening activities in this state are generally focused on poor people who are unable to afford to pay for legal services. With the understanding that a large number of those served by these activities would be eligible if screened, that is really not very different than what is done within our program. Denying programs PAI credit for efforts to collaborate will diminish collaborative efforts.

I propose that LSC recipients would maintain LSC standards on cases accepted for legal assistance by LSC recipients.

3-2 Clients referred for actual legal assistance by an LSC-funded program would still have to meet LSC eligibility requirements. In the interest of efficiency, I would propose that the eligibility screening track our current eligibility screening.

3-3 Just because the support from an LSC program might benefit some individuals who are not LSC-eligible should not be an absolute bar to such support, but there should be some demonstration that the majority (or some other such measurement) of the people served would be eligible. In addition, the amount of support permitted might be adjusted based on the user's statistics about the level of need. Support may also be based on the nature of the activity or service delivered. In that way, training activities could be supported differently than staffing the referral line. One important consideration is that a number of these clinics are operated by or with the courts that are not inclined to place restrictions on who can access screening and referral services.

There is always the hope that lawyers who participate in brief service will sometime take their pro bono to the next level and take on these cases for representation.

3-4 Permissible activities should include training and manuals. Staffing and direct legal assistance would not be allowed, although sharing knowledge on a consulting basis may be considered.

## II. Summary of Qualifications

I have been the Attorney—Coordinator for Legal Action of Wisconsin's Private Attorney Involvement activities, including our Volunteer Lawyers Project for more than 9 years. Legal Action has sponsored the Volunteer Lawyers Project for more than 30 years. Since 2003, Legal Action's service area includes 39 counties ranging from poverty-plagued urban Milwaukee to several very rural counties. Legal Action operates out of six offices and there are one or two individuals in each office responsible for PAI activities. I work with all Legal Action staff to promote private attorney involvement and to assure compliance with LSC regulations and Wisconsin's Rules of Professional Conduct. In 2009, I was complimented to be invited to participate in an advisory group chaired by Helaine Barnett in which we discussed many of the issues raised by LSC's Pro Bono Task Force

Before joining Legal Action in early 2004, I spent 15 years in private practice focused on the wide-range of family law matters. I spent 8 years in a successful 2-attorney practice and the remainder in two small firms (5 attorneys). I was active in local bar associations and chaired sections in two of them. I am an experienced lawyer who understands and appreciates what it means for lawyers in solo and small firms to make time to provide pro bono legal services.

I have been involved in volunteer recruitment and support on a non-professional basis throughout my adult life in my church, the League of Women Voters and other community activities.

## III. Complete Checklist of topics & items to be addressed. See Attachment

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

**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.                                                                                                                      |



555 Buttles Avenue  
Columbus, OH 43215-1137  
614/221-7201  
800/589-5888  
614/221-7625, Fax

<http://www.ohiolegalservices.org>

August 28, 2013

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

VIA EMAIL: [pairulemaking@lsc.gov](mailto:pairulemaking@lsc.gov)

**RE: Proposed Changes to 45 C.F.R § 1614**

Dear Mr. Freedman:

I am writing to express my interest in participating in the September 17 Rulemaking Workshop in Washington, DC, as noticed at 78 Fed. Reg. 27339. Below is a summary of my proposed testimony.

The key theme of my testimony is that LSC's focus should be on whether PAI efforts seek to increase and provide quality legal services to the poor. By definition, pro bono projects require collaboration between the sponsoring legal aid organization and its community of volunteers. Enduring pro bono programs are crafted to serve the needs of the local client population, but they must also balance the interests, capacity and preferences of the volunteer attorneys. LSC must ensure that its regulatory efforts do not result in unnecessary burdens that discourage private attorneys from participating and decrease the programs ability to support valuable pro bono projects.

**Topic 1: Law Student and Law Graduate Pro Bono**

We fully support the recommendation of the Pro Bono Task Force that "resources spent supervising law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations."

Students and recent graduates are an extraordinary resource for our clients. They have enthusiasm, idealism, and perhaps most importantly, a lot of free time. The time spent cultivating these volunteers can lead to career-long support for legal aid's work. However, these relationships take time and effort. The pro bono professionals at legal aid are the most logical people to direct projects for students and recent graduates. We already have the structures and materials in place to lead these programs efficiently.

In addition to law students, pre-admission law graduates, deferred associates, and paralegals, we suggest that LSC consider the inclusion of licensed Certified Public Accountants (“CPAs”) in Part 1614. These professionals are licensed and highly qualified to provide professional advice that may be relevant to their legal representation, and such specialization is out of the typical experience of a legal aid attorney and many pro bono attorneys. In particular, we host a Low-Income Taxpayer Clinic and CPAs are able to provide significant assistance that can be superior to that offered by an attorney. We have also worked with volunteer accountants in domestic cases in which adverse parties were hiding or understating income.

### **Topic 3: Relaxed Case Documentation in PAI Cases**

In 2008 LSC issued Advisory Opinion 2008-1001 which provided, in part, that “in order for OSLSA to allocate towards its Part 1614 PAI requirement the resources it provides to the clinics, the persons served by the clinics must be screened for eligibility and considered clients of OSLSA.” This decision was prompted by questions raised during a CSR/CSM review by LSC’s Office of Compliance and Enforcement (“OCE”) of the clinics supported by Southeastern Ohio Legal Services (“SEOLS”), a direct service component of OSLSA.

SEOLS supports a network of 16 brief advice clinics across our 30 rural counties. Rural counties present significant challenges for pro bono programs. Most local attorneys are solo practitioners or practice in two or three person firms that must work very hard to remain profitable. Potential volunteers worry about conflicting out paying clients or developing a reputation for providing free services. Many of our volunteers will not participate in pro bono outside of the clinic setting. SEOLS struggled for years to get significant pro bono help for the poor in its area from the small local bar associations until it developed the pro bono advice clinic model.

Each of the 16 pro bono clinics was created with significant input from the local bar and local judiciary. Several have been recognized or honored by the Ohio State Bar Association, Ohio State Bar Foundation, or the Ohio Legislature. Our clinics provide brief advice to thousands of low income people and they are highly regarded by the communities they serve. Based on its current interpretation of the PAI regulations, LSC has determined that we cannot count any of the time invested in the pro bono legal advice clinics towards our PAI requirement.

LSC’s determination is that in order to receive any legal advice, the clinic participant must be fully screened according to LSC’s case handling requirements, the participants must be included in the program’s case management system, and the participant must be considered a client of the legal aid program. We had considered our clinics to be a “Matter” and reported the clinic participants as people helped by an “Other Service.” The clinics did some minimal screening of income but did not engage in the full screening and documentation of the clinic participants, because (1) we did not seek to count them as a “case” for LSC purposes and (2) the local court or bar who supported and often ran the clinics did not wish to have and did not see the need for the burden of in-depth screening. They know the people coming to the clinics from their small communities are poor.

We believe that this system has many advantages over the structure mandated by Advisory Opinion 2008-1001. We use a simplified income screening form and we can document that our clinics serve low income people. This limited screening can be quickly and easily conducted by



volunteers, and it allows for the clinics to be run as a “drop-in” service. More low income people are receiving legal advice from volunteers, because we do not require them to be screened and scheduled in advance. A member of our staff is on-site to provide support and oversight for the entire process, including answering questions from the volunteer attorneys about poverty law issues.

The quality and value of the product we provide has not been questioned. Nor does the legal community question that the clinics are serving the poor. The issue has always been one of procedure, documentation, and bureaucracy. At this point, our options are to either reduce the level of service offered to clinic participants so that they only receive “legal information” or to add an unnecessarily cumbersome screening process to the clinic which could reduce the number of clinics we could support and number of low income people who receive legal assistance.

Volunteers love these clinics because they are an option that allows them to make a limited time commitment and to make a direct contribution to the needy of their community. Because the ease of participation is one of the primary attractions for volunteers, regulatory complications that do not improve service to the clinic participants would hurt our efforts to retain and recruit volunteers. We urge LSC to adopt changes to its regulations that would take into account the nature of these brief advice clinics.

We propose that LSC allow programs, as a countable PAI activity, to sponsor or support brief advice clinics that have as their demonstrable primary purpose the delivery of legal services to those persons in the community who would be financially eligible for LSC-funded legal assistance. This standard is analogous to the provisions regarding the representation of groups in 45 C.F.R. § 1611.6(a)(2). This standard would allow programs to provide support for a clinic focused at serving the poor without requiring that all of the clinic participants are clients of the legal aid program. It allows for flexibility, but stays true to the purpose of the PAI requirement.

Further, we propose that LSC allow programs to conduct and support these clinics under the framework of being a “Matter” rather than require that each participant be considered a client. This allows the program (1) to refer applicants to the clinics when there is a conflict that prevents the program from otherwise helping the applicant and (2) to limit the circumstances where someone attending a clinic unnecessarily creates a conflict of interest for the program. As attorneys, legal aid providers are subject to their state’s Rules of Professional Conduct. As long as the program satisfies its ethical obligations, LSC should embrace the flexibility that this arrangement allows.

### **Summary of Qualifications**

I have served as the Pro Bono Coordinator for Southeastern Ohio Legal Services since 2008, and my responsibilities include help establishing, supporting, and overseeing our 16 brief advice clinics. Prior to my work in pro bono, I was a staff attorney in our Zanesville office and I attended our brief advice clinic regularly to provide support to volunteer attorneys.

I am a 2004 graduate of the Georgetown University Law Center and I have been a licensed attorney in Ohio since November 2004. I am also admitted to practice in the U.S. District Court for the Southern District of Ohio and the United States Tax Court. I am a member of the Ohio

State Bar Association, the American Bar Association, and the Columbus Bar Association.

Thank you for this opportunity to share our comments on the proposed Part 1614 changes. Private attorney involvement and our brief advice clinics are crucially important to our program and to our communities. Their continued success is a very high priority for Ohio State Legal Services. If selected to participate in the September 17 panel, I would intend to participate in person.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa D. Skilliter". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Melissa D. Skilliter, Esq.  
Pro Bono Coordinator

Cc: Thomas W. Weeks, Executive Director, Ohio State Legal Services Association  
James M. Daniels, Director, Southeastern Ohio Legal Services

**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?
	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.**

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?
	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

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.                                                                         |
| X | 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.                                                                                                                                   |
| X | 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:

- |   |                                                                                                                                                                                                                                                                                                                |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| X | 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. |
| X | 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.                                                                                                  |
| X | 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.                                                                                                                      |

**National  
Center for  
Access to  
Justice**  
*at Cardozo Law School*

“Thou Shalt Not Ration Justice”  
– Hon. Learned Hand

August 28, 2013

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

Re: Comments & Request  
to Appear as a Panelist

- 45 CFR 1614 (78 FR 27739)
- <https://federalregister.gov/a/2013-11071>
- <https://www.federalregister.gov/articles/2013/08/12/2013-19383/private-attorney-involvement#h-12>

Dear Mr. Freedman,

I am writing to submit these comments on behalf of the National Center for Access to Justice in support of the recommendation to modify the Legal Services Corporation (LSC) regulation on Private Attorney Involvement (PAI), 45 CFR 1614, to authorize LSC programs to exercise their discretion to count toward satisfaction of their PAI Requirement the expenditures they make on involving law students and law graduates in the provision of legal services.

**I. Introduction & Qualifications**

In its recent report, the LSC Pro Bono Task Force observed: “[A]t least 50% of people seeking help from LSC funded organizations – and eligible to receive it – are turned away because of insufficient resources. Other studies have found that 80% of the civil legal needs of low-income people go unmet.”<sup>i</sup>

It is with an understanding of the seriousness of this “Justice Gap,” which is pervasive and which has been broadly documented, that NCAJ has undertaken a project to examine opportunities for strengthening law student pro bono service as a means of increasing access to justice. NCAJ’s activities include the following:

- NCAJ is working to replicate in the 50 states a new law in New York that conditions admission to the New York Bar on completion of 50 hours of pro bono service.
- NCAJ is working to establish an accreditation standard for law schools that would require every law school to assure that its students perform 50 hours of pro bono service prior to graduation.
- NCAJ is promoting the replication of model pro bono programs across the country that succeed in engaging law students in important activities that respond to people’s otherwise unmet legal needs.
- NCAJ has promoting development of software applications that would help law schools and other stakeholders match law students to pro bono opportunities, and that would also track the amount of law student pro bono performed, the quality of the experience from the students’ perspectives, and the impact of the activities as an instrument of reform and as a service to clients.
- NCAJ is preparing a national report on the ways in which law students can more effectively provide pro bono service that responds to people’s otherwise unmet legal needs.

NCAJ is the single academically affiliated non-partisan law and policy organization exclusively committed to assuring access to our civil and criminal justice systems. In carrying out its policy reform initiatives, NCAJ partners with the bar, judiciary, law schools, legal services and indigent defense communities, and other stakeholders in the justice system. At the same time, its independence as a free-standing non-profit organization can help its allies to see the world through the eyes of those who rely upon them. NCAJ’s tools include litigation, books and reports, public education and public advocacy, conferences, and legislative drafting. NCAJ is located at Cardozo Law School, where it teaches the Access to Justice Clinic each spring. For information about NCAJ and its initiatives to increase access to the justice system, visit [www.ncforaj.org](http://www.ncforaj.org).

## **II. The PAI regulation, problem, and recommendation**

*The PAI regulation.* In its current form, the PAI regulation requires LSC grantees to commit 12 1/2% of their annualized basic field award to involving “private attorneys in the delivery of legal services.” The text of the regulation states: “[A] recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12 1/2 %) of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services; this requirement is

hereinafter sometimes referred to as the “PAI requirement.”

*The Problem.* The problem with the PAI regulation in its present form is that in its command to LSC programs to involve “private attorneys” it omits all mention of the possibility of involving “law students” and/or “law graduates.”<sup>ii</sup> In light of the structure of the regulation, if LSC grantees spend resources on administration or supervision of pro bono activities that involve law students or law graduates, those expenditures may not be counted toward satisfaction of the PAI requirement. Yet, as NCAJ has found through its research, initiatives involving the pro bono activities by law students can constitute extraordinarily valuable and dynamic responses to the justice gap. Indeed, LSC grantees are discouraged by the regulation from relying on students and graduates and are permitted by the PAI regulation to satisfy the PAI requirement only by relying on private attorneys, even in circumstances in which private attorneys are unavailable while students and recent graduates are ready, willing, and able to help.

*The Recommendation.* In its report, the Pro Bono Task Force recognizes this problem with the regulation and recommends a solution. The Task Force observes: “Engaging students and instilling a lasting commitment to pro bono work is wholly consistent with the aims of the PAI regulation.”<sup>iii</sup> The Task Force further states, “The LSC Board therefore should consider amending the regulation to allow grantee organizations to count as PAI expenses the funds they expend on training and supervising law students.” Finally, in its formal recommendation, 2(a), the Task Force states: “Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees’ PAI obligations, especially in “incubator” initiatives.”<sup>iv</sup>

### **III. NCAJ Supports the Recommendation**

For the reasons set forth below, NCAJ supports recommendation 2(a) as an important step that will increase opportunities for LSC grantees to involve law students and law graduates in the delivery and support of legal services for vulnerable people.

#### *1. LSC programs are being asked to do more with less.*

Across the country, LSC programs are reeling from budget cuts that have forced layoffs and that have created pressure to reduce service.

At the same time, LSC programs, and the courts themselves, have seen an increase in the number of vulnerable people in need of help.

These changes have taken place in an environment in which, as noted above, legal services programs are by all accounts already turning away one potential client for every client accepted.

While LSC grantees inevitably must spend money to make effective use of law students and recent law graduates, the students and recent graduates offer

LSC grantees a relatively inexpensive and potentially effective way of extending their reach to help more people with fewer resources.

With appropriate administration and supervision, LSC programs can potentially engage larger numbers of students, for substantial numbers of hours, to tackle significant problems, with enormous potential energy, enthusiasm, and ability.

In light of the challenging environment for unrepresented litigants, for the courts, and for LSC programs, it is important to increase the flexibility of LSC programs to involve law students and law graduates in the work of the programs.

2. *The New 50 Hour Pro Bono Service Bar Admission Requirement in New York is Focusing More Students and Law Graduates on the Justice Gap*

In May 2012, New York adopted a new law that requires all persons applying to the New York Bar to complete 50 hours of pro bono service as a condition of bar admission.

As a direct consequence of this new requirement, students and law graduates who seek to practice law in New York must now identify a sufficient number of opportunities through which to complete their required service.

Since so many law graduates intend to practice in New York, the law is already having an impact in New York and across the country.

Additionally, other states are considering adopting requirements similar to the New York requirement. Thus, in California and in New Jersey, a state bar committee and a court appointed task force are recommending adoption in their respective states of rules inspired by, and similar to, the new law in New York.<sup>v</sup> The ABA is also being urged to adopt an analogous requirement as a national accreditation standard that would require each law school to involve all of its students in 50 hours of pro bono service.

With more students than ever before seeking to perform pro bono service, this is an especially important moment in which to modify the PAI regulation to afford LSC grantees the flexibility to involve increased numbers of law students and law graduates in their work.

3. *Law student pro bono helps to teach students about the legal services bar, access to justice, the particular skills involved in being a lawyer, and the importance of a lifelong commitment to pro bono service.*

LSC programs have additional reasons for wanting to encourage pro bono service by law students and recent law graduates.



Law school pro bono enables students to learn about a defining feature of our justice system, often omitted from the law school curriculum – which is that millions of people annually proceed in their cases without the assistance of a lawyer, frequently against an opposing party that has counsel. The opportunity to volunteer in a legal services program often teaches future lawyers about the importance of the legal services bar, and about the opportunity to support civil legal aid after becoming a practicing attorney. It can also help to instill a commitment in law students to continue to provide pro bono assistance as professional attorneys. LSC programs have a stake in all of these outcomes.

Law student pro bono service also offers students a valuable opportunity to acquire specific skills of the profession that include: interviewing clients, analyzing and developing facts, interpreting law and drafting affirmative and responsive pleadings, presenting oral argument, carrying out legal research, interpreting and explaining legal documents, educating the public about the requirements of the law, and understanding the operation of justice system institutions. LSC programs, along with other justice system stakeholders, have a stake in ensuring that future practitioners acquire these skills.

Modifying the PAI regulation to accord LSC grantees increased flexibility to involve students and recent graduates in the work of the programs will help to advance these goals.

4. *New and Established Models for Engaging Law Students and Recent Graduates in Legal Services Work Can Make a Difference for Clients and Communities*

This current moment is one in which pro bono services are evolving into new structures and projects, many of which, including so-called “incubator” projects, hold promise for creating helpful partnerships with legal services programs. Many models are already in place, and many more are under development. Some are identified in NCAJ’s memo, *Model Projects & Structures To Strengthen Law Student Pro Bono to Increase Access to Justice*.<sup>vi</sup>

#### **IV. The Recommendation**

NCAJ endorses Recommendation 2(a). As noted above, it states: “Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees’ PAI obligations, especially in “incubator” initiatives.”<sup>vii</sup> While NCAJ supports the recommendation, we would note that in the final regulation, it will be important to include language preserving the discretion of the LSC grantees as to when to count services of law students and law graduates toward the PAI amount.

## V. Conclusion

Thank you for the opportunity to submit these comments in support of Recommendation 2(a).

Respectfully submitted,

*David Udell*

David Udell

- 
- <sup>i</sup> Legal Services Corporation, Report of the Pro Bono Task Force (October 2012), at 1-2.
  - <sup>ii</sup> In the comments herein, NCAJ does not take a position for or against other proposals to modify the PAI regulation.
  - <sup>iii</sup> LSC, Report of The Pro Bono Task Force, at 20.
  - <sup>iv</sup> LSC, Report of The Pro bono Task Force, at IV, and 20 (Recommendation 2(a)). This recommendation is included in the NPRM as Topic 1
  - <sup>v</sup> See generally, NCAJ's Blog on national and state based initiatives to establish pro bono service requirements for law students, <http://ncforaj.org/2013/08/07/chief-justices-issue-resolution-in-support-of-law-student-pro-bono-more-progress-toward-a-national-50-hour-pro-bono-service-requirement-for-future-lawyers/>.
  - <sup>vi</sup> <http://ncforaj.files.wordpress.com/2012/10/final-models-memo-lspb-2p.pdf>.
  - <sup>vii</sup> LSC, Report of The Pro bono Task Force, at IV, and 20 (Recommendation 2(a)).

NATIONAL  
CENTER FOR  
ACCESS TO  
JUSTICE  
*at Cardozo Law School*

“Thou Shalt Not Ration Justice”  
– Hon. Learned Hand

[parulemaking@lsc.gov](mailto:parulemaking@lsc.gov)

June 25, 2013

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

Re: Comments, & Expression of Interest  
in Appearing as a Panelist

Private Attorney Involvement Rulemaking  
Legal Services Corporation  
45 CFR part 1614 (78 FR 27339)  
<https://federalregister.gov/a/2013-11071>

Dear Mr. Freedman.

I am submitting these comments in support of the recommendation which states:  
“Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in “incubator” initiatives.”

I. Outline of Key Points:

I support the recommendation. I request an opportunity to make the following points at the workshops hosted by the Legal Services Corporation in connection with the rulemaking:

1. Civil legal aid programs increasingly seek to involve law students in pro bono initiatives as a means of increasing access to justice for vulnerable people, but have limited resources for training and supervising the students.
2. Law students increasingly seek to volunteer in civil legal aid programs, in response to the following developments: the justice gap, the access to justice movement, the increased emphasis on skills acquisition in law school, and the new, nationally significant, 50 hour pro bono service bar admission requirement in New York.

3. To effectively train and supervise law student volunteers, it is important for civil legal aid programs to be able to use their resources in satisfaction of their PAI obligations.

## II. Summary of Qualifications:

During the past two years, I have carried out research, engaged in public writing, and participated in conference sessions with justice system stakeholders, on how the justice gap, the access to justice movement, and the new 50 hour pro bono service requirement in New York are helping to reshape legal education. I have become knowledgeable about how changes in legal education and in pro bono service by law students are creating new opportunities for civil legal aid programs, while also increasing demands on those programs. This perspective should have a place in the workshops at which LSC's PAI regulation will be reconsidered. Information about my work (along with some examples) is available here:

- *Is New York's 50 Hour Pro Bono Service Rule Changing the Future of Law Student Pro Bono*, in Bloomberg Law (January 28, 2013)<sup>1</sup>
- *Law Students for Strengthening Law School Pro Bono*, Facebook<sup>2</sup>
- *Software for Law Student Pro Bono*, NCAJ's Policy Recommendation (February 25, 2013)<sup>3</sup>
- *National Roundtable on Pro Bono and Professional Development*, NALP (moderated by LSC President, Jim Sandman) (January 31, 2013)<sup>4</sup>
- *List of Replicable Law Student Pro Bono Model Projects and Structures – NCAJ's Policy Recommendation* (Oct. 15, 2012)<sup>5</sup>
- *Report & Recommendations of the Law School Involvement Working Group of the Task Force to Expand Access to Legal Services in New York* (contributing author) (December 1, 2012)<sup>6</sup>
- *Bio, David Udell*.<sup>7</sup>

## III. Checklist of topics and items to be addressed

I have attached the checklist of topics and items to be addressed.

\*\*\*\*\*

---

<sup>1</sup> <http://ncforaj.files.wordpress.com/2013/02/tyler-udell-bloomberg-law-law-student-pro-bono.pdf>

<sup>2</sup> <https://www.facebook.com/LawStudentProBono>

<sup>3</sup> <http://ncforaj.files.wordpress.com/2013/02/lspb-software-application-2-25-13.pdf>

<sup>4</sup> <http://www.nalp.org/probonoandpdroundtable>

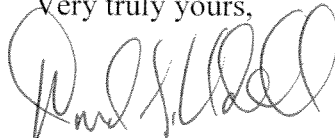
<sup>5</sup> <http://ncforaj.files.wordpress.com/2012/10/final-models-memo-lspb-2p.pdf>

<sup>6</sup> <http://ncforaj.files.wordpress.com/2012/12/report-recommendations-on-legal-ed-2012-tf.pdf>

<sup>7</sup> <http://ncforaj.org/about-2/staff/david-udell/>

Thank you for your consideration.

Very truly yours,



David Udell

Name	<b>David Udell, Executive Director, National Center for Access to Justice</b>
<b>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.</b>	
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).
<b>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.</b>	
	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).
<b>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.</b>	
	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).

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

**A. Scope of Part 1614**

Topic 1:

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

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](mailto: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 Development**<sup>1</sup>

- 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;

---

<sup>1</sup> 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 system<sup>2</sup> 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<sup>3 4</sup> and who possesses a skill set that is conducive to promoting and administering pro bono.<sup>5</sup>

---

<sup>2</sup> 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.

<sup>3</sup>NAPBPro’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.<sup>6</sup>
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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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

---

<sup>7</sup> 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."

<sup>8</sup> 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 eligibility<sup>9</sup>, 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.

---

<sup>9</sup> 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

---

5198 Beckett Ridge ▪ Stow, OH 44224 ▪ (330) 983-2531 (work) ▪ (330) 221-5122 (cell) ▪ [jvandulmen@communitylegalaid.org](mailto:jvandulmen@communitylegalaid.org)

## 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.



National Legal Aid & Defender Association

August 28, 2013

EQUAL JUSTICE.  
OF THE PEOPLE.  
FOR THE PEOPLE.

Sent by email to [PAIRULEMAKING@lsc.gov](mailto:PAIRULEMAKING@lsc.gov)

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

Re: Expression of Interest in Participating in September 17, 2013 PAI Rulemaking Workshop;  
Comments

Dear Mr. Freedman:

The National Legal Aid and Defender Association respectfully requests the opportunity for John Whitfield to participate as a panelist on behalf of NLADA in the September 17, 2013 PAI Regulatory Workshop in Washington DC. In addition, Don Saunders and Chuck Greenfield from NLADA hereby register for in-person public participation at the same workshop.

On June 25<sup>th</sup> NLADA submitted an outline of key points and comments to the three topics identified in the May 10, 2013 Federal Register Notice. Mr. Whitfield intends to expand on NLADA's comments on all three topics and to make comments on the additional questions raised in the revised Federal Register Notice of August 12, 2013. He will make specific comments in the areas of (1) Scope of Part 1614; (2) Tracking and Accounting for Part 1614 Work; and (3) Support for Unscreened Work of Private Attorney Clinics.

NLADA's Regulations and Policies Committee will meet prior to the September 17<sup>th</sup> regulatory workshop to develop more detailed responses to the recent additional questions raised by LSC. Mr. Whitfield will be prepared to share those responses at the workshop.

## Summary of Qualifications of John Whitfield

John E. Whitfield has served as the executive director and general counsel of Blue Ridge Legal Services since 1989. Prior to becoming the executive director, he served as law clerk, staff attorney, and supervising attorney since first joining the organization in 1980.

In 1981 he was awarded a Reginald Heber Smith Community Lawyer ("Reggie") Fellowship.

He was the 1998 recipient of the Virginia State Bar's Legal Aid Award and he was inducted as a Fellow of the Virginia Law Foundation in 2009.

In April 2012 John was one of 6 legal aid directors from across the country invited to participate in the White House Forum on the State of Civil Legal Assistance.

In October 2012 John was interviewed about his work as a legal aid attorney on *The Story with Dick Gordon*, a nationally syndicated public radio show produced by American Public Radio.

He is a 1977 graduate of the University of Virginia's College of Arts and Sciences, and a 1981 graduate of the University of Virginia School of Law. He is a native and resident of Staunton.

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

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:

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

- |   |                                                                                                                                                                                                                                                                                                                                                                                                        |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| X | 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:

- |   |                                                                                                                                                                                                                                                                                           |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| X | 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? |
| X | 2. Please identify what criteria should apply to referral placement organizations, such as bar association programs, for them to qualify for Part 1614.                                                                                                                                   |
| X | 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:

- |   |                                                                                                                                                                                                                                                                                                                |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| X | 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. |
| X | 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.                                                                                                  |
| X | 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.                                                                           |
| X | 4. Please identify methods or criteria to distinguish between permissible activities supporting other entities and attorneys, such as general trainings, and impermissible subsidization.                                                                                                                      |



National Legal Aid & Defender Association

June 25, 2013

EQUAL JUSTICE.  
OF THE PEOPLE.  
FOR THE PEOPLE.

Sent by email to [PAIRULEMAKING@lsc.gov](mailto: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.<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.”

---

<sup>2</sup> 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.<sup>1</sup> 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

---

<sup>1</sup> 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,<sup>2</sup> 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.

---

<sup>2</sup> 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](mailto:lperle@clasp.org).

Name	NLADA – Silvia Argueta
<b>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.</b>	
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).
<b>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.</b>	
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).
<b>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.</b>	
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).



p 517-346-6300

p 800-968-1442

f 517-482-6248

www.michbar.org

306 Townsend Street  
Michael Franck Building

Lansing, MI

48933-2012

Sent via E-mail

July 30, 2013

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

Re: 45 CFR 1614  
Proposed Revision to the Private Attorney Involvement (PAI) Regulation

Dear Mr. Freedman,

I am writing in response to the Legal Services Corporation (LSC) request for public comment on proposed revisions to the Private Attorney Involvement (PAI) regulation, 45 CFR 1614. This comment is submitted on behalf of the State Bar of Michigan.<sup>1</sup>

The State Bar of Michigan has a long and proud tradition of supporting and encouraging pro bono among its members.<sup>2</sup> We enjoy a strong and positive relationship with all of Michigan's LSC-funded programs, with the Michigan State Bar Foundation, and with many more community-based programs that deliver legal services to the poor and engage State Bar members in pro bono work. We also are proud to participate in the annual American Bar Association "ABA Day" lobbying efforts on the Hill and have lobbied for LSC funding since that activity began many years ago. The comments provided here are based on the State Bar's long-standing tradition of support for pro bono work and for Michigan's LSC-funded programs. They are also based on the findings and strategies to expand pro bono in Michigan as identified in the 2013 "An Assessment of Pro Bono in Michigan"<sup>3</sup> report commissioned by the State Bar and the Michigan State Bar Foundation.

The State Bar of Michigan appreciates LSC's leadership in convening its Pro Bono Task Force and issuing the October 2012 Pro Bono Task Force Report.<sup>4</sup> We support each of the three changes in the regulation recommended by the Task Force, and suggest an approach to pro bono that we believe LSC should take in revising the regulation, as well as additional comments on LSC's specific recommendations.

---

<sup>1</sup> The comment was drafted by the Bar's Pro Bono Initiative. The PBI draft was reviewed and approved by the Bar's Committee on Justice Initiatives and the Board of Commissioners.

<sup>2</sup> A listing of the extensive Bar efforts to support and expand pro bono can be found on the Bar's website: <http://www.michbar.org/programs/ATJ/home.cfm>

<sup>3</sup> <http://www.michbar.org/programs/pdfs/probonoreport2013.pdf>

<sup>4</sup> [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf)

**An Approach to Pro Bono.** While we support each of the three recommended changes to the regulation, we believe that the most important guidance that the LSC Board can provide is to change the Corporation's approach in reviewing its grantees' PAI activities.

We urge LSC to specifically recognize that:

1. Pro Bono is bigger than LSC. There are many examples of pro bono activities that go beyond the missions of civil legal aid programs: death penalty work, corporate and transactional work for non-profit corporations, and immigration work. Many leadership law firms embrace this work. Both the firms and LSC programs must work with bar associations and with the many other legal service providers to create a full range of pro bono opportunities for lawyers and law students, and to create a culture where pro bono is the expectation for every lawyer and law student.

LSC programs must be active partners in this dynamic network. While the cases and matters referred by these programs must be LSC-permissible work, LSC must encourage its programs to be part of a larger coordinated pro bono system.

This new perspective would change how LSC and its grantees think about pro bono and relate to bar associations and law firms. LSC should be an active partner with the ABA and the IOLTA community on pro bono with LSC talking the lead on civil legal aid to low income persons and the other entities taking the lead on non-LSC pro bono work. LSC grantees should be part of their states' pro bono network and, while directly engaging bar associations and law firms on their pro bono work, should recognize and support the broader pro bono system.

2. Successful pro bono programs are built on flexibility and innovation. The current pro bono regulation was promulgated in 1984. Since that time, the practice of law has changed dramatically and evolving technologies have altered how lawyers interact with their clients. Better programs have incorporated these changes into their pro bono programs as the technology has developed, such as volunteers staffing hotlines, answering questions over the internet, and interacting with self-represented litigants via live chat services.

We are pleased that the proposed rule changes correct three difficult LSC opinions promulgated over the past several years. While we agree that it is important to fix these past errors, it is more important to direct LSC staff to review future PAI programs in the spirit of innovation and flexibility critical to successful pro bono efforts.

Many pro bono lawyers are very busy people, whose time is extremely valuable; all are volunteers. In order to inspire a busy volunteer to give of his or her time, programs must make the volunteer experience rewarding and efficient. While time consuming regulatory compliance activities may be appropriate for government-funded programs, these barriers must be minimized in volunteer lawyer programs. It is critical that LSC: (1)

permit its recipients to develop programs that respond to the work that volunteer lawyers want to do and the ways in which they can best do it; and (2) recognize the constraints on rural practitioners and permit recipients to develop programs that are effective in rural areas.

We recommend that LSC add a statement to 1614.2(c) to the following effect:

“In reviewing the activities of recipients under this rule, LSC recognizes the need for flexibility—to meet the changing nature of client needs and the changing demands of the practice of law—and innovation—including recipients’ efforts to incorporate new technologies into their programs.”

We recommend that LSC add the following new subpart 1614.6(f) and renumber the current 1614.6(f) as 1614.6(g):

“In order to support and encourage innovation in pro bono delivery, LSC has the authority in appropriate circumstances to approve a waiver of existing regulatory provisions as applied to a private attorney involvement program. Such waivers shall be granted in the sound discretion of the Corporation if the Corporation finds that the intent of the program is to expand pro bono opportunities by reaching out to a new audience of volunteers or to expand or improve services to clients by providing services in a new or better way. A waiver under this part may be temporary or permanent. The Corporation may set a time to review a temporary waiver and may require a recipient to provide an evaluation report on a temporary program.”

Finally, we recommend that LSC adopt the following test for PAI-permissible activity:

If the activity is a good faith effort by the recipient to engage members of the private bar in pro bono and to expand services to client eligible persons, it should be a permissible PAI activity under 45 CFR 1614. The test cannot be: “100% of all persons benefitted must document eligibility under 45 CFR 1611.” LSC currently recognizes outreach and education activities as LSC-permissible without individualized eligibility determinations; it should apply this same approach to private attorney involvement activities.

### **Comments on LSC’s specific recommendations.**

**1. Law Student Pro Bono.** We fully support the recommendation of the Task Force that “resources spent supervising law students, law graduates, deferred associates, and others should be counted toward grantees’ PAI obligations.”

A major positive development in Michigan is the active involvement of the state’s law schools in educating their students regarding their professional responsibility to provide

free services to those of limited means. These programs include active partnerships with legal services programs<sup>5</sup>, pro bono pledge programs, clinical law programs, externship programs, and law school sponsored pro bono programs. The hours LSC programs spend working with students is a community investment in the future of legal services. These activities should be recognized and encouraged by LSC.

**2. Screening and Referral.** Both Advisory Opinions 2009-1004 and 2011-001 create unfortunate barriers to pro bono engagement and should be explicitly overruled. LSC programs should be encouraged to create efficient intake systems that involve private attorneys in the intake process and that are integrated with pro bono referral programs.

Since AO 2009-1004 arose in Michigan, we can note first-hand two negative consequences flowing from that decision. First, it created a negative incentive for private lawyer involvement in a coordinated intake system. Programs can still use the coordinated multi-program hotline, but they were directed not to count the cases as LSC cases. Second, as a result of 2009-1004, there are approximately 10,000 cases each year that are handled by a non-LSC funded law firm for LSC-eligible clients and paid for by LSC-funded programs, but not counted in LSC's CSR reporting system. We understand that LSC has a goal of communicating the work of its grantees to Congress in a way that gives the full picture of its services offering more reason for Congress to financially support LSC. We support that goal; however, we think a rule that directs LSC grantees not to count 10,000 cases for eligible clients undermines that goal.

**3. Revised case documentation in PAI cases.** The Task Force notes that strict compliance with LSC case documentation rules often undermines innovative pro bono programs. Cited was Advisory Opinion 2008-1001<sup>6</sup> which disallowed an Ohio pro bono program based on church and community sponsored walk-in clinics staffed by pro bono lawyers. We agree with the Task Force recommendation that the regulation be reexamined and revised to support program efforts “to develop innovative programs to promote efficiency and effectiveness in their partnerships with others”<sup>7</sup> and to encourage pro bono participation.

If LSC were to adopt a test asking if a program is “a good faith effort by the recipient to engage members of the private bar and to expand services to client eligible persons,” the Ohio clinics would not have been rejected.

**4. Internet Representation Project.** Although the Task Force did not discuss the Internet Representation Project (IRP) developed by Legal Services of Northern

---

<sup>5</sup> LSC has recognized the longstanding partnership between the University of Michigan Law School and Legal Services of South Central Michigan, see LSC Program Letter 2007-2.

<sup>6</sup><http://www.lsc.gov/sites/default/files/LSC/lscgov4/EX20081001RequirementforPersonsAssistedbyPAIAAttorneys.pdf>

<sup>7</sup> LSC Task Force Report at p. 22.

Michigan (LSNM) with special grant funding from the Michigan State Bar Foundation and LSC's Technology Initiative Grant (TIG) program, this is another innovative rural pro bono program rejected by LSC. LSNM serves a vast geographic region (36 counties) with few lawyers. The IRP permits clients to complete an online eligibility screening tool. LSC-eligible clients are sent to a panel of pro bono attorneys who provide online advice to the clients. Through the IRP, a lawyer can provide advice in 2 to 3 cases in half a day; a lawyer who accepts a case in court is often facing a half day drive to attend each hearing in this rural area.

Like the Ohio clinic program, the IRP was rejected under the analysis of Advisory Opinion 2008-1001. Because there wasn't a live-person determination of LSC eligibility, LSNM was directed not to count the IRP cases. Like the Ohio clinic program, the IRP would be permissible under the analysis suggested in this letter.

### **Conclusion**

The State Bar strongly supports pro bono. Our efforts to engage Michigan lawyers in pro bono work would be greatly enhanced if our partnership with LSC allowed a broader view of pro bono. It is worth noting that even when a locally-developed, innovative, cost-effective, efficient program has been rejected by LSC, most Michigan LSC grantees opted to continue their programs using non-LSC funding. This means that pro bono, as reported to the Michigan State Bar Foundation, and discussed within the State Bar, is much broader and richer than the limited version recognized by LSC. We encourage LSC to recognize and support this broader vision.

We also note that 45 CFR 1614 is a creation of a 1984 LSC Board, not of Congress. The LSC Board has the authority to wholly revise the regulation. We believe that Congress supports the direction suggested by the LSC Pro Bono Task Force. We think that this LSC Board should be informed by the current concept of pro bono and motivated to support real private sector engagement, innovation and efficiency.

We applaud the efforts of the LSC Pro Bono Task Force and encourage the LSC Board to adopt the Task Force recommendations through the approach suggested in this letter.

Respectfully submitted,



Bruce A. Courtade  
President



**COMMENTS ON  
PROPOSED REVISIONS TO LSC'S  
PRIVATE ATTORNEY INVOLVEMENT (PAI) RULE  
Federal Register Volume 78, Number 155**

**Submitted by Terry Lawson  
Legal Services NYC-Bronx  
August 27, 2013**

These comments are submitted to the Legal Services Corporation (LSC) in response to its request for public comments on revising LSC's Private Attorney Involvement (PAI) Rule. These comments pertain to Topic 1, i.e., that "Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in 'incubator' initiatives", and the following related requests:

- 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.



## **Background**

Legal Services NYC fights poverty and seeks justice for low-income New Yorkers. For more than 40 years, we have challenged systemic injustice and helped clients meet basic needs for housing, access to high-quality education, health care, family stability, and income and economic security. LSNYC is the largest civil legal services provider in the country, with deep roots in all of the communities we serve. Our neighborhood-based offices and outreach sites across all five boroughs help more than 60,000 New Yorkers annually.

Legal Services NYC supervises and trains more than a hundred law students and pre-admission law graduates each year. We have developed long-standing relationships with law schools in and outside of New York and spend significant numbers of hours interviewing potential law students and pre-admission law graduates each month. We attend job fairs organized by New York law schools and regularly participate in informational sessions to educate and recruit students and new attorneys to work with us on a volunteer basis. We write evaluations for law students, assist with bar application requests, and communicate with professors who seek further clarification of a student's involvement with our organization. Because the hours Legal Services NYC staff spends on recruitment, training, and supervision are significant and undeniably contribute towards our delivery of "high quality, economical and effective client-centered legal assistance"<sup>1</sup>, they should be counted towards our PAI obligations to continue to encourage our mutually beneficial relationship with law students and law graduates.

### **Question 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.**

Part 1614.1(d) should be expanded to include law students and law graduates who have not yet been admitted to practice law by the grantee's state bar. Provided that recruitment and supervision of these law students and law graduates are conducted by the grantees, no further guidelines are necessary.

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

In addition to law students, LSC should consider including college students and volunteer paralegals, secretaries, and interpreters in Part 1614 as well, as Legal Services expends resources recruiting and training these individuals for the purpose of enhancing client-centered legal assistance.

---

<sup>1</sup> See 45 CFR 1614.2 (c).

**Question 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.**

Given severe budget constraints facing civil legal service providers nationwide, the inclusion of law students, pre-admission law graduates, college students, volunteer paralegals, secretaries, and interpreters in Part 1614.1(d) significantly contributes to the goal of “generat[ing] the most possible legal services for eligible clients from available, but limited, resources.”<sup>2</sup> Accordingly, the scope of the expanded definition needs only to reference this goal.

**Question 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.**

N/A

**Question 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.**

Because attorneys often move from state to state, there should be no requirement that attorneys be admitted to the grantees’ bar to count towards a grantee’s PAI obligations. To the contrary, attorneys who are admitted in other states often seek to volunteer with grantee organizations for the purpose of learning that state’s practice. Accordingly, these attorneys require supervision and training. Given their years of experience, these attorneys are able to contribute significantly to the delivery of high-quality legal services for our clients, the overriding goal of Part 1614, and these hours should be counted by LSC.

---

<sup>2</sup> See 45 CFR 1614.1(c).

## Private Attorney Involvement

The current Private Attorney Involvement (PAI) regulations allow credit for a broad range of involvement by non-LSC attorneys in the legal work of recipients, far beyond pro bono representation of individual clients. The 12.5% requirement only measures the cost incurred by the recipient to involve these private attorneys in their work. An alternative system that measures the benefits conferred by the pro bono attorneys, perhaps run in parallel with the current PAI system for a period of years, would provide a much more accurate measure of how pro bono attorneys contribute to the work of Legal Services Corporation (LSC) recipients. Though the current system allows for simple comparisons of dollars granted and spent, a more flexible system that allows for changing markets, innovative delivery, and realities of a rapidly evolving legal market could support more representation for more clients.

In 2002 I joined one of the nation's largest LSC recipients in the newly created position of Director of Private Attorney Involvement (PAI). I served in that position for six years. The year before I joined the recipient, the pro bono program consisted primarily of several hundred hours contributed by pro bono attorneys at a courthouse-based domestic violence clinic. The bulk of the PAI requirement was fulfilled through contracts, subgrants, and training and support. By 2008 I had increased pro bono hours to nearly 20,000 per year. But the PAI percentage that the recipient reported had only grown from just over 12.5% to between 14.5% and 15%. Most people would expect that an increase from 300 hours to nearly 20,000 hours would result in a huge percentage increase. Understanding why the increase was so small is critical to understanding how PAI operates, and why a different system would provide valuable data and insight into pro bono at LSC .

## PAI and Pro Bono

When I took the position of Director of PAI, I assumed that PAI was a fancy name for pro bono. It is not, though there is definite overlap. PAI is a very accurate title describing the broad scope of the regulation: Involvement by non-LSC attorneys in the legal work of the recipient. In some instances non-LSC attorneys may be government attorneys. In 2002 some recipients passed through the entire 12.5% of their basic field grant to separate programs. Some, including mine, used a significant portion of the 12.5% on training, either trainings for the recipients' staff by private attorneys, or training of private attorneys by staff.

A large part of my charge was to develop a strong pro bono program to reduce reliance on contracts, subgrants, and trainings. A major goal was to increase financial support from local attorneys and firms.

## PAI is a Burden Calculation

Perhaps unique in pro bono and volunteer management, PAI is a burden, not a benefit, calculation. Examples of volunteer benefit calculations include total number of volunteers, total

number of volunteer hours, and the value of donated services. For pro bono programs, benefit calculations might include number of cases placed, number of domestic violence restraining orders issued, number of rental units preserved, and number of SSI applications approved. These represent direct benefits to the programs and their clients.

PAI calculates the opposite: the total cost to the recipient of involving private attorneys in the legal work of the program. The largest portion of that is the salary and benefits for each staff attorney multiplied by the number of hours that they work with private attorneys. The chief advantage is that PAI generates a hard number of dollars which can be compared to the basic field grant to ensure compliance with the minimum 12.5%. A major disadvantage is that it does not reflect the direct and indirect benefits to the recipient. A few examples of direct advantages are listed above. An example of an indirect benefit is that two pro bono attorneys joined the recipient's Board of Directors on the leadership track. That would have additional positive impacts that are difficult, if not impossible, to quantify.

An unintended consequence of the burden measurement is to discourage efficiency. I established a project with a firm which sought to retain at least 50 eviction defense cases per year. At the beginning of the project, the pro bono attorneys needed a lot of training and support. But as the firm built up its internal expertise, they conducted their own trainings and needed far less support. This was a boon to the program, freeing up time for staff attorneys to work on other cases, but while more clients were being assisted, the PAI time dropped dramatically due to the reduced interactions.

Pro Bono Managers at LSC and non-LSC programs must already collect and process a variety of data on volunteers' contributions for other funders. By standardizing the information collected, LSC could greatly aid an assessment of how well pro bono operates in different sized communities and different practice areas, for example, helping to improve the design of such programs nationwide. The data is already challenging to collect, with LSC devising standards, the process of gathering the information from firms and solo practitioners would evolve into an accepted practice.

For example, there is no standard for valuing the time contributed by pro bono attorneys. Some firms will release the value they use, others consider it proprietary. In those instances none of the stand-alone programs in my service area would divulge their scale of hourly rates. I ended up sharing data with a program in another large metropolitan area 400 miles away to establish a scale I could support.

Nonprofits don't want to share raw data because there is a competition for private donations. But a competition in metropolitan areas to increase pro bono opportunities would benefit all, by improving client screening, trainings and materials for pro bono attorneys.

## Proposal

I propose reducing the PAI requirement to 10% and maintaining it for licensed attorneys only. I would limit the amount that attendance at trainings and conferences could count towards the PAI

requirement to no more than 2%. I would allow attorneys who are inactive or not licensed in the state but allowed to practice under Emeritus, Pro Bono Practice, or similar rules to count towards the PAI minimum. I would also allow de minimis reimbursements and grants to otherwise non-practicing attorneys, for example to a cap of \$2,000 per year, without making their status LSC staff attorneys because they have no other income from the practice of law.

I would not expand the definition of attorney to include law students, law school graduates awaiting results, or similar people with legal training but who are not yet qualified for practice. There is a growing role that these individuals can play in delivering limited service, but PAI should be reserved for those who can handle full representation if necessary. This doesn't limit innovation; it encourages innovation in the use of attorneys.

I believe everyone working in legal services would want to see full legal representation for every legal problem of a qualified client. We will never see that level of funding. During the past 20 years we have seen an explosion of hotlines, kiosks, web sites, and court-based self-help clinics to provide more limited service to a greater number of clients. These are immensely valuable, and can often be staffed by non-attorney staff and volunteers. But I believe PAI should be used to continue to expand full representation by pro bono attorneys where appropriate. Though many people can be successful with a little guidance and drafting of legal pleadings, others simply are not able to maneuver through the legal system to a successful conclusion. Licensed attorneys will generally require less training and handholding during the representation than someone who has not yet had full responsibility for a client.

If there is great demand, then a separate system for counting law students and graduates could be established, with an independent goal of 5% of the basic field grant. For most urban programs this would be easy. For more rural programs, this would be a great hardship.

By contrast, I would argue in favor of counting paralegal time towards the PAI requirement. Since the pro bono definitions began evolving in the early 1980s, paraprofessional support in law firms has exploded. There are many tasks that are routinely handled by paralegals who support the work of the pro bono attorneys. The firm must choose between having a paralegal handle the tasks and not receiving any credit, or have the new attorney handle the tasks in order to bill more pro bono hours. I would count paralegal hours at a discount, perhaps 4 hours of a paralegal's time equals 1 hour of an attorney's time, and cap the paralegal's time to 20% of the total attorney hours on the case or matter.

I believe this would open up more types of cases to pro bono representation. For example, I placed one case that had a dramatic setback. What was supposed to be a simple easement actually resulted in the filing of more than 100 quiet title actions. Though the firm barely complained, they did have to choose between assigning the work to paralegals for no credit or having young associates handle the work in order to record pro bono hours. Allowing some credit for paralegal hours could keep firms from being scared of tackling potentially thorny cases. Paralegals are often clamoring to work on pro bono cases but are restricted to working for paying clients.

Conclusion

The PAI regulations have been in effect for more than 30 years. Recipients have adjusted their programs to meet the requirements, though not always with the intended results. I believe the requirement has done a great deal of good by pressing recipients to develop programs to use private attorneys to help deliver legal services, through pro bono, Judicare, and pass throughs to independent programs. However the burden measurement—only considering how much it costs the recipient to provide these services—does not fully support expansion and innovation in using pro bono attorneys to represent potential qualified clients.

Such a system would require a small staff and would benefit from a grants program comparable to TIG that would help fund innovative pro bono models. By spreading reports of successes and lessons learned, LSC could have a broader impact in the expansion of pro bono nationwide. By shifting gradually to a benefits measurement of pro bono programs and devising standards that work for individual programs and for the nature of the areas served--urban, suburban, rural, and statewide—LSC will incentivize more robust pro bono programs at each recipient.

David Ackerly  
Dunkirk, MD