

LEGAL SERVICES CORPORATION

Private Attorney Involvement by Recipients of Funding

AGENCY: Legal Services Corporation.

ACTION: Instruction.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a 88 Stat. 378, 42 U.S.C. 2996-2998, as amended, Pub. L. 95-222 (December 28, 1977). Section 1008(e) of the Legal Services Corporation Act provides:

The Corporation shall * * * publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions.

The Legal Services Corporation hereby publishes its instruction on private attorney involvement by recipients of Legal Services Corporation funding.

EFFECTIVE DATE: This instruction is effective January 14, 1982.

FOR FURTHER INFORMATION CONTACT: Theron P. O'Connor, Office of Field Services, Legal Services Corporation, 733 15th Street, NW., Washington, D.C. 20005, (202) 272-4080.

Dan J. Bradley,

President, Legal Services Corporation.

December 9, 1981.

Instruction

I. Purpose

The purpose of this instruction is to provide direction to recipients of Legal Services Corporation funding in meeting the terms of the Special Condition on private attorney involvement placed upon 1982 grant awards. It is designated to ensure that recipients, through policies and plans adopted by their governing bodies, will provide such opportunities in the most effective and economical manner and consistent with the purposes and requirements of the Legal Services Corporation Act.

The Special Condition provides:

Consistent with an instruction to be issued by the Corporation, the recipient shall allocate a substantial amount of its annualized Basic Field grant award to provide the opportunity for the involvement of private attorneys in the delivery of legal

assistance to eligible clients. As a guideline, a substantial amount shall be defined as ten percent of the recipient's annualized Basic Field grant award.

Consistent with an Instruction to be issued by the Corporation, recipients of annualized Native American, Migrant and State Support grant awards shall analyze the feasibility of involving private attorneys in the activities undertaken pursuant to such grants.

II. General Policy

The Special Condition implements a policy and statement of Principles on Private Attorney Involvement that was adopted by the Board of Directors of the Corporation on October 2, 1981. That policy requires that a substantial amount of funds be made available to provide the opportunity for the involvement of private attorneys in the delivery of legal assistance to eligible clients.

The policy builds on local program experience, as well as formal research and experimentation undertaken by the Corporation, that has provided comprehensive information about the delivery of legal services to the poor. This information and experience demonstrate several things: the staff attorney system is an effective and economical structure to deliver publicly supported legal assistance to the poor; there are many private attorneys willing and able to provide high quality legal assistance to the poor; and, there are a variety of mechanisms for involving private attorneys, on either a voluntary or a partially-compensated basis, that can be adapted for effective local use.

The Corporation's policy is designed to enhance the participation of private attorneys, through established local programs, in localities where this has not yet occurred, in ways that make sense for those particular communities.

As a guideline, the term "substantial amount" has been defined as ten percent (10%) of the annualized Basic Field grants awarded to existing recipients. To achieve that goal the Corporation will direct that each recipient develop and implement a plan to allocate a substantial amount of its annualized Basic Field grant to activities consistent with this Instruction. In the case of joint efforts involving two or more recipients, the ten percent guideline shall be applied to the aggregate of annualized Basic Field funds involved. Each recipient in any such effort shall be a bona fide participant in the activities undertaken by the joint venture.

Recipients of annualized Native American, Migrant and State Support grant awards, while not subject to the ten percent guideline, shall analyze the feasibility of involving private attorneys

in the activities undertaken pursuant to such grants.

Private attorney involvement must be seen as an integral part of a total local program, undertaken within the established priorities of that program in a manner that furthers the fundamental values of high quality, economical and effective client-centered legal assistance to the poor. Decisions about how to meet the substantial involvement requirement rest with the recipient through its governing body. The Corporation expects, however, that the recipient will develop and implement its plan in consultation with its clients and staff, and with the organized bar, including minority and women's bar groups, and private attorneys in its service area. Experience has indicated that effective private attorney involvement occurs in those communities where the legal services program and relevant bar organizations have been able to work together in the design and implementation of a plan to achieve that involvement.

To ensure that activities undertaken pursuant to the Special Condition will result in the continued provision of the highest quality services in the most effective and economical manner, the Corporation will make available to recipients a program of support and technical assistance designed to aid them in meeting this requirement.

III. Range of Activities

(a) Private attorneys can be effectively involved in the delivery of legal assistance to eligible clients in a variety of ways and in response to a variety of priority legal needs of clients. At a minimum the following considerations will apply in defining the range of activities permitted in meeting the requirements of this Instruction:

(1) The primary consideration in undertaking any such activities shall be the provision of the highest quality services to eligible clients in the most effective and economical manner; and

(2) Activities undertaken by the recipient to meet the requirements of this Instruction might include, but not necessarily be limited to:

(A) Direct delivery of legal assistance to eligible clients through organized pro bono or reduced fee plans utilizing volunteer attorneys, judiciary panels, private attorney contracts, and/or organized referral systems;

(B) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or pro bono basis through the provision of community legal education; training; technical assistance; research; advice and

counsel; co-counseling arrangements; and, the use of private law firm facilities, libraries, computer assisted legal research systems and other resources; and,

(C) Support provided by the recipient in furtherance of activities undertaken pursuant to (A) above including the provision of training; technical assistance; research; advice and counsel; and, the use of recipient facilities, libraries, computer assisted legal research systems and other resources.

(b) The specific activities 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 taking into account the following factors:

(1) The priority legal needs of eligible clients in the service area;

(2) The most effective and economical delivery of legal assistance to eligible clients;

(3) Linguistic and cultural barriers to effective advocacy;

(4) Actual or potential conflicts of interest between participating attorneys and eligible clients;

(5) The substantive and practice expertise of participating attorneys; and,

(6) The knowledge and information available from the Delivery Systems Study and other literature and experience related to the involvement of private attorneys in the delivery of legal assistance to eligible clients.

(c) Systems designed to provide direct services to clients by private attorneys, on either a pro bono or reduced fee basis, shall include at a minimum the following components:

(1) Intake and case acceptance procedures which are consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignment procedures which ensure the referral of cases according to the nature of the legal problem or problems involved and the skills, experience and substantive expertise of the participating attorneys;

(3) Case oversight and follow-up procedures which ensure the timely disposition of cases in a manner and in a forum calculated to achieve, insofar as possible, the result desired by the client and the most efficient utilization of recipient resources; and,

(4) Support and technical assistance procedures which, where appropriate and to the extent feasible, will provide access for participating attorneys to materials, training opportunities and back-up on substantive poverty law and practice considerations.

(d) The recipient shall utilize financial systems and procedures to account for costs allowable in meeting this instruction which will:

(1) Meet the requirements of the Corporation's Audit and Accounting Guide for Recipients and Auditors; and,

(2) Accurately identify and account for: (A) The recipient's administrative, overhead, staff, and support costs related to carrying out private attorney involvement activities; (B) payments to private attorneys for supportive or direct client services rendered; (C) contractual payments to individuals or organizations which will undertake administrative, supportive, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Instruction; and, (D) such other actual costs as may be incurred by the recipient in this regard.

IV Procedure

(a) Each recipient shall develop a plan to meet the requirements of this instruction. The plan shall:

(1) Take into consideration the legal needs of eligible clients in the geographic area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) and Part 1620 of the Regulations (45 CFR 1620) adopted pursuant thereto; and

(2) Take into consideration the delivery mechanisms potentially available to provide the opportunity for the participation of private attorneys in meeting the established priority legal needs of clients in the most effective and economical manner.

(b) The recipient shall provide the opportunity for consultations with significant segments of the client community, the recipient's employees, and private attorneys and bar associations in the recipient's service area in the development of its plan to provide the opportunity for the involvement of private attorneys in the provision of legal assistance to eligible clients.

(c) On or before March 31, 1982, the recipient shall prepare and submit to the appropriate Regional Office of the Corporation a brief report describing how the recipient will provide the opportunity for private attorneys to participate in the provision of legal assistance to eligible clients. In the case of joint efforts the preparation and submission of the required report shall be the joint responsibility of all

participating recipients and shall demonstrate the bona fide participation of each such recipient in the activities to be undertaken. The report shall include:

(1) A brief summary of the priority legal needs of eligible clients;

(2) A brief summary of any delivery mechanisms potentially available to the recipient in meeting those needs in the most effective and economical manner through the involvement of private attorneys;

(3) A brief summary of the consultations with eligible clients, recipient employees, and private attorney groups in developing its plan to provide the opportunity for the involvement of private attorneys in the delivery of legal assistance to eligible clients;

(4) A brief description of the activities which the recipient will undertake to meet the requirements of this Instruction including, where required, its procedures for meeting the provisions of paragraph (c) of section III; and

(5) A tentative budget showing the annualized allocation of a substantial amount of the recipient's Basic Field grant to the activities undertaken to meet the requirements of the Special Condition.

(d) A recipient which currently allocates a substantial amount of its annualized Basic Field grant award to provide the opportunity for the involvement of private attorneys in the delivery of legal assistance to eligible clients, or which has already developed a plan to that end which is consistent with the requirements of this Instruction, need not comply with paragraphs (a) and (b) above. Such recipient shall, however, prepare and submit the report required by paragraph (c) above.

(e) Implementation by the recipient of the plan adopted pursuant to paragraph (a) above shall begin on or before June 30, 1982 and shall be fully operational on or before September 30, 1982.

(f) On or before September 30, 1982, the recipient shall certify to the Corporation that it is expending, consistent with the ten percent guideline, a substantial amount of its annualized Basic Field grant in furtherance of the activities described in the report required in paragraph (c) above.

(g) For recipients of annualized Native American, Migrant and State Support grant awards, the following procedures will apply:

(1) Each such recipient shall analyze the feasibility of involving private attorneys in the activities undertaken

pursuant to such grants. The analysis shall:

(A) Take into consideration the legal needs of eligible clients in the geographic area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) and Part 1620 of the Regulations (45 CFR 1620) adopted pursuant thereto; and

(B) Take into consideration the methods potentially available to provide the opportunity for the participation of private attorneys in the activities undertaken pursuant to the such grants.

(2) Each such recipient shall provide the opportunity for consultations with significant segments of the client community, the recipient's employees, and private attorneys and bar associations in the recipient's service area in the feasibility analysis.

(3) On or before September 30, 1982, each such recipient shall prepare and submit to the appropriate Regional Office of the Corporation a brief report describing the feasibility of private attorney participation in the activities undertaken pursuant to such grants. The report shall include:

(A) A brief summary of the priority legal needs of eligible clients and the relative priority of other activities undertaken pursuant to such grants;

(B) A brief summary of the methods of involving private attorneys in meeting those needs or in other activities undertaken pursuant to the recipient's grant in the most effective and economical manner;

(C) A brief summary of the consultations with eligible clients, recipient employees and private bar groups in developing the feasibility analysis; and,

(D) A brief description of any private attorney involvement in the activities undertaken pursuant to such grants.

(4) Each such recipient which has already analyzed the feasibility of involving private attorneys in the activities undertaken pursuant to such grants need not comply with paragraphs (1) and (2) above. Such recipient shall, however, prepare and submit the report required by paragraph (3) above.

Issued: December 9, 1981.

Den J. Bradley,

President, Legal Services Corporation.

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