



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2003-1006

**To:** Edward J. Hoort, Executive Director  
Legal Services of Eastern Michigan, Inc.  
436 Saginaw Street  
Flint, MI 48502

**Date:** March 26, 2003

**Subject:** Priorities Requirements and non-LSC Funds.

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ISSUE PRESENTED

Legal Services of Eastern Michigan (LSEM) is an LSC recipient. LSEM also receives funding from the Michigan State Bar Foundation (Bar Foundation) via the Center for Civil Justice (CCJ). The Bar Foundation has added a new requirement for LSEM funding from April 1, 2003 through December 31, 2003. LSEM would be required to accept LSC-permissible cases and clients referred from the CALL referral system "whether or not they are within LSEM's priorities." Is this requirement consistent with the LSC rules regarding recipient priorities?

SUMMARY

No. The Bar Foundation requirement that LSEM accept CALL cases and clients "whether or not they are within LSEM's priorities" directly conflicts with the LSC statutory and regulatory requirement that LSEM not accept any cases outside of its priorities except for emergencies pursuant to written procedures. This LSC requirement applies to the use of all LSC and non-LSC funding, including Bar Foundation funding.

BACKGROUND

The Bar Foundation provides funding for legal services in Michigan including funding for 14 eastern Michigan counties that goes to Lakeshore Legal Aid (LLA) and CCJ. CCJ provides a part of that grant to LSEM. LLA operates the CALL client referral system.

On February 19, 2003, the Bar Foundation adopted new requirements for funding to CCJ that would apply to funds provided from April 1, 2003 through December 31, 2003. The Bar Foundation would provide CCJ with an estimated \$365,000 (in addition to \$50,000 already provided for the first three months of 2003) subject to the following terms:

1. CCJ may keep up to \$250,000 of the total 2003 Bar Foundation funding (approximately \$415,000).
2. CCJ must subgrant to LSEM any remaining amount of 2003 Bar Foundation funding to LSEM (estimated at \$165,000).
3. LSEM must use these funds “first toward accepting cases and clients referred to LSEM by LLA(CALL) for LSC-permitted cases whether or not they are within LSEM’s priorities.”
4. LSEM may use funds remaining after handling LLA(CALL) referrals for any other LSEM services.

Attachment to Letter from Margaret J. Nichols, Michigan State Bar Foundation President to Lakeshore Legal Aid (March 4, 2003). If CCJ and LSEM do not agree to these terms, then the amount that would be subgranted to LSEM “will be awarded to LLA to expand its services beyond CALL.” Id. There are additional new requirements that are not relevant to this opinion.

#### ANALYSIS

The Legal Services Corporation Act requires LSC recipients to “adopt procedures for determining and implementing priorities for the provision of [legal] assistance. 42 U.S.C. §2996f(a)(2)(C)(i). In 1996 Congress prohibited any LSC recipient from accepting, regardless of the funds used, any “cases or matters other than in accordance with the specific priorities set by [its] governing board, except in emergency situations defined by such board and in accordance with the written procedures of such board for such situations.” Pub. L. 104-134, 110 Stat. 1321, 1321-54, §504(a)(9)(A)(ii) (1996) incorporated by reference in Pub. L. 108-07 (2003) through Pub. L. 105-119, 111 Stat. 2440, 2510 (1997).

LSC implemented this prohibition into its regulations at 45 C.F.R. Part 1620 which provides that each recipient “must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which may be undertaken by the recipient.” 45 C.F.R. §1620.3(a). Recipients must also set out written policies and procedures for when and how emergency cases may be accepted outside of the established priorities. 45 C.F.R. §1620.4. All staff who handle cases or matters must agree in writing that they “will not undertake any case or matter for the recipient that is not a priority or an emergency.” 45 C.F.R. §1620.6(c).

LSEM must follow its written priorities for all cases and clients, regardless of the funding used. LSEM may accept CALL cases or clients that meet LSEM’s priorities or are qualified emergencies. LSEM may not accept CALL cases that are not qualified emergencies nor within LSEM’s priorities.

## CONCLUSION

The Bar Foundation requirement that LSEM accept CALL cases and clients “whether or not they are within LSEM’s priorities” directly conflicts with the LSC statutory and regulatory requirement that LSEM not accept any cases outside of its priorities except for emergencies pursuant to written procedures. This LSC requirement applies to the use of all LSC and non-LSC funding, including Bar Foundation funding. LSEM cannot accept CALL cases that are not qualified emergencies nor within LSEM’s priorities.

Very truly yours,

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