



Legal Assistance Foundation of Metropolitan Chicago

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June 21, 2005

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
3333 K. Street, N.W.
Washington, D.C. 20007

Re: Part 1611

Dear Ms. Condray:

We submit the following comments regarding Part 1611.

a. Group Representation

The proposed change allows LSC grantees to represent both (a) groups that are comprised primarily of low-income individuals and (b) groups that have as a primary activity delivering services to low-income individuals, so long as the representation is related to those services. In either case, the group must have no practical means of obtaining private counsel for the matter on which representation is sought. Grantees are required to document group eligibility determinations.

This is a welcome change. More and more funders are interested in collaborative funding proposals, and it will be easier for LSC grantees to attract collaboration partners if they can offer legal representation to the partner on issues relating to the collaborative goal. Moreover, in a number of areas, it is more efficient to work with a community-based organization to achieve an objective than to work with one individual client after another – for example, with a shelter to reach culturally isolated victims of domestic abuse, or with a workers' center to reach low-wage workers who have been cheated out of their wages or exposed to workplace hazards. In some areas of our work, we have seen clients develop into community leaders, and form grassroots organizations. It would further the goal of helping low-income families to tackle their own problems if LSC grantees could work with and represent those organizations.

Finally, the new rule will allow LSC grantees to respond more rapidly and effectively on issues that affect both poor and middle-class families, working with groups like the Illinois Foster Parents Association on the level of foster care payments for children with special needs, or with school reform groups to ameliorate the harsh consequences of zero-tolerance expulsions.

The proposed rule change recognizes that in every neighborhood where eligible clients are found, there are also social service agencies and affinity groups working to improve the lives of low-income families. LSC grantees can achieve more by cooperating with these agencies and groups than by tackling the same problems in isolation.

b. Retainer Issues

The proposed rules regarding retainers in (§ 1611.9) mark an improvement over the existing regulation in certain respects. First, it is important that the proposed regulation clarifies that retainer agreements are not required in PAI cases nor where only advice and counsel or brief services are provided. PAI attorneys should be allowed to structure their relationship with the client in a manner that affords the greatest flexibility. The new proposal also appropriately recognizes that there is no need to require retainers in all cases that involve only advice and counsel or brief services. Recipients should have the ability to determine when a particular case will require a retainer rather than be saddled with this burden in all cases. The administrative burden of preparing a retainer, or even some substitute notice, in the thousands of simple “advice only” cases would be staggering.

The proposed retainer rule no longer requires recipients to obtain LSC approval of each retainer form. This is a welcome change for programs such as LAF, which have a multitude of offices and projects, necessitating different retainer agreements for different situations. The elimination of the LSC approval of each modification to a retainer form will save us administrative expense and allow us to be able to act more quickly in some matters.

The one provision which LAF believes is not warranted in the proposed retainer regulation is the requirement that retainers be utilized in all extended service cases. There is no such requirement in the Rules of Professional Conduct or the laws of Illinois. Given our urgent need for flexibility in the provision of legal services to great numbers of clients, the regulatory requirement of retainers in every case of extended representation is not warranted. Recipients are quite able to make proper determinations as to which cases would need written retainers.

c. Section 509 (h)

We support the decision not to incorporate Section 509 (h) into this regulation.

Overall, we think the changes to the regulation are very positive.

Very truly yours,

Sheldon Roodman
Executive Director

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