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 a 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.

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