

Memorandum/Comments on the Legal Services Corporation's Proposed Admendment to Rule on Private Attorney Involvement (PAI), 45 CFR Part 1614

COMMITTEE ON LEGAL AID

Legal Aid #1

October 9, 2013

We submit this memorandum/comments on behalf of the New York State Bar Association's Committee on Legal Aid to express our support for the implementation of all three of the recommendations being discussed by the Legal Services Corporation (LSC) in the current rulemaking process to consider amendments to the private attorney involvement (PAI) regulation, 45 CFR Part 1614. These comments reflect the opinions of the members of the Committee and do not represent an official position of the Association.

Our comments are:

- that resources spent supervising and training law students, law graduates, deferred associates and others should be counted towards grantees' PAI obligations, especially in "incubator" initiatives;
- that 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; and
- that 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.

While we support all three changes under consideration, we at the same time strongly urge that great care be taken to ensure that any amendments made to 45 CFR Part 1614 do not have the unintended consequence of diluting the good work of many strong PAI initiatives across the United States through which LSC grantees and other organizations that administer pro bono programs utilize attorney volunteers to provide direct representation to low-income people in extended service cases.

A. Law Students:

In partnerships with many of New York's 15 accredited law schools, New York's civil legal services and pro bono providers have developed numerous initiatives to expand services to our low-income communities by providing law student volunteers with the opportunity to work on cases in a broad variety of practice areas while encouraging these volunteers to continue supporting pro bono throughout their legal careers.

In New York, the current focus is on implementation of the recent amendment to Part 520 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, 22 NYCRR §520.16. The amendment establishes a 50 hour pro bono requirement for applicants admitted to the New York State Bar on or after January 1, 2015. We believe that amending the LSC PAI regulation as proposed will help ensure that New York's seven LSC grantees allocate the resources necessary to successfully integrate the hundreds of thousands of new volunteer law student pro bono hours that are becoming available into their service delivery systems. We also believe that the proposed amendment to the LSC PAI regulation will help to ensure the strengthening of existing and the formation of new partnerships among the LSC grantees, other organizations that provide pro bono services and our law schools.

B. Screening, Advice and Referral Programs:

Our understanding is that some LSC grantees have an integrated intake system through which applicants whose cases are screened for financial eligibility and the existence of a legal problem that falls within the scope of the program's priorities are provided with substantive interviews. Then, at a later time, a case acceptance and assignment decision is made and it is determined whether the client will be provided with representation by a grantee staff member or a pro bono volunteer. Other LSC grantees conduct intake specifically for a particular pro bono project, but then may not be able to effectuate a successful referral to a pro bono volunteer and close a case after a grantee staff member provides the client with advice or a brief service. Other LSC grantees conduct intake and screening for clinics at which the participants receive advice or a brief service from a pro bono attorney, but do not become the clients of the grantee.

These types of intake systems greatly expand access to program services by low-income people. If the amendment is implemented, LSC grantees who must now navigate all of the nuances of what counts as pro bono time and what cases or matters can be reported as LSC eligible PAI activities are more likely to have expansive intake programs which provide access to greater numbers of low-income people. They are also more likely to develop collaborative relationships with pro bono volunteers than those who shy away from these intake systems because they do not count toward fulfilling the program's PAI obligation.

C. Case Handling Requirements, Other Matters:

This proposed change will encourage LSC grantees to allocate the time and resources needed to recruit and involve private attorneys in expanding access to justice to poor people without necessarily providing direct representation.

As one example, in many jurisdictions across the United States, and in New York in particular, document assembly systems that allow low-income people who cannot be represented because of a lack of resources have been developed to help them be better positioned in an adversarial proceeding in which they are forced to appear unrepresented. Using volunteer lawyers to build and test self-help tools, including writing all of the rules in plain language and building a logic tree, is imperative, particularly in practice areas in which private attorneys have significant expertise.

In addition to providing direct representation to a client in a proceeding, the talent and skills of volunteer attorneys can be utilized in a myriad of ways to help expand access to the justice system to low-income people. This proposed amendment to the LSC PAI regulation will encourage LSC grantees to tap into these additional resources.

Thank you for your attention and for the time taken to consider these comments.

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