

Committee on Legal Aid

Memorandum:
Analysis of Proposed Changes to Part 1614
Rules Governing PAI Programs

Prepared by:
C. Kenneth Perri,
Member of the Committee on Legal Aid for the
June 9, 2013 Committee Meeting

The positions taken in this Memoranda are solely those of the Committee on Legal Aid and do not represent the position of the Association unless or until adopted by the Executive Committee or House of Delegates.

June 9, 2013

Dear Committee on Legal Aid Members:

I have been asked to keep track of and to help coordinate the Committee on Legal Aid's responses to the Legal Services Corporation's private attorney involvement rulemaking process, which is presently underway. This topic will be on the agenda for discussion at the upcoming meeting of the committee, which is scheduled to be held on Tuesday, 7/9/13 at 10:00 a.m.

In order to help ensure that we make productive use of the time allotted for this topic at the 7/9 meeting, I am sending this email to provide some background information which I hope that all of you will be able to read before our meeting.

This email will discuss the current content of the private attorney involvement (PAI) regulation, the work last year of the LSC Pro Bono Task Force, a summary of what it recommended and the rulemaking process which is underway. My hope is that providing this to you in advance of our meeting will allow us to spend our time on 7/9 on a substantive discussion about whether and, if so, what the committee may want to weigh in on.

The LSC regulation on PAI by LSC funded programs is codified at 45 CFR §1614. A copy of the regulation is attached to this email as a .pdf file. The regulation is designed to ensure that LSC grantees involve private attorneys in the delivery of legal assistance to clients eligible for LSC funded services. Its centerpiece is a requirement that LSC grantees expend an amount equal to 12.5% of their LSC grants on PAI activities. The regulation contains some required activities and also discusses a range of permissible activities. It provides procedures for LSC grantees to follow, standards for securing waivers of the requirements and sanctions for failure to comply with the requirements.

In 8/2011 LSC created a Pro Bono Task Force charged with formulating recommendations on how to increase pro bono involvement by attorneys across the United States. It included legal services and pro bono program executive directors, judges, bar leaders, law firm leaders, government attorneys and law school deans.

The Task Force divided its work among working groups as follows: best practices – rural; best practices – urban; big ideas; obstacles; and technology.

The Task Force issued its final report in 10/2012. You can access a copy of the full report on the LSC website at www.lsc.gov. The final report contained four recommendations:

- LSC should serve as an information clearinghouse and source of coordination and technical assistance to help grantees develop strong pro bono programs;
- LSC should revise its private attorney involvement regulation to encourage pro bono;
- LSC should launch a public relations campaign on the importance of pro bono; and
- LSC should create a fellowship program to foster a life- long commitment to pro bono.

To implement the second recommendation, on 5/10/13 LSC published in the Federal Register a notice of rulemaking workshops and a request for expressions of interest in participating in the rulemaking workshops. The first workshop will be held in Denver on 7/23/13. The second workshop will be held in Washington, D.C., on 9/17/13. The workshops will be open discussions among staff and board members from LSC, panelists selected to serve on the workshops and public participants. Expressions of interest in participating as a panelist and written comments on issues associated with encouraging and facilitating

pro bono efforts through revisions to the PAI rule were due on 6/25/13 for the Denver workshop and are due by 8/20/13 for the Washington, DC workshop. Any final comments on the PAI rule are due by 10/17/13.

The Federal Register notice lists three topics for discussion:

- LSC Pro Bono Task Force recommendation 2(a) – *Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees’ PAI obligations, especially in “incubator” initiatives;*
- LSC Pro Bono Task Force recommendation 2(b) - *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*
- LSC Pro Bono Task Force recommendation 2(c) – *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.*

Thanks everyone. I will look forward to our discussion on this topic at our 7/9/13 meeting. I will be happy to answer any questions about the content of this email as best I can.

Some on the committee may have already submitted comments or have knowledge about the content of comments that others may have already submitted in connection with the Denver rulemaking workshop. I am hoping that those of you who may have any information in this regard will share it with us at the 7/9 meeting.

Thanks again.

Ken Perri