



OFFICE OF LEGAL AFFAIRS

EXTERNAL OPINION

External Opinion # EX-2008-1001

To: Thomas W. Weeks, Executive Director
Ohio State Legal Services Association
555 Buttles Avenue
Columbus, OH 43215-1137

Date: March 19, 2008

Subj: Requirement for Persons Assisted by PAI Attorneys to be Eligible
Program Clients

This is provided in response to your request for a formal opinion on whether persons being served by legal services clinics need to be screened for eligibility -- financial and otherwise -- and need to be considered clients of Ohio State Legal Services Association (OSLSA) in order for OSLSA to be able to count OSLSA's support to the clinics towards its Private Attorney Involvement (PAI) requirement under 45 CFR Part 1614.

Brief Answer

Yes, in order for OSLSA to allocate towards its Part 1614 PAI requirement the resources it provides to the clinics, the persons served by the clinics must be screened for eligibility, determined to be eligible and considered clients of OSLSA.

Background

As we understand the circumstances you described, OSLSA provides support to a number of legal services clinics operating in your service area. The clinics are collaborative efforts of churches, the local bar, OSLSA and, in some cases, governmental social welfare agencies. OSLSA provides a variety of "in-kind" support, including providing organizational assistance and providing technical support to the private attorneys serving in these clinics. OSLSA has been counting the value of the support it provides to these clinics towards its PAI requirement under LSC regulations at 45 CFR Part 1614.

As we understand it, the clinics are run on a "walk-in" basis and are intended to provide only limited services (brief service and advice) to clinic participants. The

persons served by these clinics are not screened for LSC-eligibility (financial, citizenship or alien status) and are not accepted as clients of OSLSA in accordance with OSLSA's eligibility and case acceptance policies.

During the course of a CSR/CSM review by LSC's Office of Compliance and Enforcement ("OCE"), OCE informed you that because of the lack of eligibility screening and because the clinic clients are not clients of OSLSA, OSLSA may not count the value of support it provides to the clinics towards its PAI allocation. You have asked this office for an opinion as to whether the OCE position is legally correct.

Analysis

Pursuant to LSC regulations at 45 CFR Part 1614, LSC grant recipients are required to devote an amount equal to at least 12.5% of their respective annualized basic field grant to the involvement of private attorneys in the delivery of legal services. 45 CFR §1614.1(a). An important aspect of the Part 1614 PAI program is that it is intended to involve private attorneys in the delivery of legal services to "*eligible clients.*" There are repeated references to the phrases "*eligible clients*" "*legal assistance to eligible clients,*" and "*legal services to eligible clients*" in nearly every section and subsection of the regulation. *See, e.g.* 45 CFR §§1614.1(a); 1614.1(c); 1614.2(a); 1614.2(b); 1614.2(c); 1614.3(a); 1614.3(b); 1614.3(c); 1614.3(d); 1614.4(a); 1614.4(b) (emphasis added).

If clinic applicants are not being screened for eligibility, there is no way to ensure that service is being provided to "*eligible*" clients. Further, under §1614.3(d) for "*systems designed to provide direct services to eligible clients*" (which is the what the clinics OSLSA supports are), the program retains, *inter alia*, the responsibility to ensure that there are "*intake and case acceptance procedures consistent with the recipients established priorities in meeting the legal needs of eligible clients*" and to practice "*case oversight*" to ensure the client is being properly served.

Thus it has been the longstanding interpretation and practice of LSC that cases referred to private attorneys pursuant to a recipient's PAI program remain cases of the recipient and the clients in those cases remain clients of the recipient.¹ Not only is this position consistent with the plain language of the regulation, but it is consistent with the policy underlying the PAI program. The express object of the PAI requirement is to involve private attorneys in serving those people whom the recipient could otherwise serve if only they had the resources to do it. Underlying the program is a belief that, with judicious use of program resources for effective PAI programs, the program can obtain more legal services for its eligible client population than it could would it to

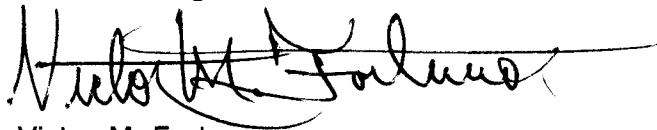
¹ Please note that this position was most recently expressly reiterated in the preamble to the revision of the Financial Eligibility rule at 45 CFR Part 1611. *See, 70 Fed. Reg. 45545 at 45562 (August 5, 2005).*

spend all of its resources providing direct services itself. *See*, Preamble to PAI Final Rule, 50 Fed. Reg. 48587 at 48587 (November 26, 1985) ("Widespread use of PAI promises to make available to eligible clients a greater diversity in services and a higher degree of specialization than would be available through a necessarily limited number of staff attorneys.").

Your letter expresses concern that requiring OSLSA to ensure that applicants are screened for eligibility and accept such persons as clients of OSLSA in order to permit OSLSA to count the value of the support it provides to the clinics towards its PAI allocation would have adverse consequences to the clinic program. Your letter does not, however, specifically address how this might be so.² Of course, OSLSA may continue to provide support to the clinics without having to consider the persons served by the clinic attorneys as clients of OSLSA. In such case, however, OSLSA would not be able to count that support towards OSLSA's PAI requirement and, pursuant to 45 CFR Part 1610, would have to ensure that it was not subsidizing any restricted activities.³

While this may not be the reply you had anticipated, it should clear up the question and be helpful in determining how to proceed. Of course, if you have any remaining questions, or if you know of additional information that might affect the outcome under the above analysis, please do not hesitate to let me know.

With best regards,



Victor M. Fortunato
Vice President & General Counsel

² In fact, you state in your letter your belief that the vast majority of persons served by the clinics are LSC-eligible, with legal issues within your priorities. Thus it does not appear that applying OSLSA's eligibility and case acceptance criteria would adversely affect the ability of most persons seeking assistance to be able to obtain it from the clinics. At the same time, you do not provide any information to suggest that screening applicants and accepting them as OSLSA clients would be in any manner administratively burdensome or problematic. We would note in this context that OLA is aware that many other recipients provide various in-kind services in support of successful PAI direct service programs in which applicants are screened for eligibility and are accepted as clients of the recipient.

³ For example, OSLSA should be aware that without any citizenship/eligible alien status screening, we believe it would be very difficult for OSLSA to be able to ensure that its support of the clinics was not subsidizing restricted activity (the provision of service to ineligible aliens).