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Sent: Tuesday, July 17, 2012 3:34 PM
To: Richard Sloane; Jim Sandman; Victor Fortuno
Cc: Caitlin Davis Carlson; Bamberger, James (OCLA)
Subject: Washington State Comments on Draft LSC Strategic Plan
Attachments: LSC Strategic Plan Comments -- Washington State Legal Aid Funders.pdf

Greetings:

Please find comments for late filing submitted by the two principal state-based civil legal aid funders in Washington State, the Office of Civil Legal Aid and the Legal Foundation of Washington. We appreciate the opportunity to share our thoughts and look forward to further engagement with LSC on this important initiative.

Best regards,

Jim Bamberger (OCLA)
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To: John G. Levi, Chairman
Legal Services Corporation Board of Directors

James Sandman, President
Legal Services Corporation

From: Jim Bamberger, Director
Washington State Office of Civil Legal Aid

Caitlin Davis Carlson, Director
Legal Foundation of Washington

Re: Draft LSC Strategic Plan

Date: July 17, 2012

Thank you for the opportunity to share these thoughts about the draft Strategic Plan 2012-2016 LSC Strategic Plan. We appreciate management's and the Board's willingness to consider our perspectives even though they were submitted after the date established for submission in the Federal Register Notice.

First, we wish to express our support for the current Board and President of the Legal Services Corporation. You have all signed on to an incredibly important effort at a time of unprecedented challenge. Federal budgets are constrained as never before in recent history. Some voices seek to rekindle the embers of partisan political controversy over the use of taxpayer resources to help deliver on our Nation's promise of "equal justice under law." Socio-economic and demographic dynamics coupled with recession-generated demand have expanded the "Justice Gap" in America to the point where more people than ever are in need of legal help with the most profound civil legal problems. IOLTA funds have plummeted to historical lows, and many cash strapped state governments have cut their support for civil legal aid.

Despite these challenges, you have stepped forward to acknowledge and affirm the importance of an enduring federal commitment to meeting the civil justice needs of low income individuals and families. We appreciate the commitment that the present Board and executive management team at LSC are making to upgrade the Corporation's leadership, internal capacity to support and systems to ensure the effective and economical delivery of civil legal aid services to low income people across the country.

We have a number of observations, suggestions and concerns that we will share in the paragraphs that follow. Allow us to note at the outset that, while LSC is indeed the single largest national funder of civil legal aid services, it is for all intensive purposes the only national funder. That said, LSC does not provide the majority of funding for civil legal aid services either nationally or in many states. Here in Washington, LSC provides less than 1/3 of the funding that is dedicated to civil legal aid services. In 2012, the Office of Civil Legal Aid will provide \$11.8 million in state-appropriated funding and the Legal Foundation of Washington will provide more than \$5.8 million in funding that originates with IOLTA, private attorney donations, private foundation grant commitments and cy pres awards. Between our two entities (and disregarding the very substantial amount of resources generated by local private bar and specialty legal aid programs), we will provide \$17.6 million in direct civil legal aid funding. LSC, in contrast, will provide \$5.6 million in basic field funding.

We appreciate the importance of strategic planning. Our statewide legal aid system operates under the auspices of a strategic plan for civil legal aid delivery.¹ First adopted by our Access to Justice Board in 1995, this strategic plan has been updated and adjusted regularly in the years since. Grounded in a set of enduring core values, the plan sets the framework of expectation for all entities involved in the civil legal aid delivery system in Washington State. We are grateful that the LSC Board and staff had the opportunity to immerse itself in the specifics of our integrated statewide system when it visited Seattle last summer. We take this time to respectfully remind both the Board and the executive management team of the input we offered then, both in private conversations and during the public comment period during the Board meeting itself:

1. LSC is no longer the “principal funder” of civil legal aid in the United States. It is our “national partner” in a broad and inclusive effort to ensure access to the civil justice system for low income people. IOLTA, state appropriations, cy pres awards, private funding (individual and foundation grant) together provide more funding for civil legal aid than does LSC.
2. In large part due to LSC’s encouragement, states have developed increasingly sophisticated, integrated systems for meeting the civil justice needs of low income people. While grounded in a common commitment to ensuring access to and the experience of justice, these systems are evolving within the unique legal, social and political cultures of their host states, and do not fit any national template. The role of an LSC-funded program differentiates depending upon the state and/or region in which it operates.
3. Given the development of state-based justice communities, LSC should exercise caution when developing policies or undertaking strategic initiatives of national

¹ The Office of Civil Legal Aid also operates in accordance with a strategic plan, which can be found at: <http://www.ocla.wa.gov/reports.html>

application or implication, so as not to interfere with the thoughtful development of frameworks, relationships, expectations and systems within any given state.²

As we reviewed the Draft Strategic Plan, we found much to embrace. We agree that LSC's primary goal is to maximize the availability, quality and effectiveness of the civil legal aid services that its grantees provide. We agree that LSC can be *a* (not THE) leading voice for civil legal services for low income Americans. We agree that LSC must establish and ensure that both the Corporation itself and its 135 grantees meet the highest standards of fiscal responsibility in the management of increasingly scarce taxpayer funds. We agree with the Corporation's focus on accountability. We agree that structural reorganization of the Corporation can enhance its ability to achieve consistency of message and expectation, and operational coherence across the enterprise.

At the same time, we observe that the Draft Strategic Plan appears to expand the Corporation's areas of operational focus well beyond its core statutory mission. We worry that in doing so, especially in this time of renewed congressional scrutiny, LSC will be undertaking initiatives that are best left to other organizations including but not limited to state-based funders, will be expensive to effectively implement and will potentially invite unnecessary criticism from interests that seek to eliminate the federal commitment to civil legal aid.

We are not alone in expressing these observations. A number of others who commented share many of the concerns we outline in more detail below. We specifically encourage you give great weight to the comments submitted by our peer, Linda Rexer of the Michigan Bar Foundation, the very thoughtful contributions offered by Ann Routt and Mike Chielens of the Legal Services Association of Michigan, and those submitted by Don Saunders from NLADA. We echo the requests of a number those who submitted comments that the Board and executive management not take action on the current Draft at its July meeting. We believe that LSC should engage in further conversations with the Corporation's partners in the field – both funders and providers – to ensure that the scope of LSC's strategic endeavors are narrowly tailored to most effectively deliver on the Corporation's primary mission, and that they do not place the Corporation in a position of further political vulnerability.

Comments on the Draft Strategic Plan

Any strategic plan must be grounded in a set of core responsibilities and mandates. LSC's can be found in the LSC Corporation Act of 1974 as amended by a succession of post 1995 appropriations acts and riders. Reviewing these, and reviewing LSC's recent strategic plans and statements of strategic intent, we suggest that the Corporation's principal areas of strategic focus be redefined as including:

- Working with Congress to secure the maximum amount of funding it can to help close the Justice Gap and meet the civil justice needs of low income Americans.

² See, e.g., OCLA's comments regarding the unconstructive impact of LSC's policy and legal interpretations related to 45 CFR 1614 (June 5, 2012)

- Establishing, providing training on and enforcing systems that ensure fiscal responsibility and accountability by the Corporation and its grantees
- Developing, providing training on and enforcing systems that ensure grantee accountability to legal mandates established by Congress
- Working with its partners to conceive, develop materials and dissemination strategies to promote, and effectively deliver consistent and effective messages about the need to ensure access to the civil justice system for all Americans and the corresponding imperative to effectively fund our national and state-based civil legal aid systems
- Working with state funding partners and the Corporation's grantees to develop systems that capture, chronicle and promote best practices in the delivery of civil legal aid services that are responsive to the most pressing needs of clients within lawful areas of client legal representation
- Working with its grantees and state-based funders to develop meaningful systems to assess the value of its investment in civil legal aid and the impact of that investment on individuals, families and low income communities, employing in the process justice-based references and benchmarks
- Promoting efforts to expand volunteer involvement in civil legal aid and other ways to effectively leverage the limited amount of funding provided by Congress and other funders of civil legal aid
- Facilitating and promoting new technology systems, functions and applications that enhance the ability of programs to deliver and clients to access civil legal aid services and state-based justice systems
- Facilitating where it can strategic partnerships between other federal entities, the private sector and national legal aid initiatives, and
- Promoting the effective integration of LSC funded programs into coordinated state-based civil legal aid systems

We note that a number of the initiatives suggested in the Draft Strategic Plan seek to serve these ends. We note further, however, that some of the initiatives described in the draft (and characterized as imperatives) suggest a role for the Corporation inconsistent with its status as a limited-purpose, strategic funding entity. We agree with our colleague Linda Rexer when she suggests that the draft plan is "unrealistically ambitious." We respectfully go further, offering that significant components of the plan stake out unprecedented roles for the Corporation, embrace models that potentially reorient the underlying rationale for public funding of civil legal aid, and interfere with efforts that are best addressed at the state and local level.

1. Standards and Best Practices

As the national point of contact for 135 dedicated civil legal aid programs, LSC is well positioned to capture, chronicle and promote best practices in civil legal aid delivery. We encourage the Corporation to reach out to state-based funders to assist with this effort.

Best practices must serve and be measurable against objective standards. LSC's Performance Criteria represent the best set of standards developed to date, and are relied on not only by the Corporation itself in assessing grantee performance, they are relied on by LSC grantees engaged

in self-assessment and by state-based access to justice communities and funders. Here in Washington, LSC's Performance Criteria are incorporated into our Access to Justice Board's Standards for the Delivery of Civil Legal Aid³, and are embedded in the oversight framework employed by the Office of Civil Legal Aid with respect to LSC's grantee, Northwest Justice Project. The Draft Strategic Plan should reaffirm the value of these standards or state an express intent to revise them over the life of the plan. They should not be ignored.

2. New Performance Management System

We are troubled at the prospect of LSC developing a new performance management system. We agree that much can be learned from monitoring the impact that services provided by LSC grantees have on their clients and the communities within which their clients live.

Your state level funding partners have strongly cautioned before – and we reiterate these concerns here – against LSC taking a lead role in developing standardized “quantitative metrics” or “outcome measures” to be applied across the spectrum of activities of LSC grantees. Every program operates in a unique environment. What, where, how and for whom programs provide services is a function of myriad variables including client community demographics, geography, existence of and relation to other legal aid providers and pro bono attorneys, etc. By both congressional mandate and LSC regulation, local boards of directors assess the needs of the clients in their service areas and establish program priorities. While we as state-based funders welcome the opportunity to work with the Corporation and its grantees to develop some pilot initiatives to see what we can learn from different types of client service and impact information (we caution against the oft-overused term “metrics”), we do not welcome the Corporation's development or imposition of the range of “quantitative metrics” that it suggests be used to measure and rank the performance of its grantees.

On this point, we note that there are many other ways to assess the impact of the services that publicly funded civil legal aid providers provide. As LSC knows, our state's centralized statewide legal aid intake, advice, education and referral system (CLEAR) accounts for the vast majority of cases closed by the Northwest Justice Project. Because we care about the substance, quality, value and impact of the services that clients receive when they interface with this system, we are working with NJP to undertake a program-owned, research-based assessment of the same – one that allows for meaningful engagement with existing and former clients without compromising the attorney-client relationship. Through this effort NJP (and our state system) will gain unique insight into the effectiveness of CLEAR and position itself to make such changes as may be necessary and appropriate to ensure that CLEAR (or some altered version thereof) delivers the most effective level and volume of services given its limited capacity, the needs of the clients who call it, and the overall resources available to the program. With all respect, we believe that initiatives such as this will yield much deeper insights into the central questions of effectiveness and accountability than any system of uniform “metrics.”

³ http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Performance%20Standards%20for%20Legal%20Aid%20in%20the%20State%20of%20Washington%20-%202009.ashx

We are particularly concerned about the notion of “efficiency metrics.” We have reviewed recent writings suggesting that LSC could effectively assess and compare program efficiency by looking at a representative sample of funding and client service report (CSR) indicators.⁴ We find the suggestion that one can glean meaningful information about program efficiency and effectiveness from CSR data wholly lacking in understanding of the complexity of any individual legal aid program’s delivery choices. We further disagree with the suggestion that one can objectively compare one program’s “client service efficiency” to another. Depending upon how one characterizes it, the most “efficient” system for delivering “legal aid” may be a hotline or website. Surely such a system serves larger numbers of clients at substantially lower cost per case than a system that focuses on direct legal representation. But can it be said to be effective for one who needs to be represented in court?

Clients need a continuum of legal services that are responsive to the full range of their legal problems. Legal aid programs do not produce widgets. Embracing efficiency metrics pushes programs to find the cheapest, easiest, most limited form of client service – regardless of its responsiveness to the needs of clients.

We note that the term “efficient” is not used as a standard or benchmark in the LSC Act. The Act speaks in terms of the “economical and effective” delivery of services. This implicates the need for qualitative understandings of the needs of clients, the range and intensity of strategic legal responses and the impact of such responses on the needs. Efficiency metrics – however they may be devised – are not germane to the statutory charge.

We also disagree with the concept of “performance triggers”. Effective engagement with programs must occur quietly, be grounded in a sense of common purpose, and promote the program’s interest in moving forward with changes that further its mission and enhance its effectiveness. Peer assessment must be part of LSC’s ongoing approach to engagement with its programs – not just with those in the “LSC doghouse.” We know from many years of experience that punitive approaches rarely achieve the intended objectives. LSC must be mindful of the limits of its own knowledge and expertise. Absent objective indications that a program is failing to meet its legal and contractual obligations as a grantee, LSC should remain at arm’s length from and avoid the temptation to wander into the world of micromanagement.

3. Grantee Training

We strongly recommend that LSC not wade into the training arena *except* with respect to issues relating to legal compliance (statutory, regulatory and contractual) and fiscal and administrative accountability. A number of entities are already engaged in providing training on a wide range of skills and substantive legal areas of law. MIE, the Shriver Center, NLADA and many others offer tested curricula using expert trainers schooled in modern concepts of adult pedagogy. The only problem is that there are insufficient offerings and insufficient funding to enable program staff to take advantage of these. If there is any role for LSC at all in this area, it is to encourage

⁴ See, e.g., Comments of Wayne Moore
<http://www.lsc.gov/sites/default/files/July%2011%2C%202012%20%288%29.pdf>

its grantees to dedicate a portion of the LSC grant to enable their staff members to attend these training programs.

4. Management Support

Again, LSC may be trying to insert itself into an area that is already well served. MIE has developed excellent training programs for legal aid program managers. It serves as a clearinghouse for management informational tools and resources. The MIE Journal is a great resource for programs. LSC should not spend scarce management and administrative dollars duplicating functions and services that are already being provided.

5. “Leading Voice”

Again, we welcome LSC as a strategic *partner* in helping craft, develop materials and strategies and disseminating a consistent, compelling message around civil legal aid. But this is another area where we suggest that LSC needs to collaborate, not initiate. Effective messages resonate because they are crafted to the interests and perspectives of their target audiences. LSC’s efforts here should mirror those in the area of best practices – LSC should compile, coordinate and disseminate the best of the best. It should work with state-based justice communities, private funders/philanthropists and others to facilitate national conversations about how best to develop and deliver a values-based message that resonates with target audiences and constituencies.

6. The “Business Case”

We have very serious concerns about the suggestion that we “build a business case for funding civil legal aid services.” Our mission is justice. Like the courts, public defender agencies and other justice system components, civil legal aid is not an enterprise service. Its value to society should not be measured by notions of ROI, marginal value or economic multipliers. It must be measured on the basis of the value of having a justice system that is fair, perceived as fair, and operates to bring meaningful access to and just results for those who need but cannot pay for an attorney.

We realize that some work has been done in recent years around the question of “economic impact.” We have reviewed and appreciate the studies funded by our peers in Florida, Texas and elsewhere. But we strongly caution against LSC using “economic impact” as a principal rationale for seeking and securing the public funds necessary to meet the justice needs of low income people. We do not want to find ourselves defending the use of LSC or other funds for client representation that does not have a positive ROI or is found to cost society money. While there is value in trying to understand the direct and indirect economic impact of the work our grantees do for clients, it is a very slippery slope – one from which the Corporation should stay away.

7. Private Resource Development

Consistent with the comments of others, we note that a number of organizations already provide substantial advice and technical assistance in the area of private resource development. While

these entities might benefit from additional support to upgrade and enhance the services they offer, there is no void here for LSC to fill, and we caution LSC against getting into the private resource development technical support business.

We disagree with LSC's assessment that it can enter the private resource development effort without competing with its grantees. Recognizing that there is always the potential for unintended consequences – and compromised opportunities -- the Washington State legal aid community has developed a private resource development protocol through which potential private grant initiatives are run and screened by our statewide private fundraising organization, LAW Fund, for potential conflicts and strategic opportunities. While we have been successful in instilling a sense of common purpose and discipline amongst the 25 members of our Alliance for Equal Justice, we cannot imagine how LSC would conceivably vet its potential private resource initiatives against the potentially competing interests of its grantees or national support entities. The prospect of engaging in strategic private resource development efforts is seductive. The reality is that it is hard work, has the potential of placing the Corporation in positional conflict with its grantees and could undermine the efforts of the private entities working hard to preserve some level of national support infrastructure.

8. Ensuring Superior Fiscal Management

As state-based funders of legal aid services, we appreciate and wholeheartedly agree with the thrust of this initiative. Every time a legal aid program is in the news for failure of fiscal accountability, fraud or other monkey business, we empower our detractors. We make LSC the issue, not the needs of clients. LSC's primary duty is to ensure effective stewardship of the resources Congress makes available to it. The structural changes proposed and strategic initiatives will enhance the Corporation's capacity to live up to this duty.

Conclusion

Once again LSC is in the cross-hairs. Once again LSC must demonstrate its value to Congress and the taxpayers. These are very difficult times. They call for visionary, smart, strategic leadership. We are confident that both the Board and executive management at LSC are up to the task. We welcome the commitment by LSC to update its strategic direction. We embrace the strong commitment to effective client service and programmatic accountability embodied in the Draft Strategic Plan. At the same time we have expressed our concerns about the degree to which some of these initiatives exceed the scope of LSC's proper role, reorient the conversation about civil legal aid away from the needs of clients, and create the potential for greater harm than value returned to LSC and the clients served by its grantees.

We thank you again for the opportunity to share these thoughts.

Jim Bamberger (OCLA)
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