



OFFICE OF LEGAL AFFAIRS

MEMORANDUM

TO: Operations & Regulations Committee

FROM: Victor M. Fortuno
General Counsel

DATE: April 13, 2006

SUBJECT: Staff Report on 45 CFR Part 1621 (Client Grievance Procedure)
Rulemaking

Introduction

On October 29, 2005, the Board of Directors directed that the Legal Services Corporation (LSC) initiate a rulemaking to consider revisions to LSC's regulation on client grievance procedures. 45 CFR Part 1621 (hereinafter "Part 1621"). The Board further directed that LSC convene a Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any Notice of Proposed Rulemaking ("NPRM"). LSC convened a Rulemaking Workshop on January 18, 2006, and provided a report to the Committee at its meeting on January 27, 2006. As a result of that Workshop and report the Board directed that LSC convene a second Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any NPRM. This report is provided to inform the Committee of the results of the second Rulemaking Workshop, held on March 23, 2006, and to present management's recommendation for further action in the rulemaking.

Summary of the Workshop

A second rulemaking Workshop to consider issues relating to Part 1621 was held on March 23, 2006. The following persons participated in the Workshop: Claudia Colindres Johnson, Hotline Director, Bay Area Legal Aid (CA); Terrence Dicks, Client Representative, Georgia Legal Services; Breckie Hayes-Snow, Supervising Attorney, Legal Advice and Referral Center (NH); Norman Janes, Executive Director, Statewide Legal Services of Connecticut; Harry Johnson, Client Representative, NLADA Client Policy Group; Joan Kleinberg, Managing Attorney, CLEAR, Northwest Justice Project (WA); George Lee, Client Representative, Kentucky Clients Council; Richard McMahon, Executive Director, New Center for Legal Advocacy (MA); Linda Perle, Senior Counsel, Center for Law and Social Policy; Peggy Santos, Client Representative, Massachusetts Legal Aid Corporation; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, Client Representative, NLADA Client Policy Group; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles

Jeffress, LSC Chief Administrative Officer; Mattie Condray, Senior Assistant General Counsel, LSC Office of Legal Affairs; Bertrand Thomas, Program Counsel, LSC Office of Compliance and Enforcement; Cheryl Nolan, Program Counsel, LSC Office of Program Performance; and Mark Freedman, Assistant General Counsel, LSC Office of Legal Affairs,

President Barnett welcomed the group and provided background on the LSC Board's interest in reviewing Part 1621 and these workshops. President Barnett then provided a summary of the issues raised in the first workshop and explained that the participants in the first workshop and LSC staff recommended having a second workshop to get more client input and to hear from programs operating hotlines. Thus the participants for the second workshop, she explained, included client advocates, representatives from programs with different kinds of hotlines, as well as national advocates from NLADA and CLASP. Finally, President Barnett noted that the workshop was meant to encourage a sharing of ideas, but not for arriving at specific recommendations or consensus. The ideas from the meeting will be reported to the Board in April, and LSC will proceed as the Board directs. President Barnett left after her remarks. After self-introductions by the participants, the participants began their discussions.

At the outset, Ms. Condray provided some background and an overview of the requirements set forth in the current regulation. Ms. Condray also briefly mentioned a rulemaking undertaken in 1994 to consider revisions to the rule, but which was never completed. Ms. Condray did not review the particular changes proposed in that rulemaking, but rather listed a number of issues which that rulemaking sought to address. She noted that these issues were listed for informational purposes as reflective of what was of concern in 1994 and that there was no intention to limit or restrict the discussion to those issues.

The discussion focused primarily on how hotlines approach the issue of providing notice to clients and applicants and how they process grievances given that in-person contact with such programs is extremely rare, and how clients and applicants experience the grievance process and what the process means for them. There was also some discussion of additional issues, such as client confidentiality and potential application of the grievance process to private attorneys providing services pursuant to a grantee's PAI program. The following issues and themes emerged from the discussion:

- The programs felt that a strength of the regulation is its flexibility. Programs have different delivery systems, even among hotlines, and different approaches. They cautioned against adopting specific practices in the regulation itself. Rather, they felt that programs should be free to adopt practices that best meet their delivery model and communities.
- Hotlines have different approaches to providing notice to callers. Some programs include it in their automated script. There is some concern about making the initial contact seem negative by bringing up the grievance process. There is also a concern about callers being denied service without knowing about their grievance rights. Many participants felt that the regulation should not require notice in the automated hotline script.
- The regulation could emphasize the importance of the notice but leave it to the programs to figure out the best way to provide it in different situations.

- Client and applicant dignity is very important. Most concerns are addressed when the applicant feels that they were heard and taken seriously, even if they are denied service.
- All of the programs reported that intake staff will deal with dissatisfied callers by offering to let them talk to a supervisor, sometimes the executive director. They are given the choice of talking to someone or filing a written complaint. They almost always want to talk to someone. Talking with someone higher up almost always resolves the issue and usually entails an explanation of the decision not to provide service.
- Decisions to deny service sometimes involve the priorities of other entities such as pro bono programs that take referrals. Some programs handle intake for themselves and for other organizations. The criteria for intake are not always the same. A program may have to handle complaints about denials of service that involve a different program's priorities.
- In many situations there is nothing more that the program can do, especially when a denial of service decision was correct. There was a concern about creating lots of procedures that would give a grievant false hope. It is important that the applicant get an "honest no" in a timely fashion.
- The oral and written statements to a grievance committee do not require an in person hearing. These can be handled by conference call, which may be better in some circumstances. In some cases though, clients or applicants have neither transportation nor access to a phone. Programs may have difficulty providing grievance procedures in those situations.
- Hotlines have a number of callers who are not spoken to. They include hang ups, disconnected calls, people who got information through the automated system, and people who could not wait long enough. These calls may include frustrated applicants who never got to the denial of service stage.
- Websites could provide client grievance information, but that also raised questions about how to make grievance information available only to people with complaints about that program. There is a danger of a generally available form becoming a conduit for a flood of complaints unrelated to a program and its services.
- The grievance process itself should not be intimidating. Often the applicants and clients are already very frustrated and upset before contacting the program.
- There was discussion of what process, if any, a client had for quality concerns with a PAI attorney or a pro bono referral. One program reported informally moderating these disputes. Another program reported surveying clients at the end of PAI cases and following up on any negative comments. One program reported that its separate pro bono program has its own grievance procedures. There was a concern that private attorneys would not volunteer if they felt that they would be subject to a program's grievance process and grievance committee. There was some discussion acknowledging a distinction between paid and unpaid PAI attorneys, but noting that clients do not see a difference.

Management Recommendation

After consideration of the information which was developed at both of the Rulemaking Workshops, management recommends that LSC proceed to develop a Notice of Proposed Rulemaking for the Committee's review. Management anticipates proposing only a few relatively minor changes to the regulation intended to help the regulation function better in today's operating environment. Management anticipates that changes will address issues of particular impact on hotline and other geographically remote services where in-person contact is rare, such as use of the phrase "initial visit" clarification of the hearing requirement to include conference calls and other non-in-person meetings, and the importance of providing notice to clients and applicants for service of the grievance process while still maintaining maximum flexibility for grantees in the regulation. Management also plans to consider whether the language of the regulation can be improved to clarify potential client confidentiality issues and address appropriate distinctions between clients and applicants in the grievance process. Management further anticipates using the preamble to the NPRM to provide additional guidance and discussion of issues such as best practices and the value of the grievance process as a method of obtaining feedback from the client community. These are important issues meriting treatment, but which are not necessarily appropriate for inclusion in the text of the regulation itself. If the Committee agrees and makes these recommendations to the Board and the Board provides direction to staff to proceed along these lines, management would anticipate presenting a Draft NPRM to the Committee for its review at the July 2006 meeting.