

7050-01-P-01-P

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1621**

**Client Grievance Procedures**

**AGENCY:** Legal Services Corporation

**ACTION:** Final Rule.

**SUMMARY:** This Final Rule amends the Legal Services Corporation's regulation on client grievance procedures. These changes are intended to improve the utility of the regulation for grantees and their clients and applicants for service in the current operating environment. In particular, the changes clarify what procedures are available to clients and applicants, emphasize the importance of the grievance procedure for clients and applicants and add clarity and flexibility in the application of the requirements for hotline and other programs serving large and widely dispersed geographic areas.

**DATES:** This Final Rule becomes effective on [insert date 30 days from date of publication].

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**SUPPLEMENTARY INFORMATION:**

**Background**

The Legal Services Corporation's (LSC) regulation on client grievance procedures, 45 CFR Part 1621, adopted in 1977 and not amended since that time, requires that LSC grant recipients establish grievance procedures pursuant to which clients and applicants for service can pursue complaints with recipients related to the denial of legal assistance or dissatisfaction with

the legal assistance provided. The regulation is intended to help “insure that legal services programs are accountable to those whom they are expected to serve.” 42 Fed. Reg. 37551 (July 22, 1977).

As noted above, Part 1621 has not been amended since its original adoption nearly 30 years ago. A Notice of Proposed Rulemaking (NPRM) was published in 1994 which would have instituted some more specific requirements for the grievance process and clarified the situations in which access to the grievance process is appropriate. However, due to significant legislative activity in 1995 and 1996, no final action was ever taken on the 1994 NPRM and the original regulation has remained in effect.

As part of a staff effort in 2001 and 2002 to conduct a general review of LSC’s regulations, the Regulations Review Task Force found that a number of the issues identified in the 1994 NPRM remained extant. The Task Force recommended in its Final Report (January 2002) that Part 1621 be considered a higher priority item for rulemaking. Representatives of the grantee community agreed at that time that rulemaking to revise and update Part 1621 was appropriate. The Board of Directors accepted the report and placed Part 1621 on its priority rulemaking list. No action was taken on this item prior to the appointment of the current Board of Directors.

After the appointment of the current Board of Directors, LSC Management recommended to the Board that a rulemaking to consider revision of Part 1621 was still appropriate. The Board of Directors agreed and on October 29, 2005, the Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC’s regulation on client grievance procedures, 45 CFR 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. LSC convened a second Rulemaking Workshop on March 23, 2006 and provided a report to the Committee at its meeting on April 28, 2006. As a result of the second Workshop and report, the Board directed that a Draft NPRM be prepared. The Committee considered the Draft NPRM at its meeting of July 28, 2006 and the Board approved this NPRM for publication and comment at its meeting of July 29, 2006. LSC published the NPRM on August 21, 2006 (71 Fed. Reg. 48501). LSC received five timely comments on the NPRM.

A Draft Final Rule was prepared by Management for presentation to the Committee at its October 27, 2006, meeting. Prior to that meeting, however, LSC received a request from the National Legal Aid and Defender Association (NLADA) that LSC postpone consideration of the Draft Final Rule and reopen the comment period to allow the client community additional time to respond to the proposed changes in the rule. In response to that request, action on the Draft Final Rule was deferred and the NPRM was republished for comment on November 7, 2006 (71 Fed. Reg. 65064). LSC received three timely additional comments, one from the client caucus of an LSC grantee, one from the client committee of a non-LSC grantee legal services provider, and one from the Center for Law and Social Policy on behalf of NLADA, replacing CLASP/NLADA's previously submitted comments. LSC also received two late filed comments, one from an individual past client of a recipient and one from the Chairperson of the NLADA Client Policy Group.<sup>1</sup> After consideration of the additional comments, Management presented a

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<sup>1</sup> The comments from the Chairperson of the NLADA Client Policy Group although dated December 21, 2006 (prior to the close of the comment period) were not submitted properly in accordance with the directions set forth in

revised Draft Final Rule to the Committee at its meeting of January 19, 2007. The Committee recommended adoption of the Draft Final Rule to the Board of Directors and the Board adopted the changes to Part 1621, as set forth herein, at its meeting of January 20, 2007.

***Summary of the Rulemaking Workshops***

LSC convened the first Part 1621 Rulemaking Workshop on January 18, 2006. The following persons participated in the Workshop: Gloria Beaver, South Carolina Centers for Equal Justice (now known as South Carolina Legal Services) Board of Directors (client representative); Steve Bernstein, Project Director, Legal Services of New York – Brooklyn; Colleen Cotter, Executive Director, The Legal Aid Society of Cleveland; Irene Morales, Executive Director, Inland Counties Legal Services; Linda Perle, Senior Counsel, Center for Law and Social Policy; Melissa Pershing, Executive Director, Legal Services Alabama; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, Chairperson, National Legal Aid and Defenders Association Client Policy Group (client representative); Chuck Wynder, Acting Vice President, National Legal Aid and Defenders Association; Steven Xanthopoulos, Executive Director, West Tennessee Legal Services; 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; Bert Thomas, Program Counsel, LSC Office of Compliance and Enforcement; Michael Genz, Director, LSC Office of Program Performance; Mark Freedman, Assistant General Counsel, LSC Office of Legal Affairs; and Karena Dees, Staff Attorney, LSC Office of Inspector General.

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the NPRM and were, consequently, received late. The late filed comments were nonetheless considered in the development of this Final Rule.

The discussion was wide-ranging and open. The participants first discussed the importance of and reason for having a client grievance process. There was general agreement that the client grievance process is important to give a voice to people seeking assistance from legal services programs and to afford them dignity. The client grievance process also helps to keep programs accountable to their clients and community. It was generally agreed that the current regulation captures this purpose well. However, it was noted that the client grievance process also can be an important part of a positive client/applicant relations program and serve as a source of information for programs and boards in assessing service and setting priorities. This potential is not currently reflected in the regulation.

The participants noted that the vast majority of complaints received involve complaints regarding the denial of service, rather than complaints over the manner or quality of service provided. The vast majority of complaints over the manner and quality of service provided are resolved at the staff level (including with the involvement of the Executive Director); complaints which need to come before the governing body's grievance committee(s) are few and far between. It was noted that many recipients have the experience of receiving multiple complaints over time from the same small number of individuals.

In the course of the discussion, the group discussed a variety of other issues related to the client grievance process. The group also considered the fact that some of the issues raised, although important, may not be easily or most appropriately addressed in the text of the regulation. Some of these issues are summarized as follows:

- Whether programs can be more “proactive” in making clients and applicants aware of their rights under the client grievance procedure, but do so in a positive manner that does not create a negative atmosphere at the formation of the attorney-client relationship. It

was noted that while informing clients of their rights can be empowering, suggesting at the outset that they may not like the service they receive is not conducive to a positive experience.

- The appropriate role of the governing body in the client grievance/client relations process;
- Challenges presented in providing proper notice of the client grievance procedure to applicants and clients who are served only over the telephone and/or email/internet interface;
- Application of the process to Limited English Proficiency clients and applicants;
- Whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g., by a higher proportion of clients than the governing body has generally;
- Challenges presented by a requirement for an in-person hearing and what other options may be appropriate;
- Whether the limitation of the grievance process related to denials of service to the three enumerated reasons for denial in the current rule is too limited given the wide range of reasons a program may deny someone service;
- Whether the grievance process should include cases handled by non-staff such as PAI attorneys, volunteers, attorneys on assignment to the grantee (often as part of a law firm pro bono program);

Finally, the group was in general agreement that additional opportunity for comment and fact finding would prove useful to both LSC and the legal services community before LSC committed to moving ahead with the development of a Notice of Proposed Rulemaking.

LSC convened its second Part 1621 Rulemaking Workshop March 23, 2006. The following persons participated in the second 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 Assistance Corporation; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, Chairperson, 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.

The motivation for convening a second Workshop was to elicit further information about 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. This, accordingly, was the primary focus of the discussion at the second Workshop, although 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 while others do not mention the grievance process. 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 consideration of 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 for different entities 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 conveyed 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 never speak to a member of the hotline staff. 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 raises 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 addressing quality concerns with a PAI attorney or a pro bono referral. One program reported informally mediating 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.

### **Section-by- Section Analysis**

After considering the discussions from the Workshops and the all of the comments received in response to the NPRM, LSC has determined that the regulation is generally working as intended and that some of the issues raised in the course of the Workshops, while of significant importance, are not issues which can easily be addressed by changes in the regulation itself. Accordingly, LSC is adopting only modest changes to the text of the regulation. LSC believes, however, that these changes will improve the regulation and benefit grantees, clients and applicants for legal assistance. These changes are discussed in greater detail below.

At the outset, we note one comment in which the commenter requested that LSC confirm its understanding of the terms “applicant” and “deny” (or “denial”) as those terms are used

throughout this regulation. LSC intends no change to the meaning of the terms “denial” and “deny” as they are used in the current client grievance procedures rule. LSC intends that “applicant” has the same meaning as it does in Part 1611, Financial Eligibility, except that for the purposes of this Part, “applicant” shall also include groups which apply for legal assistance.

*Section 1621.1 – Purpose*

LSC proposed to amend this section to clarify that the grievance procedures required by this section are intended for the use and benefit of applicants for legal assistance and for clients of recipients and not for the use or benefit of third parties. LSC received one comment specifically supporting and no comments specifically opposing this amendment. Accordingly, LSC adopts this change as proposed.

In addition, LSC proposed to delete the reference to “an effective remedy” because the grievance process is just that, a process and not a guarantee of any specific outcome or “remedy” for the complainant. LSC received three comments specifically supporting and three comments specifically opposing this change.<sup>2</sup> The comments opposing the proposed change (all of which are from client representative groups) stated that removal of the reference to an effective remedy undermines the purpose of the rule and suggests that so long as the recipient provides a grievance process, the outcome to the client in cases in which the client has a meritorious complaint is immaterial. Each of these comments suggested that LSC retain the current language of the rule.

LSC is sensitive to the concerns of the client community that the rule not imply that the complainant’s satisfaction with the ultimate outcome of the process is entirely immaterial. LSC

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<sup>2</sup> One of the comments opposing this change was from the Chairperson of the NLADA Client Policy Group which included as attachments a petition signed by various client representatives opposing the proposed changes to the purpose section of the regulation and 14 individual comments similarly opposing the changes to the purpose section. Although it is not entirely clear from the Chairperson’s comments, it appears that these individual comments formed the basis for the Chairperson’s comments. As such, they have been considered as part of the Chairperson’s comments. It should also be noted that one of the 14 individual comments addressed proposed changes to sections 1621.3 and 1621.4. These remarks are addressed separately in the respective discussions of those sections, below.

agrees that a goal of an effective grievance procedure should be to foster a mutually satisfactory outcome in as many cases as possible. Indeed, this concern underlies LSC's decision to add language to the rule (in sections 1621.3 and 1621.4) that a recipient's grievance procedures must be designed to foster effective communication between the complainant and the recipient. However, LSC disagrees that deletion of the reference to a "remedy" either undermines the purpose of the rule or implies that the applicant's/client's satisfaction as to the outcome of the grievance is immaterial.

As one commenter notes, the current rule is not understood to require applicants or clients with non-meritorious complaints to be awarded the remedy they seek. To the extent that the current language of the regulation is understood not to mean what it says, it is appropriate to amend it to more clearly reflect what the language is, in fact, intended to mean. Moreover, on the basis of the comments made during the Rulemaking Workshops and other comments, although it appears that nearly all grievances are resolved to at least some level of satisfaction on the part of the applicant/client, the rule is not intended to and cannot guarantee that the grievance process provide a particular resolution to the applicant's/client's satisfaction in all cases. There are and will continue to be instances in which, even after the grievance process, an applicant or client does not receive the specific "remedy" he or she wants. For example, an applicant may not be accepted as a client or a client may not get the recipient to agree to appeal his/her unsuccessful case, notwithstanding that this is the "remedy" the applicant/client wants. In such cases, the best the regulation can do is ensure that complainants have access to a fair and reasonable complaint process.

In light of the above, LSC is adopting a revised statement of purpose which LSC believes addresses both LSC's and the client community's concerns. Specifically, LSC is deleting the

reference to an “effective remedy” as proposed, but is adding an additional sentence to this section providing:

This part is further intended to help ensure that the grievance procedures adopted by recipients will result, to the extent possible, in the mutually satisfactory resolution of complaints.

LSC believes that the addition of this language meets the commenters’ concerns that grievance procedures should be designed and implemented with the intention of resolving complaints to at least some level of satisfaction of the complainant in as many cases as possible. Indeed, LSC believes that this is already the intention and practice of recipients. As such, adding this clarifying language to the regulation bolsters the notion of accountability to applicants and clients which animates Part 1621, while acknowledging that no specific outcome can be guaranteed in any particular instance.

LSC considered including a statement in this section clarifying that the client grievance procedure is not intended to and does not create any entitlement on the part of applicants to legal assistance. LSC specifically invited comment on this issue in the NPRM. One commenter agreed with LSC’s determination that the addition of such a statement would not ultimately be a useful addition to the regulation because it seems unlikely that many applicants for legal assistance will have read the regulation prior to applying for legal assistance. Another commenter expressed some concern that an express statement that there is no entitlement to service could be used by a recipient as a basis to deny grievances in instances in which the recipient failed to follow its own case acceptance or other policies. Another commenter suggested that including such a statement would undermine the purpose of the rule and would be dispiriting to disappointed clients. However, LSC also received two comments suggesting that

LSC should include language in this section making it clear that the existence of a grievance procedure does not mean that an applicant is entitled to service. These commenters argue that such a statement would be helpful in that, even if applicants do not read the grievance procedures rule, recipients would have something concrete to refer to in talking with applicants unhappy with being denied legal assistance.

LSC acknowledges that there are good arguments to be made in favor of both positions (inclusion of a non-entitlement statement and non-inclusion of such a statement). On balance, LSC continues to believe that adding such a statement to the regulation is unnecessary. To the extent that it may be helpful to have something to cite to when talking to a complaining applicant as a way of explaining why he or she is being denied service, reference can be made to this discussion in the preamble of the regulation and to LSC's financial eligibility regulation at 45 CFR Part 1611 (which does explicitly state that a determination of financial eligibility does not create any entitlement to legal assistance).

Another issue which came up during the Workshops was the ancillary use by recipients of the client grievance procedures as a feedback mechanism to help recipients identify issues such as the need for priorities changes (i.e., because there are increasing numbers of applicants seeking legal assistance for problems not otherwise part of the recipient's priorities), foreign language assistance, staff training, etc. Although LSC believes that information collected through the client grievance procedures can and should, as a best practice, be used in this manner, such ancillary use is incidental and not the purpose of the client grievance procedures *per se*. LSC believes that adding a reference to such ancillary use to the purpose statement of the regulation would be inappropriate and would dilute the focus of the regulation from its purpose of providing applicants and clients with an effective avenue for pursuing complaints. LSC

invited comment on this issue and received one comment agreeing with LSC's position. Accordingly, LSC is not adding any language to the regulation on this issue.

LSC received one additional comment on this section. This commenter suggested that LSC add a statement to the regulation that the client grievance procedure process does not take the place of a complaint filed with the appropriate state or local bar association and that the bar association "expects the client to make a good faith effort to resolve the matter . . . [by] going through the client grievance process." As an initial matter, LSC is not in a position to speak for any bar association about what its complaint process requirements are or should be. As such, adding language to Part 1621 about what bar associations may or may not expect of clients filing complaints is beyond LSC's authority.

The commenter's first point, regarding the fact that grievance procedures are not a substitute for whatever complaint procedure may be available under state or local rules of professional responsibility, is well taken. LSC agrees with the commenter about this basic fact. LSC believes, however, that this discussion in the preamble is sufficient to make this point and that addition to the regulation of a statement to this effect is not necessary.

#### *Section 1621.2 - Grievance Committee*

LSC did not propose any changes to this section. There was discussion in one of the Workshops about whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g. by a higher proportion of clients than the governing body has generally. It was not clear from the discussion, however, what such a change would accomplish and there was no clear feeling that the current requirement was resulting in ineffective or inappropriate grievance committees. Accordingly, LSC considers the current wording of the regulation, which requires

the proportion of clients and lawyer members of the grievance committee to approximate that of the governing body, to be sufficiently flexible for recipients to respond to local conditions. LSC received one comment opposing and two comments expressly supporting LSC's approach to this issue. LSC continues to believe any change to this section to be unwarranted.

The comments supporting LSC's position on this issue did, however, suggest that LSC add a discussion to the preamble to note that although there is a role for each recipient's governing body in the grievance process, it is also important to recognize the limited role of the governing body in the day-to-day operations of the recipient. Further, it is incumbent on all parties to recognize that governing body members have fiduciary duties to their organization and must be careful, when engaging in any grievance committee activities, to safeguard these duties and avoid any potential conflicts of interest. LSC agrees that these are important considerations, and, accordingly, sets them forth herein. LSC is confident that governing body members currently serving on grievance committees are generally balancing their various duties and responsibilities appropriately. Inclusion of this discussion in the preamble should not be taken as an indication that either LSC or the commenters are concerned that current grantee/governing body practices are raising problems involving micromanagement of recipients' day-to-day operations.

The matter of potential conflicts of interest between a Board member's duty to the grievance process and his/her duty to the organization was the subject of the one comment LSC received opposing the proposed retention without amendment of this section. That commenter suggested that LSC create a Grievance Committee within LSC to process all client complaints. This, the commenter argues, would alleviate any potential conflicts because it would remove recipient Board members from the complaint resolution process. This commenter further argues



that such a change would be appropriate because client members of governing bodies who are not attorneys do not have the proper “legal training to sit in judgment of legal procedures.”

Eliminating recipient grievance committees would eliminate any potential conflict of interest issues. However, as noted above, LSC is confident that governing body members currently serving on grievance committees are generally balancing their various duties and responsibilities appropriately. Thus, LSC does not see this issue as significant enough to justify the solution proposed.

More importantly, LSC believes that even with the inherent balancing of interests of which recipients and their Board members must be mindful, this is a matter appropriately committed to the separate and local control of each recipient. Having LSC perform the functions of the respective governing body grievance committees would be an undue encroachment by LSC on the independence of recipients. Moreover, for LSC to exercise such authority would require an unjustified reallocation of LSC’s resources so that LSC staff could become well versed in each recipients’ particular grievance procedures and local situation.

*Section 1621.3 – Complaints by applicants about denial of legal assistance*

LSC proposed to reorganize the regulation to move the current section dealing with complaints about denial of service to applicants before the section on complaints by clients about the manner or quality of legal assistance provided. This change was proposed for two reasons. First, the vast majority of complaints that recipients receive are from applicants who have been denied legal assistance for one reason or another. As such, it seems appropriate for this section to appear first in the regulation. Second, and more importantly, the current regulation (and the regulation as being proposed herein) requires recipients’ to adopt a simpler procedure for the handling of these complaints. There was some concern that some level of confusion is created

by having the more detailed procedures required by the section on complaints about the manner or quality of legal assistance appear first in the regulation. Put another way, there was concern that the current organization of the regulation obscures the fact that recipients are permitted to adopt a different procedure for processing the denial of complaints of legal assistance by applicants.

LSC received two comments specifically supporting the proposed reorganization. LSC continues to believe the proposed reorganization will clarify this matter and make the regulation easier for recipients and LSC to use. Accordingly, LSC adopts the change in organization as proposed.

In addition to the proposed reorganization discussed above, LSC proposed modest substantive changes to the regulation. First, LSC proposed to add language to the title of this section and the text of the regulation to clarify that this section refers to complaints by applicants about the denial of legal assistance. Consistent with the proposed changes in the purpose section, LSC believes these changes will help clarify that the grievance procedure is available to applicants and not to third parties wishing to complain about denial of service to applicants who are not themselves complaining. LSC notes that for applicants who are underage or mentally incompetent, the applicant him or herself is not likely to be directly applying for legal assistance and LSC does not intend this change to impede the ability of any person (parent, guardian or other representative) to act on that applicant's behalf. Rather, LSC intends the proposed clarification to apply to situations in which a neighbor, friend, relative or other third party would seek to complain in a situation in which the applicant is otherwise capable of complaining personally. LSC received two comments expressly supporting these changes and no comments opposing them. Accordingly, LSC adopts these changes as proposed.

Second, LSC proposed to delete the language which limits complaints about the denial of legal assistance to situations in which the denial was related to the financial ineligibility of the applicant, the fact that legal assistance sought is prohibited by the LSC Act or regulations or lies outside the recipient's priorities. Applicants are denied for these and other reasons, such as lack of resources, application of the recipient's case acceptance guidelines, the merit of the applicant's legal claim, etc. By removing these limitations, the regulation will apply in all situations of a denial of legal assistance. From the applicant's point of view it is immaterial why the denial has occurred and LSC can discern no good reason to afford some applicants, but not others, an avenue for review of decisions to deny legal assistance. Moreover, the recipients participating in the workshops noted that they do not make any distinction between applicants on this basis and make their grievance procedure available to any applicant denied service, regardless of the reason. LSC received two comments expressly supporting this change and no comments opposing it. LSC continues to believe that the proposed change will, therefore, not create any new burdens on recipients, yet will implement the policy in a more appropriate manner. Accordingly, LSC adopts this change as proposed.

Third, LSC proposed to clarify that the phrase "adequate notice" as it is used in this section is adequate notice of the complaint procedures. The current regulation is vague on this point, although in context the logical inference is that it must refer to notice of the content of the complaint procedures. LSC continues to believe clarifying the language on this point would be useful. LSC further proposed to add the words "as practicable" after "adequate notice." This change was intended to help recipients who do not have in-person contact with many applicants and who, therefore, cannot rely on posted notice of the complaint procedures in the office. Such recipients use a variety of methods of providing notice, from posting on websites, to inclusion of

notice in phone menus, to having intake workers and attorneys speaking with applicants provide the information orally. All of these methods can be sufficient and appropriate to local circumstances. The proposed phrasing was intended to ensure that recipients have sufficient flexibility to determine exactly how and when notice of the complaint procedures are provided to applicants, while retaining the requirement that the notice be “adequate” to achieve the purpose that applicants know their rights in a timely and substantively meaningful way so as to exercise them if desired.

LSC received several comments addressing the proposed changes concerning “adequate notice.” Three commenters suggested that the clarification proposed by LSC was not adequate. One of these commenters suggested that the phrase “as practicable” should instead be “to the extent practicable,” while another commenter suggested that the language LSC proposed in section 1621.4 is clearer and that similar language could be used in section 1621.3. LSC does not agree that the phrase “to the extent practicable” is substantively preferable to “as practicable.” LSC believes that “to the extent practicable” suggests that that if a recipient decides it is not practicable, the recipient is not required to provide notice at all, whereas LSC believes that that the phrase “as practicable” suggests that adequate notice will always be provided, but recognizes the significant leeway recipients need in determining the particular time and manner in which that notice is to be provided. However, LSC does agree that the language it proposed in section 1621.4 is clearer than the language in proposed 1621.3. Accordingly, LSC is adopting language that provides that the procedure must provide “a method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint, as practical. . . .” LSC is also changing the word “practicable” to “practical” in the following clause of that sentence to maintain consistency in language. Thus, the clause will read that the

recipient's procedure for review of complaints by applicants about the denial of legal assistance "shall provide for applicants to have an opportunity to confer with the Executive Director, or the Executive Director's designee, and, to the extent practical, with a representative of the governing body."

Finally, LSC proposed to add a statement that the required procedure must be designed to foster effective communications between recipients and complaining applicants. It was clear in the Workshops that this is very important to both applicants and recipients. Indeed, it is one of the main reasons for having a complaint procedure. Accordingly, LSC believes it is important for the regulation to reflect this. Because LSC is confident that the vast majority of recipient grievance procedures are already designed to foster effective communications, LSC continues to believe that the proposed addition to the regulation should not create any undue burden on recipients.

LSC received two comments specifically addressing this change. One commenter suggested that this statement should not be mandatory because the requirement necessitates a subjective judgment as to what is effective. Although LSC agrees that regulations should generally set forth clear, objective standards, there are situations in which some level of discretion and judgment are appropriately incorporated into a rule. An example of this is the "adequate" notice requirement discussed above. One could argue that "adequate" is a subjective term, yet LSC believes that there is no appropriate "one size fits all" approach and that recipients may provide notice in a variety of ways, any of which is adequate to inform the applicant as to the existence of a complaint procedure and what they are such that the applicant can meaningfully exert his or her rights under that procedure. Similarly, LSC believes that *requiring* the procedures to be designed to foster effective communication signals the seriousness with

which LSC takes this element of the complaint procedure process (based on the importance which both applicant and recipients place on it), yet provides for a necessary level of recipient discretion in achieving the desired results. Accordingly, LSC declines to substitute the word “should” for “must” as suggested. LSC does believe a change in this paragraph, however, is warranted. Another commenter suggested the use of the word “shall” for “must” to be consistent with the use of the word “shall” throughout the remainder of the regulation. LSC agrees that “shall” is more appropriate in this context and adopts this suggestion.

LSC considered proposing to add a statement that the required procedure must be designed to treat complaining applicants with dignity, as this was another recurring refrain LSC heard throughout the Workshops. Because treating applicants with dignity is such a basic duty, LSC preliminarily determined that it is neither necessary nor appropriate to make it a specific regulatory requirement in this context and invited comment on this issue. LSC received one comment specifically supporting LSC’s determination in this respect and none in opposition. Accordingly, LSC is not adopting any specific regulatory requirement on this issue.

LSC also received a comment suggesting that the proposed language of section 1621.3, “inappropriately involves the governing body in day-to-day case acceptance decisions because of the proposed addition of the phrase ‘at a minimum.’” LSC disagrees that the inclusion of the phrase “at a minimum” either negates the language in the previous sentence of the provision that the procedure be “simple” or, of necessity, elevates the involvement of any governing body in a recipient’s day-to-day case acceptance decisionmaking. Rather, as proposed, the regulation sets forth the minimum elements the procedure must have to be compliant with the regulation while inclusion of the phrase “at a minimum” provides recipients with discretion to have procedures which incorporate the required minimum elements, but also provides for additional elements, if

so desired. LSC does not intend and does not believe the language will require most recipients to make significant changes in how their governing bodies' grievance committees are incorporated into the grievance procedure. As LSC noted in the preamble to the NPRM: "LSC intends that existing complaint procedures for applicants who are denied legal assistance which would meet the proposed revised requirements may continue to be used and would be considered to be sufficient to meet their obligations under this section." 71 Fed. Reg. at 48505 (August 21, 2006).

This commenter also argues that, as proposed, section 1621.3 requires each recipient to have a procedure in place to review all decisions to deny legal assistance to applicants and not just those decisions which become subject to a complaint and that this represents a substantive change to the regulation. There is nothing in the current regulation, however, which expressly limits the procedure to a review of a decision to deny legal assistance which has become the subject of a complaint. The current regulation provides only that each recipient "shall establish a simple procedure for review of a decision that a person is financially ineligible, or that assistance is prohibited by the Act or Corporation Regulations, or by priorities established by the recipient pursuant to section [sic] 1620." As such, LSC does not agree that the proposed revised language (that a recipient "shall establish a simple procedure for review of decisions to deny legal assistance to applicants") implies any more or less than the current language does about whether the review is applicable to all decisions or only those which become a subject of a complaint. Moreover, to the extent that any decision to deny an applicant legal assistance is potentially subject to a complaint, all decisions must be subject to review. Nonetheless, neither the current regulation nor the proposed revisions are intended to require recipients to create a procedure for internal review of decisions to deny legal assistance outside of and apart from the client grievance procedure. LSC believes that the language of section 1621.3 can be clarified on this

point. Accordingly, LSC is changing the language of proposed section 1621.3 to read “[a] recipient shall establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant.” This language is also more consistent with the similar language in section 1621.4.

Finally, LSC received one comment (in the attachments to the Chairperson of the NLADA’s Client Policy Group comments) suggesting that the current language of the regulation is clear and that the changes proposed make the language legalistic. This commenter suggests retaining the original language. LSC disagrees that the proposed language is less clear than the existing language. Rather, LSC believes the language being adopted, as discussed above, is clearer than the language it is replacing (as well as clearer than the existing language). Moreover, the language being adopted includes some substantive changes which LSC believes improves the utility of the regulation for recipients, applicants and clients. Accordingly, LSC declines to adopt the commenter’s suggestion.

*Section 1621.4 – Complaints by clients about manner or quality of legal assistance*

As noted above, LSC proposed to reorganize the regulation to move the current section dealing with complaints about legal assistance provided to clients after the section on complaints by applicants about denial of legal assistance. For a discussion of the reasons for this proposed change, see the discussion at section 1621.3, above. LSC received two comments specifically supporting the proposed reorganization. LSC continues to believe the proposed reorganization will clarify this matter and make the regulation easier for recipients and LSC to use. Accordingly, LSC adopts the change in organization as proposed.

LSC also proposed some minor substantive changes. First, LSC proposed to add language to the title of this section and the text of the regulation to clarify that this section refers



to complaints by clients about the manner or quality of legal assistance provided. LSC received two comments expressly supporting these changes and no comments opposing them. Consistent with the proposed changes in the purpose section, LSC continues to believe these changes will help clarify that the grievance procedure is available to clients and not to third parties wishing to complain about the legal assistance provided to clients who are not themselves complaining. Accordingly, LSC adopts these changes as proposed. As with the similar proposed changes to the section on applicants, LSC notes that for clients who are underage or mentally incompetent, the client is not likely to be directly applying and LSC does not intend this change to impede the ability of the person (parent, guardian or other representative) to act on that client's behalf. Rather, LSC intends the proposed clarification to apply to situations in which a neighbor, friend, relative or other third party would seek to complain in a situation in which the client is otherwise capable of complaining personally.

LSC also proposed some revision of the language setting forth the minimum requirements for the required grievance procedures. Except as noted below, these changes are not intended to create any substantive change to the regulation but, rather, to provide more structural clarity to the regulation. One such proposed change is the addition of a statement that the procedures be designed to foster effective communications between recipients and complaining clients. LSC received one comment suggesting that this statement should not be mandatory because the requirement necessitates a subjective judgment as to what is "effective." The rationale for the proposed change and LSC's response to this comment are the same as for the parallel proposed change in proposed section 1621.3.

As with proposed section 1621.3, LSC considered also proposing to add a statement that the required procedure must be designed to treat complaining clients with dignity, but chose not

to for the same reasons articulated in that proposed section. As noted above, LSC received one comment expressly supporting LSC's position on this issue.

LSC also proposed to amend the time specified in the rule regarding when the client must be informed of the complaint procedures available to clients. Currently, clients must be informed "at the time of the initial visit." This is typically accomplished in one of several different ways, such as through the posting of the complaint procedures in the office, by providing an information sheet to clients or by including information about the grievance procedure in the retainer agreement. However, the phrase "at the time of the initial visit" tends to imply an in-person initial contact – a situation which is increasingly uncommon for many recipients and clients. Also, a client may not actually be accepted as a client at the time of the initial contact (whether in person or not). LSC believes that what is important is that the person being accepted as a client be informed of the available complaint procedure at that time because that is when the information appears to be most useful and meaningful for the client. Accordingly, LSC proposed that clients be informed of the grievance procedures available to them to complain about the manner or quality of the legal assistance they receive "at the time the person is accepted as a client or as soon thereafter as practicable." LSC did not propose to dictate how that notice must be provided. LSC continues to believe that this change will assist recipients and clients in situations in which the client does not have an in-person initial visit and will afford recipients the flexibility to provide notice in a manner and time appropriate to local circumstances.

LSC received three comments addressing this proposed change. All of these comments generally supported the proposed change as helpful and appropriate, but one suggested substituting the word "practical" for "possible" as it appears in proposed section 1621.4(b)(1).

However, the word “possible” is not used in that subsection. Rather, LSC used the word “practicable” in that proposed subsection. LSC believes that the language as proposed already meets the intent of the comments, but LSC does not believe the use of the word “practical” instead of “practicable” is likely to cause problems in understanding or applying the rule. This change would also be consistent with the use of the word “practical” in section 1621.3 (discussed above). Accordingly, LSC adopts the suggested change.

LSC received two additional comments on this section. The first commenter suggested that the terms “adequate notice” and “as practicable” were too vague and instead urged LSC to adopt a requirement that recipients be required to provide a written form setting forth the grievance procedures to clients (either in person, or by mail or fax) at the time the client is accepted for service. As noted in the discussion of the term “adequate notice” in section 1621.3, above, recipients use a variety of methods of providing notice of grievance procedures to clients, from posting of the procedures in the office or on websites, to having written procedures available for distribution and/or included in retainer agreements, to the provision of the notice orally through recorded phone menus or by having intake workers and attorneys speaking directly with clients. All of these methods can be sufficient to achieve the purpose that clients know their rights in a timely and substantively meaningful way so as to exercise them if desired, while still being appropriate to local circumstances. Moreover, there are situations in which issues of practicality arise in the provision of notice. For example, providing a written notice by mail to a client who is seeking legal assistance in a case involving domestic violence may put the client’s safety in jeopardy and in other cases emergency conditions may prevail dictating some delay in the provision of notice. For these reasons, LSC believes that adopting the commenters’ suggestion would unnecessarily impinge on recipients’ flexibility to determine exactly how and

when notice of the complaint procedures are provided to clients. Accordingly, LSC declines to adopt this suggestion.

The second commenter asked for guidance on application of the requirements as they relate to telephone advice. Specifically, the commenter noted that they typically provide the grievance notice to clients who never come into the office in person in conjunction with a letter summarizing the advice given/actions taken. The commenter asks whether this is acceptable in cases in which the closing letter does not go out for several weeks, rather than within a few days. It is not possible for LSC to provide a definitive answer to this very general question in the preamble to the regulation because of the case-by-case variables which could determine what is “practical” for a given recipient in a given situation. In such situations recipients might LSC would consider, among other things, whether it is foreseeable that for a given client it will likely be several weeks before a closing letter is going to be sent out, whether there is another avenue by which the client can be reasonably informed of the grievance procedure other than the closing letter, the number of cases in which this is actually a problem. As LSC stated in the preamble to the NPRM, it intends that a recipient’s existing complaint procedures for clients who are dissatisfied with the manner or quality of legal assistance provided, which would meet the proposed revised requirements may continue to be used and would be considered to be sufficient to meet their obligations under this section. 71 Fed. Reg. at 48505 (August 21, 2006).

The last change LSC proposed to this section was to include an explicit requirement that the grievance procedures provide some method of reviewing complaints by clients about the manner or quality of service provided by private attorneys pursuant to the recipient’s private attorney involvement (PAI) program under 45 CFR Part 1614. The regulation has previously been silent on this matter and LSC has not required recipients to apply the client grievance

procedure to private attorneys. However, from the clients' standpoint it is immaterial whether legal assistance happens to be provided directly by the recipient or by a private attorney pursuant to the PAI program. In both cases, the client remains a client of the recipient and should be afforded some avenue to complain about legal assistance provided. At the same time, subjecting private attorneys to the same grievance procedure that applies to the recipient would likely be administratively burdensome and likely impede recipients' ability to recruit private attorneys for the PAI program. In addition, some PAI programs, such as ones administered by bar associations, already have their own complaint procedures. Also, recipients are required by the section 1614.3(d)(3) of the PAI regulation to provide effective oversight of their private attorneys. Providing some process for review of complaints about their service is reasonably considered part of that responsibility.

LSC received two comments addressing this proposal. One commenter supported this proposal, but suggested that the preamble make clear that recipients should be aware of their state bar's grievance procedures and should be prepared to refer clients to the state bar's grievance procedures (or possibly to independent counsel) when such referral would be appropriate. We agree that this is an important consideration and so note it herein.

The other commenter suggested that this provision might prove difficult for recipients in private attorney recruitment efforts and urged LSC to refrain from adopting such a provision without first soliciting input from the ABA and state and local bar associations. The comment does not address with any specificity how recruitment efforts might be impeded in light of the fact noted in the preamble to the NPRM (and restated above) that recipients are already required to provide some process for review of complaints as part of their responsibility under the PAI regulation to provide effective oversight of their participating private attorneys. Moreover, LSC

believes that the issues in the rulemaking have been widely noticed and discussed since the inception of the rulemaking. More specifically, the NPRM was not only published in the Federal Register for public comment but it was also posted on the LSC website, and the public meetings at which the Rulemaking Workshops and the Draft NPRM were discussed were also publicly noticed. Should the any bar association have desired to comment, there has been ample opportunity for those organizations to do so. As such, LSC sees no reason to delay action on this particular provision.

In light of the above, LSC continues to believe that it is appropriate that this regulation contain a requirement that recipients establish a procedure to review complaints by clients about the manner or quality of service of PAI attorneys. After further consideration, however, LSC believes that there is a better way to state this requirement than as proposed in the NPRM. Accordingly, LSC section 1621.4(c) provides that:

Complaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR §1614.3(d)(3) and with applicable state or local rules of professional responsibility.

LSC believes this language does not create a substantive change in the policy proposed in the NPRM but, instead, states that policy in a clearer, more appropriate manner. Accordingly, LSC adopts the PAI-related provision as described herein. LSC reiterates, that is it not requiring recipients to afford the same procedure as provided to clients being provided service directly by the recipient. LSC also reiterates that it intends that existing formal and informal methods for review of complaints about PAI attorneys currently meeting recipients' obligations under Part

1614 continue to be used and would be considered to be sufficient to meet their obligations under this section.

LSC received three other comments addressing proposed section 1621.4. Two of these comments ask LSC to clarify that the requirement in proposed section 1621.4(d) that recipients maintain files of complaints and their disposition applies only to complaints by clients about the manner or quality of legal assistance provided and not to complaints by applicants about the denial of legal assistance. LSC believes that it is clear that this requirement applies only to that section and not to any other section in the regulation. Recipients are not required to maintain files on complaints by applicants about denial of legal assistance. LSC does not believe that any modification of the regulation is necessary and anticipates that this discussion will remove any possible ambiguity.

One of these commenters further suggested that either the rule or preamble should make clear that files are required only for complaints that are not resolved informally by staff, the Executive Director or the Executive Director's designee and that the requirement should, instead, apply only to complaints that have been considered by the Board's grievance committee. The current requirement found in section 1621.3(c) is not limited in the manner suggested by the commenter. Rather, the current language provides that in cases of complaints by clients about the manner of quality of legal assistance provided "a file containing *every* complaint and a statement of its disposition shall be preserved for examination by the Corporation" (emphasis added). The proposed provision is exactly the same as the current one (except for substitution of "LSC" for "Corporation"). For LSC to adopt the position urged by the commenter in the preamble would result in a preambular statement directly at odds with the clear language of the

regulation. For LSC to change the regulation would result in a significant substantive change for which no rationale has been articulated. LSC declines to adopt this suggestion.

Finally, LSC received one comment (in the attachments to the Chairperson of the NLADA's Client Policy Group comments) suggesting that the current language of the regulation is clear and that the changes proposed make the language legalistic. This commenter suggests retaining the original language. LSC disagrees that the proposed language is less clear than the existing language. Rather, LSC believes the language being adopted, as discussed above, is clearer than the language it is replacing (as well as clearer than the existing language). Moreover, the language being adopted includes some substantive changes which LSC believes improves the utility of the regulation for recipients, applicants and clients. Accordingly, LSC declines to adopt the commenter's suggestion.

**For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC revises 45 CFR Part 1621 as follows:**

**PART 1621—CLIENT GRIEVANCE PROCEDURES**

Sec.

1621.1 Purpose.

1621.2 Grievance Committee.

1621.3 Complaints by applicants about denial legal assistance.

1621.4 Complaints by clients about manner or quality of legal assistance.

AUTHORITY: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a) (1).

**§ 1621.1 Purpose.**



This Part is intended to help ensure that recipients provide the highest quality legal assistance to clients as required by the LSC Act and are accountable to clients and applicants for legal assistance by requiring recipients to establish grievance procedures to process complaints by applicants about the denial of legal assistance and clients about the manner or quality of legal assistance provided. This Part is further intended to help ensure that the grievance procedures adopted by recipients will result, to the extent possible, in mutually satisfactory resolution of complaints .

**§ 1621.2 Grievance Committee.**

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body.

**§ 1621.3 Complaints by applicants about denial of legal assistance.**

A recipient shall establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant. The procedure shall, at a minimum, provide: a method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint, as practical; and an opportunity for applicants to confer with the Executive Director or the Executive Director's designee, and, to the extent practical, with a representative of the governing body. The procedure shall be designed to foster effective communications between the recipient and complaining applicants.

**§ 1621.4 Complaints by clients about manner or quality of legal assistance.**

(a) A recipient shall establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient to the client.

(b) The procedures shall be designed to foster effective communications between the recipient and the complaining client and, at a minimum, provide:

(1) A method for providing a client, at the time the person is accepted as a client or as soon thereafter as is practical, with adequate notice of the complaint procedures and how to make a complaint;

(2) For prompt consideration of each complaint by the Executive Director or the Executive Director's designee,

(3) An opportunity for the complainant, if the Executive Director or the Executive Director's designee is unable to resolve the matter, to submit an oral or written statement to a grievance committee established by the governing body as required by §1621.2 of this Part. The procedures shall also: provide that the opportunity to submit an oral statement may be accomplished in person, by teleconference, or through some other reasonable alternative; permit a complainant to be accompanied by another person who may speak on that complainant's behalf; and provide that, upon request of the complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

(c) Complaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR §1614.3(d)(3) and with applicable state or local rules of professional responsibility.

(d) A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC. The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

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