



OFFICE OF LEGAL AFFAIRS

MEMORANDUM

TO: Operations & Regulations Committee

THROUGH: Helaine M. Barnett *HMB*
President

FROM: Victor M. Fortuno *VMF*
Vice President of Legal Affairs and General Counsel

DATE: July 11, 2006

SUBJECT: Staff Report on 45 CFR Part 1621 (Client Grievance Procedure) Draft
Notice of Proposed 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"). Pursuant to the Board's direction, LSC convened Rulemaking Workshops on January 18, 2006, and March 23, 2006. After the completion of the Workshops, the Board directed that Management develop a Draft Notice of Proposed Rulemaking (NPRM) for the Operations & Regulations Committee review. Accordingly, a Draft NPRM is attached to this report for the Committee's review and action.

Summary of the Draft NPRM

Management is proposing only modest changes to the regulation, but Management believes that these changes will improve the utility of the regulation for LSC, its grantees, and their clients and applicants for legal assistance.

Section 1621.1 – Purpose

With regard to this section, Management proposes: (1) 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; and (2) 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. Management believes that these changes are consistent with the current application and understanding of the rule and are appropriate to more accurately reflect the purpose of the regulation.

Management is also proposing to include in the preamble a discussion of two issues which were raised in the Workshops: whether this section should contain a statement that the client grievance procedure is not intended to and does not create any entitlement on the part of applicants to legal assistance; and whether this section should address the ancillary use by recipients of the client grievance procedure as a feedback mechanism to help recipients identify issues such as the need for priorities changes, foreign language assistance, staff training, etc. With respect to both issues, Management considers addressing them in the text of the regulation unnecessary. In the former case, including a statement to this effect would not likely be very useful because it seems unlikely that many applicants for legal assistance will have read the regulation prior to applying for legal assistance. In the latter case, 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. We have, however, included language in the Draft NPRM inviting comment on these issues.

Section 1621.2 - Grievance Committee

Management does not propose any changes to this section. The proposal is to include in the preamble a brief discussion, stemming from 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 having a higher proportion of clients than the governing body has generally. This discussion also addresses why the current wording appears appropriate.

Section 1621.3 – Complaints by applicants about denial of legal assistance

Management proposes 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. In considering changes to the regulation, Management is concerned 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. Accordingly, Management believes the proposed reorganization will clarify this matter and make the regulation easier for recipients, their clients and applicants, and LSC to use.

In addition to the proposed reorganization discussed above, Management recommends the following modest substantive changes to the regulation:

- (1) consistent with the proposed change in the purpose section, adding 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;
- (2) deleting 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. From the applicant's point of view it is immaterial why the denial has occurred and Management 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;

- (3) clarifying that the phrase "adequate notice" as it is used in this section is adequate notice of the complaint procedures and to add the words "as practicable" after "adequate notice." This change will help recipients who do not have in-person contact with many applicants and who, therefore, cannot rely on posting notice of the complaint procedures in the office to provide the required "adequate notice." The proposed change is 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; and
- (4) adding a statement that the required procedure must be designed to treat complaining applicants with dignity and 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 and Management believes it is important for the regulation to reflect this.

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

As noted above, Management proposes 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.

In addition to the proposed reorganization discussed above, Management recommends the following modest substantive changes to the regulation:

- (1) consistent with the proposed change to the purpose section, adding 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;
- (2) adding a statement, similar to the proposed change to 1621.3, that the procedures be designed to treat complaining clients with dignity and to foster effective communications between recipients and complaining clients;
- (3) amending the time specified in the rule regarding when the client must be informed of the complaint procedures available to clients from "at the time of the initial visit" to "at the time the person is accepted as a client." 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 conditions;

- (4) including 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. Management is not proposing to require that recipients afford the same procedure as provided to clients being provided service directly by the recipient. Rather, LSC 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; and
- (5) minor revision of the language which is not intended to create any substantive change to the regulation, but, rather, to provide more structural clarity to the regulation.

Management Recommendation

Management recommends that the Operations and Regulations Committee recommend that the Board of Directors approve the attached Draft NPRM for publication in the Federal Register for public comment.