



OFFICE OF LEGAL AFFAIRS

Mark O'Brien, Pro Bono Net

Mr. O'Brien prefaced his statement by saying that, in times of exigent circumstances, organizations need to look beyond their own individual capacities to deliver services, and instead think about how their capacities fit into broader community needs. Legal services organizations, he added, live in a time of exigent need every day. Thus, they have to think creatively about how to bring more resources to bear. Adding pre-admission law graduates, as well as law students, to grantees' PAI programs would greatly expand the capacity of service delivery, especially brief services and advice. He added that students were particularly suited for the on-the-ground legwork of determining which problems need addressing, as Pro Bono Net experienced during their projects with students in the wake of Superstorm Sandy. It is this question about actual need he stated, that is essential to rightly deciding where to put resources to most effectively meet needs. By drawing on law students and other attorney volunteers, legal services providers can better scale their projects. Technology and internet applications were also helpful, especially with providing legal information. It might even be possible, Mr. O'Brien added, to draw in other professions, such as business management, that contribute to law practice.

David Udell, National Center for Access to Justice

Mr. Udell began by emphasizing the importance of relying on law students to help narrow the justice gap. They have always volunteered, he noted, but there has not been much focus on what they can do to help the legal services community. Grantees should refocus where students apply their energies, especially in light of a growing trend toward mandatory pro bono work. Nonetheless, he noted the need to preserve the quality of PAI programs. He would not, for instance, recommend restructuring the PAI rule around trying to provide work to as many law graduates as possible, because grantees primarily need to assure the positive impact and effectiveness of their programs on the client community. For that, grantees need to rely on the best possible people, not just large numbers of people. Mr. Udell suggested partnering with law schools in creating, or maintaining, effective law student work within legal services programs.

Mr. Udell stated that the most important principle in expanding the rule to cover law students is to actually expand programs' capacity. That kind of work should include intake, the analysis and development of facts, the drafting of pleadings, legal research, the interpretation and explanation of legal documents (especially to clients), preparation of oral arguments, and education of the public in "know your rights" meetings. Mr. Udell also noted a concern that the 12.5% requirement could encourage a program to direct spending toward ineffective activities simply to meet the required percentage. As an alternative to the current PAI rule, he suggested offering separate pro bono grants to encourage best practices and replicable successful PAI models. Moreover, altering the "private attorney" definition would increase programs' flexibility to decide where to spend their money. He also noted that programs should have options to work with a much larger community of other pro bono participants.

Jennifer van Dulmen, NAPBA

Collaboration, Ms. van Dulmen began, is the key to unleashing pro bono, paraphrasing Mr. Whitfield's earlier remarks. Pro bono programs should be equal partners with staff programs for legal services delivery. She identified barriers to pro bono, excessive regulation, a lack of

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Ms. van Dulmen did not think that there would be a further incentive to do so by requiring it in the PAI rule. Thus, no additional reporting requirements were necessary.

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Mr. O'Brien also favored the adoption of Recommendation 2(b) addressing the question of finding the most effective way to structure the delivery of legal services. Grantees, he said, need flexibility to partner with other community access organizations. For instance, he suggested embedding legal services in other institutions that serve poor people, such as social services agencies and libraries, rather than exclusively relying on other members of the legal community at clinics. As for outcome reporting requirements, Mr. O'Brien agreed with Ms. van Dulmen, that it is better to develop best practices in order to influence behavior, rather than set up a new regulatory standard, with the risk of overregulation. Lastly, Mr. O'Brien addressed concerns with screening for eligibility at clinics not organized by grantees. He responded that an overemphasis on eligibility screening can impede the ability of grantees to put themselves in situations where they can help eligible clients at co-sponsored clinics—due to the elevated “risk” of serving ineligible clients. He did not want the fear of such a possibility to overwhelm the high probability of serving more eligible than ineligible clients.

Patricia Zeeh Risser, Legal Action of Wisconsin Volunteer Lawyers Project

Grantees are still the central providers of extended legal services, Ms. Risser began, but the picture of pro bono work has changed considerably in the last thirty years. There are more players now, so grantees need to collaborate and to be on the team. They should be encouraged, she said, to provide help where they have the unique resources to do so. Thus, Ms. Risser favored expanding the current PAI rule to cover screening, and referral, which would foster vitally important collaboration with other organizations. She noted that screening and referral is central to connecting people with the service that they need.

Ms. Risser noted that legal aid programs educate other entities about substantive legal issues facing the poor and about eligibility for LSC-funded entities. She explained that LAWVLP's staff is the Wisconsin expert

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handling limited financial screening and another volunteer for recruiting. A staff person helps run the clinic and support the volunteer attorneys. To make such projects count under the current rule would require telling volunteers that they have to do something they do not like, as many and possibly to tell clients that they will get less help. The clinics could fully screen and reject some people or limit themselves to legal information. OLSA could also withdraw from the clinics entirely. It is very detrimental to grantees to have a regulation that interferes with their ability to help clients and to work with community partners.

Regarding eligibility, Ms. Skilliter compared clinic work to group representation in which LSC looks at the primary purpose of the group organization. Similarly she suggested looking at the primary purpose of the clinic.

In response to Committee Chairman Keckler's question about limited screening, Ms. Skilliter stated that they do that kind of limited screening and it is not too onerous. She also recommended flexibility regarding serving people who are over income for LSC services.

ADDITIONAL PUBLIC COMMENT: TOPIC 3

Virginia Martin, Director of the New Hampshire Bar's legal services programs and past NAPBPro president

Ms. Martin added that it would be helpful to permit PAI subgrantees to minimize unnecessary conflicts by not requiring the subgrantee PAI cases to also become cases, and clients, of the primary grantee.

Ken Penokie, Legal Services of Northern Michigan

Mr. Penokie noted that they have an internet project and a Traverse City clinic that both collect full screening information except for client names and addresses. This approach permits them to avoid conflicts due to people served in those projects while still doing screening information. He further noted that the concern about private attorneys providing legal advice to unscreened people is less than the concern that an LSC grantee does so.

ADDITIONAL MATTERS

Board Chairman Levi suggested considering pilot projects possible without a rule change, and he reported that many people have asked him about changing the name of the rule. Mr. Whitfield suggested involvement of the Legal Profession (ILP).