

LEGAL SERVICES OF NORTHERN MICHIGAN, INC.

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May 9, 2013

Mark Freedman
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RE: Rule making workshops July 23, 2013 & September 17, 2013

Mr. Freedman:

I would like to express my interest in participating as a panelist for either or both of the rule making workshops listed above. Legal Services of Northern Michigan has been a pioneer in using the internet to allow private attorneys to provide counsel and advice services to low income individuals (IRP project). LSNM's IRP project went live in June of 2006 and since then the private attorneys servicing the site have responded to question from 3,706 low income individuals. Several other programs have replicated LSNM's project, but the project and the replication are being restrained by LSC's current interpretation of 45 CFR 1614.

In addition to my involvement with the internet based delivery, I am intimately familiar with the unique challenges faced by rural programs in establishing pro bono delivery models. LSNM is a program that covers 36 counties in Michigan and it is exclusively rural. I have been with the program for 34 years (15 as a staff attorney) and am a life time resident of the region so I have experienced the issues and attitudes of the private bar regarding pro bono services. LSNM is involved in several different PAI models which include; contract attorneys, a traditional clinic program, how to work shops and old fashion local arm twisting. Many of these efforts go unreported under present day LSC rules.

Please consider me as a panelist for the upcoming workshops. I believe I can provide a unique and informed perspective on the issues surrounding PAI delivery and reporting rules.

Sincerely,

Kenneth Penokie
LSNM Director



LSC PAI Workshop

Key Points

Topic 1

In rural communities there are several obstacles to the recruitment of pro bono legal services that are missed by the Report of the Pro Bono Task Force. Some of these are:

A. Conflict of Interest. Start with an understanding that rural communities have few attorneys.¹ The firms are small and have modest incomes. These firms/sole practitioners are very concerned that they will lose cases because they are handling a pro bono case which conflicts them from taking a paying case. In addition, the very same attorneys who are willing to do pro bono will be opposing parties in cases handled by the legal services program.

B. Limiting exposure. Traditionally we think of an attorney's exposure in terms of the time required to handle a case or legal issue. That exposure is limited by a careful screening and selection of cases referred. However, in rural areas exposure also includes "becoming the town's free attorney" and the "attorney for life" syndrome. Once a rural attorney handles one or two pro bono cases in an effective matter, word of mouth spreads throughout the area and s/he receives a torrent of requests for free work. The exposure is not just during work hours, but at community and social events. In addition, because the communities are small the client who was assisted will treat the attorney as his/her personal attorney (and for that of his/her friends) for life.²

C. Record keeping. If rural attorneys take pro bono cases, they don't want to be bothered by a lot of follow-up work, phone calls or other paper work. They just want to do the case and not be bothered. Amazingly, our experience is that most claim not to want public thanks or acknowledgment of their good work. Perhaps this is because of the factor listed above.

D. Accounts receivable. The prevalent feeling among small firms and solo practitioners in rural areas is that their accounts receivables are their pro bono work. Most attorneys practicing in rural areas struggle to make a modest living. Their clients are likewise struggling and are sometimes unable to pay their bills fully. These factors taint the waters for pro bono recruitment. State Bar Associations work hard to encourage pro bono and to dispel the notion that accounts receivables meet pro bono standards, but the fact is the attitude persists.

¹33 of LSNM's 36 counties have between 10 and 25 attorneys. Of those only about 2/3's would be available for pro bono.

². LSNM's Board Chair assisted one client in his early days of practice and has received four or five requests for help from her each year for the past 40 years.

There is an adage that all pro bono is local. No where is that more true than in rural areas. Most of the pro bono case placement within our service are

invested in the pro bono, the less is available for staff who perform core services. The steeper the cost/benefit curve the less valuable the pro bono services.

The question with many of the issues identified is what is required by 45 CFR 1614. Sections 2(a), 3(c), and 4(a)(2) all require the plan and delivery system to meet the clients needs in an “effective”, “efficient” and “economical” manner. Section 19(c) specifically requires: recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

The directives of 1614 should then be overlaid on top of 45 CFR 1611.7 which requires that “a recipient shall make reasonable inquiry regarding sources of the applicant’s income, income prospects and assets.” The question then is: What is reasonable in light of the resources being utilized in a particular pro bono “case”? If a case is being directed to a private attorney for service, the legal services community is not providing any “legal service” to that client. So the risk under any particular pro bono delivery model is that a person who is not financially qualified may get free advice from a private attorney. The exposure is much less than the same client being seen in-house by a program attorney. Since the exposure is less it would follow that a “reasonable” screening process could be less robust and more cost effective.

We are well into the digital age and technology exists to screen potential “clients” for eligibility and placement with a pro bono attorney without the necessity of costly personnel. While it is true that these systems cannot detect every nuance in an answer or potential prevarication, it is also true that they are not subject to human error. Given the very small amount of program investment for these electronic dating systems, electronic screening does represent a “reasonable inquiry.” Especially if they are coupled with some basic instructions to the pro bono lawyers to flag irregularities.

Name	Kenneth Penokie, Director Legal Services of Northern Michigan
Topic 1: LSC Pro Bono Task Force Recommendation 2(a) - Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in "incubator" initiatives.	
	How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?
X	What are the obstacles to LSC grant recipients' full use of these volunteers?
	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?
	How can LSC ensure against fraud, waste, or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?

	recommendation? What caution should LSC exercise to ensure against any unintended consequences?
	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
	Other issues related to Topic 2 (please specify in your submitted outline).
Topic 3: LSC Pro Bono Task Force Recommendation 2(c) - LSC should reexamine the rule, as currently interpreted, that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.	
X	How are recipients currently using or supporting pro bono volunteers in brief service clinics?
X	What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?

	How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
X	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
	Other issues related to Topic 3 (please specify in your submitted outline).

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