



NLADA COMMENT ON STRATEGIC PLANNING

The National Legal Aid and Defender Association submits this comment in response to the December 23, 2010, publication in the Federal Register (75 FR 80850) soliciting suggestions for updating, revising and modifying LSC's current Strategic Directions and developing a new strategic plan for LSC for 2011-2015. Included in addition to these comments in a separate document is a line by line review of the current strategic plan with suggestions for changes and updates. However, we wish to highlight some of our major suggestions in this memorandum.

NLADA RECOMMENDATIONS FOR THE LSC STRATEGIC PLAN

LSC has a major role to play to improve the civil legal assistance system. Some of our major recommendations follow:

Mission

We support the mission in the prior Strategic Plan:

To promote equal access to justice in our Nation and to provide high quality civil legal assistance to low-income persons.

In addition to the references to the Statement of Purpose in the LSC Act, which we believe should remain in the Strategic Plan commentary, we would also add the point that the Preamble to the Constitution begins with the need to "establish justice" and is the basis for ensuring "domestic tranquility."

Other Federal Funders

LSC grantees received considerable funding from other non-LSC federal departments including the Department of Health and Human Services (e.g., Administration on Aging), Department of Housing and Urban Development (e.g., Fair Housing Initiatives Program) and the Department of Justice (e.g., Office of Violence Against Women). While federal grant programs are valuable and help many thousands of people throughout the country obtain critical legal services, the programs are known today for being extremely bureaucratic and have differing reporting and financial requirements from agency to agency. Some are seed grants and not long-term funding. Grantees face significant issues involving requests for information protected by the attorney-client privilege and ethical rules on confidentiality. There are also problems in finding matching funds. As a result of these and other problems, many good legal aid programs are deterred from applying for the funding and those that do receive the funding are required to unnecessarily

expend unduly large amounts on grant administration. LSC should expand its outreach to other federal funders and take the lead in convening an ongoing process among other federal funders to effectively address these and other issues.

Regulations and Policies

The new LSC board should carefully review the current LSC regulations and policies, including CSR, to reduce regulatory and administrative burdens on LSC grantees and to address issues that have arisen in the implementation and interpretation of the current regulations and policies. This review should be done in consultation with representatives of grantee programs who can help the new board identify those issues under the current regulations and policies that have been of concern to field programs. Based on this review, the Board should adopt a regulatory agenda for 2011 and beyond based on the need for new or revised regulations that it identifies.

Quality

The current LSC “quality agenda” uses the LSC Performance Criteria in its grant competition process and in visits by the staff of the Office of Program Performance to review LSC grantee program quality. These should continue. Using existing approaches as well as new initiatives, LSC should continue to work with grantees to improve the quality of representation provided to the clients and communities they serve. LSC should also proactively participate with IOLTA and state funders, the American Bar Association, NLADA and other relevant groups and stakeholders to develop the tools necessary to effectively implement the ABA Standards for the Provision of Civil Legal Aid.¹

Support and Infrastructure

A key component of quality is training, support and necessary research.² No recent assessments have been done regarding the needs for training, support and research within the civil legal aid community, nor has there been a comprehensive assessment of the capacities that exist across the country to meet those needs. Therefore, a careful assessment of those needs and the range of capacities that are currently available are necessary in order to determine how LSC should proceed to address them. Such an assessment should begin with an analysis of the changing

¹ In 2007, the ABA, LSC, IOLTA and state funding representative, CLASP, NLADA, MIE and others came together to discuss and develop an outline of possible areas where materials needed to be developed to implement the ABA Standards for the Provision of Civil Legal Aid. Unfortunately, most of the suggestions for materials have never been developed and implemented. A similar convening should occur and a review agenda should be developed.

² When LSC began operations in 1975, it had organizational divisions devoted to training and research on the delivery of civil legal aid and it provided funding for state and national support. LSC ended its funding for research in 1982, and in 1996 Congress eliminated funding for national and state support centers and training programs. As a result, LSC could no longer fund the national infrastructure that had included 15 national support centers and five regional training centers. In addition, the loss of over \$10 million in LSC’s state support funding took a large toll on the state support structure that had helped to ensure coordination and support for all legal providers and their partners in the states, along with a central focus on statewide advocacy on issues of importance to low-income persons, including representation before legislative and administrative bodies.

legal needs of the low-income community. The demographics of the low-income population have changed considerably over the last 15 years, and many new legal problems affecting poor people have arisen. LSC should examine the need for skills and substantive training; access to research capacity; professional development for legal aid attorneys and paralegals; governance, financial and cross-cultural communication training for grantee board members; management and administrative training for grantee executive directors and other program management staff; as well as professional development for advocates and staff at all levels. It should also examine what types of substantive information is necessary for effective legal aid advocacy and what gaps exist. It should examine the best ways to use technology to provide information and research to grantees and their staffs, as well as the need for access to skilled and experienced substantive experts and litigators who could provide technical assistance and co-counseling. Finally, it should consider whether LSC should have a research capacity to stimulate innovation in, and examine the delivery of, civil legal assistance. Many other developed countries have such a delivery research capacity as part of their civil legal aid systems. Based on these assessments, LSC should then develop a plan to ensure the availability of training, support and research that addresses the documented needs in a cost effective manner.

Private Attorney Involvement

LSC should examine and provide leadership to achieve effective and innovative private attorney involvement in the delivery of civil legal assistance. Currently, every LSC grantee must expend the equivalent of 12.5% of its LSC grant award on private attorney involvement (PAI). The requirements are spelled out in 45 CFR §1614 and Office of Legal Affairs opinions. LSC should review the current private attorney involvement structure to ensure that the current PAI requirements provide flexibility for grantees to develop and utilize innovative and effective PAI programs at a reasonable cost.

Competitive Salaries

Because the largest cohort of experienced lawyers in LSC grantees is nearing retirement age, LSC should consider how it can help programs institute competitive salaries to recruit and retain the leaders of tomorrow.

Leadership Development

In addition, LSC should consider whether to continue, make changes in, and/or expand the leadership development and mentoring pilot program that it began several years ago. The pilot program utilized leadership mentoring as a strategy to support the development of a diverse corps of well-trained future leaders for the legal services community. LSC should explore the creation of a leadership development and mentoring pilot program for client board leaders as well.

Monitoring for Compliance

LSC should thoroughly review how LSC monitors for compliance with existing laws and regulations and what is the most appropriate and cost effective method to ensure compliance by

LSC grantees with the significant requirements of those laws and regulations. Both the OIG and the OCE monitor for compliance, and there is some duplication of effort. LSC should carefully explore how new technology could reduce travel costs and increase the effectiveness and efficiency of monitoring. In addition, LSC should promote best practices in risk management to help grantees improve fiscal and regulatory accountability. LSC should also review the desirability and appropriateness of continuing to use Independent Public Accountants to review and determine compliance with the LSC Act, appropriation laws and regulations, as opposed to internal financial controls, and should make recommendations to Congress accordingly.

Encouraging Innovation

LSC should be more proactive in encouraging innovation and providing flexibility for grantee experimentation. LSC should also help programs evaluate the innovations and experiments, publicize the results, and encourage replicating those innovations that work. Many innovations in the LSC delivery system have been occurring in addition to those which LSC has helped promote and develop through the TIG grants. For example, Medical Legal Partnerships integrate lawyers into the health care setting to help patients navigate the complex legal systems that often hold solutions to many social determinants of health – e.g., income supports and SNAP program eligibility for hungry families, utility shut-off protection during cold winter months, and mold removal from the homes of asthmatics. Doctors and lawyers are now partnered at over 170 hospitals and health centers in 40 states nationwide in Pediatrics, Family Medicine, Internal Medicine, Oncology, and Geriatrics. Nearly half of LSC-funded legal services programs have an active or developing medical-legal partnership program.

Performance Measures

NLADA strongly endorses the current Strategic Plan language on the use of outcome measures for LSC grantees. We do not believe that LSC should develop national level outcome measures that grantees would be required to use and report on as an indicator of the quality of a particular program's services. LSC rejected this approach in the past after giving the issue careful consideration and considerable analysis and concluding that collecting national case outcome data is beset with significant difficulties and not essential to helping LSC determine whether a civil legal aid program grantee is effective. In addition, there are a variety of burdensome administrative recordkeeping and cost issues involved in collecting such data that raise significant cost-benefit and accuracy concerns. Furthermore, there may well be severe unintended consequences from collecting that data when seeking funding, particularly at the federal level, including adverse reactions in Congress and imposition by Congress of its own narrow access-focused outcome system. Therefore, NLADA does not believe that LSC should proceed to include within the strategic plan an effort to develop a national outcome measurement system. Instead, as part of its Quality Agenda, LSC should encourage its programs to establish their own outcome measurement systems that are keyed to the outcomes the programs themselves have determined are relevant to their own program priorities and management objectives. In conjunction with grantees and their representatives, LSC should develop templates and tools to assist grantees to set goals and measure outcomes.

