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MEMORANDUM

To: Legal Services Corporation

From: Don Saunders, Director of Civil Legal Services, NLADA

Re: Initial Comments on State Justice Communities Planning Initiative Evaluation Instrument

Date: September 27, 2002

These comments are provided in response to LSC's request for input regarding the initial draft state justice community evaluation instrument developed for field testing in Washington State and Kentucky this fall, and for full implementation in 2003 in 18 states. NLADA looks forward to working with LSC throughout this test process to ensure the development of a system that most efficiently and effectively provides the information and assessment that LSC seeks through this initiative.

Given the myriad of issues raised and the detailed information sought in the draft instrument, neither the NLADA Resources Committee, Civil Policy Group nor Board of Directors have had an opportunity to develop policy positions and recommendations regarding many of the significant issues posed by the draft. Therefore, these comments are submitted to raise at the front end of the process a number of concerns and questions that have been aired during frequent discussions among NLADA's leadership and its members. This is not to imply that the various concerns have been overlooked or disregarded by LSC staff, its consultants or the members of the Design Team. We look forward to working with LSC and the test states in striving to address these and other concerns through broad deliberation, discussion and refinement during the course of the field test.

While NLADA has raised a number of the specific concerns of our members throughout the LSC state planning process, the Association has generally been supportive of the overall goals of establishing integrated, comprehensive state justice communities in every state. We have worked with LSC and our constituents throughout the process in striving to make the goals of state planning realities with regard to improved stakeholder involvement and ownership of the justice system; increased and diversified fundraising capacities; maximization of the impact of technology to improve delivery; greater involvement of the private bar resource; and increased capacity for training and support

for the delivery of quality services. We have also gone beyond the scope of LSC, given the Congressional mandates and limitations on the use of federal funding, to encourage the development of capacities in every state to address both particular groups of clients and advocacy needs restricted to LSC grantees.

It is from this experience that we raise the following questions and concerns. To the extent that these comments raise issues that LSC staff or the Design Team can address through changes to the draft prior to its release this fall, we would welcome those changes. If the concerns raise deeper policy questions that should be considered as LSC tests the document and evaluation process this November, NLADA will work actively with LSC in fashioning answers that work for both LSC and the justice communities it seeks to evaluate.

GENERAL CONCERNS OR QUESTIONS

- **Scope of the evaluation.** While much practical information will be gained through the Washington and Kentucky experiences, we question whether the detailed information requests and the broad net which is cast across the community (far beyond LSC-funded entities) will not create overly burdensome time demands and costs on states to comply. How much will this process cost? Who will assume these costs? Will the outcome result in better services for clients? Does the document really need to be 55 pages? Could it be significantly simplified?

In many states, non-LSC entities are likely best placed to lead the evaluation process. Will they cooperate? Will they be compensated? What input will they have into a process directed toward LSC grantees, particularly if they fund equal justice initiatives themselves?

- **Inherent limitations of LSC-led evaluation process.** Many states have crafted visions of a state justice community that include components that go beyond the limitations inherent in LSC funding given the restrictions placed upon that funding. These states have endeavored to ensure that all clients have access to the justice system and to all the tools and forums that are embodied therein. NLADA strongly supports that vision.

It would not be appropriate for LSC to evaluate state justice communities that provide services restricted to grantees of LSC funds. What will be the impact of looking at a state justice community through the lens of the federal restrictions? Will we indeed “get what we measure”? The state planning process at its essence was designed to develop strong capacities in states to define and develop the best possible justice systems given local realities and possibilities. If a state’s vision goes beyond LSC’s capacities, what will be the impact of defining “state justice community” in terms of the more narrow, federally supported component? How will/should those broader systems be measured?

- **Participation by non-LSC entities.** Much of the analysis and information contained in the draft instrument is dependent upon the participation and buy-in of a host of entities and stakeholders beyond the reach of LSC funding. How can grantees ensure they will participate, either by being a part of the “state justice community” or by proving the information being sought? What will be the impact on the evaluation if they do not?
- **Relationship of evaluation process to competition for LSC funds.** The prior question and many others take on a different perspective depending upon the impact that this evaluation will hold in relationship to the competitive bidding process for LSC funds. It might be a meaningful indicator of the relative health of a state justice community if these non-LSC entities indeed chose to participate voluntarily. However, if not, will LSC grantees suffer? What impact, if any, will the assessment of the state justice community have on LSC’s opinion of the quality of a specific, individual LSC grantee? Can it have such an impact without a specific LSC regulation to that effect?
- **Is the evaluation process consistent with the goals of state planning?** A paramount goal of the LSC state planning process, and a stated goal of this evaluation instrument, is the creation of state-based justice systems. The design of this instrument and the process of evaluation might not be consistent with those goals. Better outcomes for clients are obviously the underlying goal of any state justice community. Are you getting at that by focusing so much attention on the structure of the state system? Are you really judging a state against its state plan, as you purport, or against a national view of what is an optimal structure?

Section 1 in particular focuses upon a variety of structural issues related to a state system in a weighted fashion. Many LSC grantees and state planners might wonder if the highly weighted components do not amount to an LSC view of what a system should look like. Many highly effective systems throughout the country have developed components that work, but that reflect poorly in your ratings system. What will be the impact of such an instrument? What message will it send to states?

- **Does the draft contain new LSC policies regarding state planning not previously contained in PL’s 98-1, 98-6, 00-7 and 02-3?** While the instrument generally attempts to measure the goals of the process stated over time, certain questions (e.g. state planning body should compel action vis a vis an LSC grantee board of directors; specific definitive principles of relative equity; trying to address every client issue versus the priority setting process) present new, important policy directives that deserve further conversation as the field test goes forward. NLADA is not prepared at this point to provide policy recommendations, nor have we identified what issues might bear further discussion, but we look forward to working with LSC on these issues throughout the field test.
- **Miscomprehension of the availability of pro bono data.** There are a number of questions in the draft designed to quantify the amount of pro bono resources that are

contributed within the state justice community. Much pro bono assistance is provided outside the framework of organized pro bono programs. Even among many organized pro bono programs, the statistics sought here are not maintained. In most states, if not all, this information is not tabulated in any form that would allow a meaningful response. Significant discussions should take place with state planners and the organized bar regarding better ways to get at this data.

SPECIFIC CONCERNS OR QUESTIONS

Obviously, with any document of this length and detail, numerous questions are raised regarding the practical impact of certain components and the definitions inherent in many of the terms used. Among the ones NLADA has identified to this point are:

Section 1. Statewide Planning Process and Coverage of State Plans

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- **1.1.1 Client-Centeredness.** More definition would be helpful here. What is the relationship of the state planning process to Regulation 1620? Should the focus be on client goals or needs? Are you evaluating individual or collective client concerns?
- **1.1.2 Unified Planning.** Some states have adopted an effective regional planning model. Should that model be contemplated in this part?
- **1.1.5 Participation.** What is meant by “all legal services programs?” Some states have hundreds of legal services providers. To expect them all to participate might be highly unrealistic.
- **1.1.6 Authority of Planning Body to Compel Compliance.** Should this be given the highest ranking? What is the relationship of the planning body and boards of directors of grantees? Does this usurp the fiduciary, policy making and fiscal responsibility of the policy body legally charged with the duty of protecting the interests of the program? Many successful state planning efforts have proceeded without this component.
- **1.1.7 Staff Support.** This point combined with the above, is a potential example of the earlier overall concern that LSC might be signaling a preferred model (state planning body, well-staffed, with authority to compel compliance) that is both imposed from outside and goes beyond previously stated state planning policy.
- **1.1.11 Formality of Organization.** Many very successful planning efforts have emerged from bodies not appointed by a supreme court. Why is this

not a factor of the realities within a given state? In some states, the court might not be the best body to set priorities in such a direct way. Certain issues related to the administration of justice could create a conflict in such a relationship. Does the draft again direct a given “structure?”

- **1.2 Inclusiveness of Structure.** How many of this somewhat daunting list are enough? Or does the draft contemplate very large planning structures? The commentary could be more tightly crafted to explain the degree of latitude an evaluator should consider. Could a state not decide a more narrowly representative group with a core of effective leaders is more appropriate for their needs? Without some additional guidance, this area of inquiry could become overly subjective for the evaluator.
- **1.3 Diversity.** More definition might prove helpful here. Questions relating to a persons sexual orientation or religion might not be appropriate ones for a planning body to ask. Presumably, the identification of “persons of all nationalities” refers to populations relevant to a given service area. Even so, in urban environments, including “all” nationalities would likely be impossible.

Part 2. Maintain Rigorous Planning Process

- **2.1 Breadth of Input.** Significant input from a broad range of stakeholders might well prove to be more effective in a given state than broad inclusion on a planning body. However, this list is very long and could be read to suggest a level of commitment of time and resources to procuring input that would be prohibitive and exhaustive of the limited resources available in many states. Refining this important area in practical terms should be an important part of the testing process.

Part 3. Produce Comprehensive State Plan

- **3.1.1 Exclusion of Groups.** Is this analysis looking at groups of clients “potentially eligible” under the LSC restrictions or in a broader context? If these groups are eligible for service from a non-LSC provider are they included herein? Also, in the LSC context, how does meeting all of “the needs” described in this part dovetail with the priority setting process under Regulation 1620?
- **3.1.2 Limitations Imposed by Funding Sources.** Does this analysis transfer responsibility of compliance with funding requirements to the state planning body? What about the responsibilities of local boards of directors? It seems problematic that a variety of providers in a given state would delegate this responsibility. What about LSC’s responsibilities to ensure compliance? Do they not flow directly to the grantee?
- **3.2.1 Subject Matter Coverage.** While other parts of the draft survey include the broad range of providers within a state, LSC and non-LSC, this part

shifts to analyze the legal work of only the LSC grantees. This particular analysis is the one most likely to create the dichotomy with state planning efforts that have envisioned a delivery system capable of addressing needs beyond LSC funded capabilities. How does this Part fit with the priority setting process? Can states realistically be expected to address every client problem, when only 20% of the need is currently being met? The impact of this analysis needs to be closely examined during the testing phase.

- **3.3 Appropriate Mix of Services.** These capacities are critical for achieving meaningful outcomes for clients. Does lumping them together in one section for evaluation while providing greatly detailed “rankings” in the structural part of the draft send the right message? Does structure outweigh implementation as a result?
- **3.4 Mix of Delivery Models.** As above, collecting all of these models under one part might not be the best approach. Should the capacity for full representation be given the same consideration and weight as Web-based information? Should full representation perhaps have a separate listing and its own evaluation?
- **3.6 Coordination of Activities.** The instructions to this Part might not reflect the broader planning that has taken place in many states. The driving vision of a given process might not be “to maximize services to clients eligible for LSC-funded legal services.” Rather, emphasis within a plan might legitimately be placed upon maximizing the provision of services through non-LSC funded, less restricted providers.
- **3.7 Engagement of Multiple Entities.** Defining engagement would help. How specific does the working relationship need to be defined? Why only the executive branch? “Other professional associations, e.g. doctors and accountants” is vague and somewhat confusing. Again, this area of analysis is potentially overbearing in many states.
- **3.9 Technology for Statewide Operational Systems.** The ability of some states to conform to this analysis may well depend upon circumstances beyond their control. Integration with court-based technology, for example, is not always widely available within a given state. Court rules are very specific with respect to issues such as e-filing. Another measure for consideration needs to be the availability and constancy of the technological infrastructure in poorer, rural states.
- **3.10.2 Generation of Other Governmental Funds.** How can the state plan determine or direct other programs’ (not legal services programs) funding streams? How can planners obtain this information? What use will be made of it?

- **3.11 Statewide Strategy for Quality Assurance.** Again, is this Part implying a particular statewide model that might not be appropriate in a given state? Should the state plan be the repository of quality assurance mechanisms that might be better left to the provider level, particularly in states with multiple providers? A state plan has no authority to address “a Bar disciplinary mechanism.”

Part 4. Maximum Efficiency and Effectiveness of Resource Use

This Part in general makes many assumptions on configuration as it relates to the effectiveness of a given delivery system. The evidence to date from reconfiguration suggests that focused, creative leadership, more than any particular configuration, might have a greater role in ensuring the effective use of resources. Your two test states provide contrasting means to evaluate this question of whether configuration itself ensures the highest and most strategic use of all resources.

- **4.1.1 Delivery System Will Maximize Access Throughout State.** The focus here again shifts to the LSC-funded component of the overall delivery system. Can the measure of an optimally effective configuration to meet the diverse needs of clients statewide be taken without consideration of other partners in the justice system? How is the evaluator’s “impression of the extent to which the configuration of service providers contained in the plan promotes relative equity” to be determined? That critical question is left to a completely subjective assessment by the evaluator under this draft.
- **4.2.2 State Level Capacities.** While we completely agree with the critical need for state support capacity, the sheer weight of all of these very resource- and time- consuming efforts into one inquiry might be beyond any state’s reach. Each of these issues contains a host of specific measures of quality factors that are very complex. This approach only applies the evaluator’s subjective views of the success of each of these components. Some further detail and definition would be helpful.

Section 2. Implementation of State Justice Communities Plans. In large states, especially ones with multiple regions, there may be hundreds of actions that will be on the evaluator’s or the state’s list. Successful state plans have a number of outgrowths not contemplated in the written document as well. Are the evaluators (and the state planners) really prepared to analyze each of them? If not, who decides what will be evaluated? How do you weigh “the relative importance of each action in achieving the goals . . .” without a completely subjective view from the evaluator?

How will the evaluator independently verify during the site visit the information provided? Will the state be required to schedule interviews with the state supreme

court? Other non-LSC entities or their boards? If this is contemplated, substantial lead-time should be provided.

Section 3. Objective Measures of the Success of State Justice Communities Planning

- **A1 State-Level Capacities.** Why does the draft measure change since 1998? Why not compare a state’s progress to 1995 when the process was begun? Should the evaluator be directed to assign a score of zero if the capacity does not exist or “is so new or lacking in effectiveness that it does not enhance the effectiveness or delivery of legal services”? Does this approach create a strong bias toward states that are much further along, or started substantially ahead, in the planning process? Will non-LSC programs be required to supply data? If not, can a true assessment of the capacity of a state’s system be made?
- **A2 Capacity to Strengthen the Community.** Should evaluators not consider additional factors, such as loan forgiveness programs, pensions and benefits, leadership training and diversity?
- **A3 Capacity for Public Support and Resource Development.** More definition of what is contemplated by coordinated advocacy issues affecting legal services **providers** would be helpful.
- **A4 Non-LSC Resources Received by All Legal Services Providers.** In many larger states, this Part will present an enormous, and difficult, challenge to gather all the information from the myriad of “all” providers of legal services in a state.
- **A5 Relative Availability of Lawyers.** This Part presents the same concerns as A4. Also, a number of states use 100% of poverty, not 125%. Should they not have the option in making this calculation?
- **B1 Quantity of Service by Type.** Again, this Part highlights the dichotomy of viewing a state justice community solely through the LSC prism. Such an analysis misses much of the important work being undertaken and completed within a state and is not an accurate barometer of the success of a state plan. CSR and MSR data provide only a limited vision of the quality, quantity and outcomes achieved for clients. This area should be closely evaluated during the field test.
- **C1 Geographic Equity in Resource Distribution.** This Part raises a host of questions and potential policy decisions that need to be explored over the next several months. As pointed out above, it is not possible in most states to begin to make a calculation of pro bono hours similar to that contemplated herein. Likewise, it might be impossible to gather an accurate picture of all the non-LSC resources and how they are allocated in many states. Is LSC now telling its

grantees that equal amounts of resources should be allocated to all the counties within a state? Is even an aspirational goal in this regard realistic, given funding realities in each state?

These questions and concerns are offered constructively as a first step in what NLADA hopes will be a productive process of dialogue between LSC and the many players with a stake in the civil justice system at the state level. We intend to fully explore these issues with our members and our leadership and hope to continue to inform the process as you begin testing it.

We realize that the Design Team worked very hard and surely discussed and understood many of the questions and concerns raised here. We are not privy to those discussions at this point and welcome a chance for further dialog. We also recognize that much of the commentary in the draft attempts to get at some of these issues.

However, the release of the document has generated a great deal of dialog about the future of this process, and state planning in general. NLADA will continue to listen to the concerns of its members and try to constructively instill them into your process.