

The Impact of Legal Services Program Reconfiguration on Pro Bono

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The ABA Center for Pro Bono commissioned a study in 2002 that was designed to examine how the changes in corporate structure at many legal services programs, resulting from the emphasis of the Legal Services Corporation (LSC) on merger and reconfiguration, have impacted private attorney involvement and pro bono delivery systems.¹

The study examines eighteen reconfigured programs, which include both staffed and pro bono delivery models. Some are statewide mergers, some multi-program but not statewide, and some involved only two programs coming together. There is a mix of urban and rural as well as geographic diversity. Programs at different stages of reconfiguration and ones that would provide a range of pro bono models were selected.

Background

With the implementation in the early 1980's of the LSC regulation that required that every grantee spend an amount equal to 12.5 percent of its LSC grant on private attorney involvement (PAI), the number of pro bono programs increased greatly. In 1980, ABA records show there were 88 pro bono programs. By 1985, there were over 500 pro bono programs and by 1990 there were 900.

In the mid-1990's, LSC began encouraging the development of statewide, integrated equal justice communities. The development of statewide planning entities, with representation from all stakeholders, was encouraged. A significant result of this movement was a reduction in the number of LSC-funded programs in each state, creating statewide programs where possible and regional ones in the bigger states. As of September 2002, there were reconfigurations in 28 states, resulting in approximately 170 LSC-funded programs, compared to 260 in 1998, a one-third reduction.

Study/Survey Methodology

The first step in the research was to review the state plans and (where available) the self-evaluations that LSC had required state planning entities to produce. This was done to obtain some basic information before talking with program people to reduce the amount of interview time and to get a sense of specific questions that should be asked. Telephone interviews followed. For most programs, conversations were held with two people, usually the executive director of the reconfigured program and someone connected with the pro bono program. Depending on the

¹The terms private attorney involvement (PAI) and pro bono have different usages in varying contexts. The terms are defined here as they are used in this report. Although PAI is an all-inclusive term that is used to describe any activity that utilizes private attorneys, here it is used only to describe work related to the LSC requirement (45 CFR Section 1614) that programs expend an amount equal to 12.5% of their LSC grant on work with the private bar. Pro bono is used most of the time in this report, and means any activity that uses volunteer lawyers to provide legal assistance to the poor. Contract attorney is used to describe systems that pay members of the private bar to take a case, including judicare.

structure, the pro bono contact was either an in-house staff member or a person employed by an outside pro bono project.

Understanding the Difficulty of Reconfiguration

A very important factor related to reconfiguration in terms of this study is that *reconfiguration is very difficult*. There was near unanimity amongst the interviewees on this point. This is especially important because in the face of so much difficulty, pro bono appears to be among the least pressing issues addressed during the first phases of the reconfiguration process.

“Least pressing” is not meant to suggest “unimportant”, although some may feel that pro bono is not terribly important at this time. In reality, there are many tasks to be completed first, even if a better pro bono program, a better intake system, or any of a variety of other service delivery issues may be more important. This study did not ask LSC program staff what their priorities were, nor were they asked to compare pro bono with other substantive delivery issues in terms of importance during reconfiguration. However, many interviewees volunteered information about what was consuming their time, and the matters mentioned most often were computer, database, and similar system consolidations and purchases; union issues; salary and benefit inequities and related problems; problems dealing with merging cultures; and general resistance to change.

Improving pro bono did not appear on the list of most important and immediate problems, even in programs where leaders were determined to improve their pro bono function. Increased costs seem to be a general problem with reconfiguration, as most of the issues mentioned above have expenses attached to them. To the extent that improving pro bono requires additional expense, it may be put off if other new expenses must be incurred.

Differences in Pro Bono Models

There seem to be three general ways that the work considered as PAI in LSC-funded programs is accomplished and, within those three systems, there are a wide variety of structures. The three models are:

1. In-house pro bono programs: In this model, the LSC-funded program has its own project(s) that handles most or all of the pro bono activities - recruiting attorneys, doing intake, screening and assigning cases, training, developing and coordinating recognition activities, etc. In many programs, the in-house project is supported by a bar program. If there is a bar program as well, its most frequent activities are attorney recruitment, training and recognition.
2. Independent pro bono programs: This model involves a pro bono program outside of the LSC-funded program, usually run through a state or local bar association, but sometimes as a separate entity. The independent program may handle everything, with the LSC-funded program simply telling potential clients that it cannot serve to call the pro bono program. However, it is frequently the case that the LSC program does intake, screens for eligibility, determines which cases should be assigned to pro bono, and then manages the referral to the program internally. Some independent programs receive some or all of their funding from the LSC program, with the LSC program thereby fulfilling some or all of its PAI requirement through a sub-grant to the pro bono program.

3. Contract work with the private bar: Here, LSC programs pay members of the private bar to take cases. Although this is most often used in rural areas with few lawyers and no legal aid office, it also is seen in some urban areas.

Most LSC programs use a combination of two or three of these methods to fulfill their PAI requirement.

Reconfiguration and Pro Bono

As noted earlier, pro bono does not seem to be a major priority in most reconfigurations occurring in legal services today. The study identified two factors that seemed to impact whether pro bono is seriously considered during the reconfiguration process were identified. One has to do with programs having incompatible pro bono systems. Only two of the programs interviewed included a major change in their pro bono system as part of the early reconfiguring process. Both of these programs had incompatible pro bono systems coming together, and both situations demanded a conversion to more compatible pro bono programs.

The other and more important factor was the interest of key personnel. Pro bono appears to have figured more prominently in the reconfiguration of programs where the executive director or another high-level staff person has a very strong commitment to pro bono. This seemed to be particularly so in reconfigurations where the new executive director came out of a smaller program, where he or she had had personal involvement with pro bono. In a few programs, some changes in pro bono occurred because bar staff or volunteers made the overture. Particularly in statewide mergers, it appears that pro bono is more likely to be recognized in the process if the bar association has a pro bono state support staff person and/or a strong, demonstrated pro bono commitment.

Another observation in the study is that the more difficult the reconfiguration process, the less likely it is that pro bono will be discussed and acted on in a thoughtful way. Several surveyed programs noted that serious management problems overwhelmed the reconfiguration process, allowing for scant attention to be paid to the pro bono systems or their delivery.

Recommendations

In the best of circumstances, management staff in programs undergoing reconfiguration would focus broadly on how the newly reconfigured program could improve delivery of legal services to clients, utilizing all strategies and resources available. These programs, in consultation with volunteer leadership, would look critically at their pro bono systems *early in the reconfiguration process*. They would analyze possibilities; decide what changes, if any, might make a better program; and develop a plan for implementing those changes.

The following suggestions are strategies that can be implemented without a lot of up-front work that would positively impact a pro bono program:

- Set the stage for potential changes in the pro bono structure during the early phases of reconfiguration, and then implement the change when the time is right. As noted earlier, pro bono is not going to be among the first issues to be considered in most reconfiguring programs. The problem with waiting to think about pro bono is that certain options may be precluded by other decisions. So, consider pro bono early and design the program with these potential changes in mind.

- Strongly consider developing a system that puts overall management and responsibility for PAI in the hands of a deputy director level manager who has had pro bono experience and enjoys working with volunteers. This staff member can work with the key bar associations to develop stronger relationships with private attorneys, and can train, assist and support regional/local staff who are probably going to be responsible for referring cases to pro bono lawyers, or local bar pro bono programs if the pro bono programs are not in-house.
- Where possible, design the staffing so that there is at least one person whose only responsibility is pro bono. Staff who do pro bono part-time often find that their other responsibilities take over, and pro bono suffers.
- Include representatives of the private bar and/or pro bono programs on the transition/reconfiguration planning and implementation committee. People who are not board or staff of the reconfiguring programs may help keep the focus on how to best meet the needs of clients and may help to mediate disagreements. They may also bring to the table fresh ideas related to pro bono that can be built into the long-term reconfiguration plans.
- Establish a pro bono committee of the program's board to reflect the importance of pro bono in the program's overall delivery structure. This advisory committee could help to articulate a vision for the pro bono component including its staffing, operation and integration within the program. Once the pro bono project is established, the committee could serve as a "board of directors" to help support the project's work.

Developing Pro Bono Models

There are several pro bono ideas brewing in reconfiguring programs that could be used as good models. A strong statewide model would combine high-level leadership and support for pro bono with local-level authority and responsibility. Having a high-level management person at the legal services program, who is interested in making pro bono successful and who provides solid support for local pro bono activities, sends a message about the importance of pro bono in the program and encourages local managers, staff and/or pro bono coordinators to give pro bono some priority.

This high-level program support could be coupled with a strong pro bono person on the staff at the state bar association to help keep the bar focused on pro bono, provide support for any independent pro bono programs that may exist, and, depending on the model, may be the person in the state who handles some pro bono services, such as recruitment and recognition. With management level people at the statewide legal services program and the state bar, there is a potential for regular collaboration and cooperation.

Since pro bono is so personalized, much of the work is best done at a local level, whether through in-house or independent pro bono programs. It would seem that in all but the smallest states, the decisions about case referrals are best made at a local level, where a pro bono-dedicated staff person is more likely to have personal relationships with the attorneys. Some recruitment also is more effectively realized locally, on a personal, one-to-one basis. This high-level leadership combined with localization and personalization has the potential to provide the power, coordination, and strength of relationships at the various levels where it is needed.

The most successful current overall pro bono delivery model within a reconfigured program may be the one found in New Hampshire, Connecticut and the Volunteer Lawyers Project of the Boston Bar Association. This model operationally separates intake, advice, and referral from the more full representation components of the delivery system, yet at the same time it fully integrates these functions into the system. In New Hampshire and Boston, the pro bono function is operationally separate from the overall program. And in Connecticut, the recruitment, retention, and recognition pieces are separate. From these three programs, it appears that when these elements are operationally separated out and put into the hands of a skilled executive director, there is more time and energy to focus on improving these functions, and more time and willingness to figure out how to best collaborate with the private bar. The staff of the intake and advice systems in these reconfigured programs appear to have closer working relationships with the staff of the pro bono programs than in virtually any other program reviewed in this study.

Talking to the staff in the New Hampshire, Connecticut and Boston programs is quite different from talking to staff in currently reconfiguring programs. Although they identify problems, they sound as though they have the time and energy to solve, or at least ameliorate, them. They seem to have developed sophisticated, successful pro bono programs, and they are working on how to make good programs into great ones. Because the goal of these reconfigurations was to design programs that could function without the restrictions of LSC, and all three service areas had sufficient non-LSC funding to do this successfully, these programs are unlike any of the current reconfigurations. They also are all in New England, which is probably not important, and they all cover relatively small geographic areas, which probably is. Some of the success very likely is due to the size of these programs, and it would be hard to replicate if there was a separate intake and advice program in a larger geographical area. The problems inherent in managing a large geographical area and client base might prevent the “New England” model from being as effective in a larger program. But, the search to develop a big program model might begin with a further investigation into these early reconfigurations that seem to be working well.

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It is important to analyze each reconfiguration separately – paying special attention to the unique aspects of particular mergers and programs. At the same time, there may well be lessons and models that can be developed over time for different reconfiguration scenarios. Tracking the progress of specific reconfigurations over several years will provide constructive learning, and developing materials and other resources to support pro bono staff within reconfigurations is a worthwhile effort. In addition, continuing to confer on a national level to increase pro bono support within reconfiguring programs is critical.

It is apparent to everyone involved that reconfiguration is hard. The process is certainly ongoing and will likely take many years to complete. To better serve the needs of clients, it is imperative for reconfiguring programs to seek ways of bringing the vital pro bono function off the back burner and to develop new strategies for incorporating pro bono into each program’s larger set of priorities. Ultimately, reconfigured programs will not succeed as high quality deliverers of legal services to the poor without a strong pro bono capacity.