



**Legal
Services
Corporation**

750 First Street, NE
Washington, D.C. 20002-4250
202-336-8800 202-336-8959 (Fax)
www.lsc.gov

Writer's Direct Telephone
(202) 336-8849

E-mail : sarjeank@smtp.lsc.gov

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President

May 28, 1999

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1625 K Street., NW
Washington, DC 20006

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Funding Criteria Committee
Legal Services of Southeastern Michigan
420 North Fourth Avenue
Ann Arbor, MI 48104

Dear Alan, Don, and Bob:

Thank you for your memorandum of February 16, 1999. We are sorry it has taken so long to respond, but we wanted to give your memorandum the careful consideration it deserves. At the outset, let us express our appreciation for the thought and care reflected in your memorandum. We also want to reiterate our commitment to working with you, the organizations you represent, and other national and state equal justice leaders on an ongoing basis. As we have stated several times previously, we remain open to augmenting the design and structure of the state planning initiative as our community learns and grows through its experiences.

In your memorandum, you raise three primary areas of concern.¹ First, the

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process that LSC should employ in making state planning decisions; second, the substantive criteria that should guide LSC and state planners in making decisions regarding service area configuration; and third, the relationship between the state planning process and the duration of grant awards. In this letter, each of these concerns is addressed.

You also make a valid and helpful observation that we need to be more clear regarding our objectives, and the values and criteria that we believe should guide state planners in the *overall* planning effort. As you will see, we have devoted much of this letter to doing just that, further expanding upon the context of the state planning initiative, LSC's expectations of state planners, and what state planners should expect of LSC as this initiative continues to move forward.

LSC Process in State Planning Decisions on Configuration

Your memorandum suggests that LSC should employ a more formal process in communicating with states about configuration decisions. While we appreciate the concerns that have led to this suggestion we do not believe the process you suggest would advance our efforts to establish relationships that promote a positive, open exchange of information and ideas. We also believe the kind of formulaic approach you suggest inappropriately severs the question of configuration from the state planning analysis, review and feedback process. We believe a more constructive response is to enhance the qualitative level of our staff's engagement with state planners prior to making state planning decisions, whether or not such decisions involve configuration issues and concerns. In the past few months, we have increased our efforts to visit and explore the delivery issues in each state, engage in dialogue, and communicate our observations, concerns and expectations through on-site work with recipients and a broad cross section of other stakeholders. These efforts have enabled us to establish relationships with state planners that promote productive planning and have led to very positive results in a number of states. This is especially true where recipients have actively involved a range of stakeholders in their planning processes and have shared responsibility for assuring good communication among all interested parties.

While we remain open to implementing changes in our approach when appropriate, at this time, we do not believe that the planning initiative would be strengthened by adoption of the formal process suggested in your memorandum and by the FCC's letter of December 18, 1998.

Substantive Criteria Used by LSC in Decisions on Configuration

We agree that many of the criteria identified in your memorandum, in SCLAID's letter of December 23, 1998, and in our Program Letters 98-1 and 98-6 are part of the overall analysis that should guide state planning decisions, including, but not limited to, decisions affecting configuration. We will incorporate the additional criteria listed in your memorandum into our discussions with state planners. But we do not believe state planning decisions should be limited to an evaluation of a finite list of considerations. Each state is different, and in a number of

states, intra-state regions differ significantly as well. Some factors relevant to decisions affecting configuration can, in context, suggest different conclusions, depending upon the state or geographic region involved.

Rather than attempt to delineate an exclusive set of criteria that must be used in every state, we believe it best to leave consideration of the many factors involved to those engaged in the state planning process itself, subject to the overarching values that guide the state planners. Each situation must be viewed on a totality of the circumstances, the bottom line being whether after considering all the factors, LSC and state planners believe that a decision to change or not change service area configuration will in the long run benefit clients.

This is not always an easy determination, involving the application of judgment to a host of considerations. Just as we think on-site work with recipients and planners will alleviate concerns about communication, we also believe such work will promote full discussion of the many relevant considerations, and maximize opportunities for consensus on decisions affecting program configuration.

Relationship Between the State Planning Process and the Duration of Grant Awards

As our decisions last December demonstrate, LSC is committed to employing its grant making authority to facilitate the objectives we have outlined in our Program Letters. This includes our authority to determine the duration of grant awards. As in the case of configuration, we do not believe it appropriate to wed ourselves to a specific set of factors and considerations. Decisions on length of funding are influenced by many factors, including but not limited to, the evaluation of each applicant during the competitive grants process, the progress made on planning and implementation, and the design and evolution of state-based systems dedicated to ensuring accountability to mutually agreed upon objectives. Similar to decisions on configuration, funding term decisions consider the totality of the circumstances and evolve through a process of engagement with state-based stakeholders in order to minimize potential short-term disruptive effects while maximizing the opportunity for longer term positive gains.

The State Planning Framework - Context

Since 1995, LSC has worked to stimulate meaningful state planning to ensure that the civil legal assistance needs of low-income and vulnerable clients are met as effectively and economically as possible given available resources. The initial catalyst for LSC's effort was the proposed phase out of federal funding for civil legal assistance and the corresponding proposed changes in the federal statutory and regulatory framework governing what would remain of the federal investment in civil legal assistance. Subsequent to 1995, the stimulus has been different; however the focus on effective state planning has remained constant. As you rightly point out in your letter:

"The emphasis on state planning recognizes that the civil legal assistance system

is state-based. The State provides the basic legal framework and the institutions in which most representation occurs. Moreover, as a result of the policies of devolution, the state has, and in the future will continue to have, even a larger role in determining policies affecting the poor. In addition, the state planning emphasis was motivated by the reduction in LSC funding and the imposition of the new LSC restrictions, including the new restriction on the use of non-LSC funds. Thus, leaders in the civil justice system recognized that to expand the availability of civil legal assistance in the future, state civil legal assistance leaders must seek to increase and appropriately allocate resources derived from within a state."

There are other compelling reasons for seizing the opportunity to engage in effective state planning. Poor people are being subjected to massive changes in the manner in which the legal profession operates and legal services are delivered. There are substantial changes in the rules governing the federal government's investment in civil legal assistance, and there have been substantial changes in federal, state and local laws and rules affecting poor and vulnerable people. In many areas, the delivery challenges facing many legal assistance providers are compounded by the arrival of large numbers of immigrants and refugees. Additionally, long standing assumptions relating to the role of the attorney, the legal authority of non-attorneys to provide civil legal assistance, and the relationship between technology and the delivery of legal assistance are being challenged in the broader legal environment. The outcome of these dynamics, many of which are occurring at the state level, will fundamentally affect the manner in which the civil legal assistance needs of poor and vulnerable people are met today and into the future.

In addition, revolutionary changes in communication and information via technology are already having profound effects on our client communities and on the community at large. Technology has facilitated radical changes in the manner in which both private and public sector lawyers do their work. Technology also fundamentally affects the manner in which we communicate with clients, service providers, courts, judges, other lawyers, etc. Similarly, the boundaries of non-lawyer practice are being pushed at the state level. From the development of courthouse-based facilitator programs to demands for expanded paralegal practice (whether licensed or not), consumer demands outside of the legal services environment are stimulating structural and regulatory changes that will have direct and profound consequences on the manner in which legal services are provided within each state.

In sum, the past few years have witnessed far more than a change in the rules governing LSC funds and those that affect our clients. We, along with the rest of the legal profession, are struggling with sweeping changes that directly affect the nature, substance and manner in which legal services are delivered to client communities. There must be acknowledgment, understanding, and planning in light of these changes. We cannot responsibly assume the continuing relevancy of organizations, technologies, and legal advocacy systems created years earlier, in another social/cultural environment. We have affirmative duties to our client

communities and to our common mission to undertake active and ongoing assessment of the contexts within which we carry out our work, and to adapt and constructively change as the circumstances require.

The state planning initiative seeks to ensure effective identification, design and implementation of structural and service delivery system changes necessary to ensure that our civil equal justice system is equal to the tasks facing it and the challenges facing our clients now and into the next century. Program Letters 98-1 and 98-6 were developed with valuable input from staff of NLADA, CLASP, the Project for the Future of Equal Justice (PFEJ), along with representatives of the FCC and many other valued members of the national legal services community. We believe they reflect a general community consensus regarding the propriety of state planning; and we read your memorandum of February 16, 1999, as an affirmation of this consensus.

LSC Expectations of State Planners

Having agreed on the value of state-based planning, the question becomes one of planning focus. Planning is not a static activity designed to produce a report for LSC. As we suggested in a number of our feedback letters, and reiterate here:

[e]ffective planning is broad based, and includes a wide range of persons and institutions with a stake in the achievement of articulated goals. A common set of values and principles is key to ensuring consistency of vision and purpose both in the planning process and throughout the implementation phases. [It] is a staged process that requires a commitment to regular review, analysis, evaluation and augmentation over time²

Our expectation for effective, ongoing planning has guided the nature and quality of our on-site work with state planning entities in the various states where we have been involved. Throughout this work, LSC staff has been consistent in encouraging state planners to:

- Define the vision and values that govern their state planning efforts;
- Establish a framework or governance structure for present and future planning and implementation efforts;
- Identify accountability mechanisms to ensure the timely implementation of state planning tasks and directives; and
- Provide a vehicle for continued and regular review of the statewide delivery system to ensure both the continuing relevancy of the values and goals that serve as the benchmarks for the planning efforts, and to ensure that the system reinforces those values and goals over time.

While we believe the state is the proper jurisdictional focus for planning and must develop its own delivery system vision, we have come to believe that certain broad values should guide the planning effort. These include:

□ ***The Civil Legal Assistance System Should Be Client Centered.***

- There should be coordinated and meaningful access to the civil legal assistance system for low-income clients and client groups.
- There should be meaningful client community involvement in the planning, design and delivery of civil legal assistance.
- Services and systems should be culturally relevant and reflect the informed needs and expectations of distinct and identifiable low-income populations.

□ ***The Civil Legal Assistance System Should Promote And Secure Full And Meaningful Access To Legal Assistance For All Low Income People Throughout All Geographic Regions Of The State.***

- The system should be designed to ensure that low-income clients in all geographic regions of each state have access to civil legal services appropriate to their legal needs.
- The system should develop and maintain capacity to ensure that no group or subgroup of low-income clients is excluded from securing and enforcing their rights within the civil justice system.
- The state's civil legal assistance delivery system should work to ensure that those who suffer disparate treatment, who shoulder disproportionate burdens of poverty, or who face unique barriers to justice are identified, and that relevant systems and services are developed and deployed to level the equal justice playing field. Cultural and ethnic diversity in program leadership and management is valued.
- There should be development and maintenance of statewide capacity for effective client representation in all appropriate forums.³

□ ***The Civil Legal Assistance System Should Be Designed to Ensure the Highest and Best Use of All Resources and All Capacities.***

- Strategic coordination, planning and resource deployment should characterize the operation of the system and all its component parts at the local, regional and statewide level.
- No institution, provider, or funder should act in a vacuum. Each should operate as an integral component of a comprehensive, integrated delivery system.

□ ***The Civil Legal Assistance System Should Be Accountable To Clients, Funders And Other Stakeholders.***

- The civil legal assistance system and all stakeholders, should ensure that scarce resources are appropriately marshaled, effectively and efficiently managed, and strategically deployed to meet the overall mission, and that meaningful results are secured for clients in response to their most pressing legal needs.

What To Expect From LSC

LSC, as a major investor in civil legal assistance in every state, has a duty to stimulate the most effective and economical means possible for delivering civil legal assistance to low-income and vulnerable people. We are committed to effective and meaningful partnerships with our grantees and the broader civil equal justice community. At the same time, we are obligated to ensure that our investment in state-based civil legal assistance promotes efficiency and effectiveness of client service and complements the efforts of ever expanding civil legal assistance partnerships.

Your memo observes correctly that unilateral action was taken only in those states or geographic regions where, despite substantial on-site involvement by LSC staff, it became clear that there was an unwillingness or inability of the LSC-funded programs to work together to develop an integrated system that serves the legal needs of all clients within the state/region, and that continuation of the status quo would impede the development of such a system. Our experience is that states committed to broad based, inclusive planning have already undertaken or are in the process of undertaking a thoughtful process to answer the questions presented in the Program Letters. Planners in these states have assumed responsibility for making changes necessary to achieve a comprehensive, integrated delivery system without the need for unilateral action by LSC.⁴

However, in states where the community of stakeholders has been defined narrowly and there has been little effective articulation of guiding values or objectives, the planning effort has tended to be limited to defending the status quo. There has been opposition to objective and fresh reevaluation of the relationship of program configuration to overall delivery system objectives. In such instances LSC has been compelled to fill the planning vacuum. As the planning initiative moves forward, our on-site work will enhance the likelihood of achieving agreement on core planning issues, including but not limited to the question of program configuration, and the need for unilateral action will be further minimized.

As the Program Letters, Feedback Letters and LSC decisions make clear, reconfiguration is not LSC's goal. Our objective is a comprehensive, integrated statewide delivery system. What that looks like is different in each state. Our review of the state plans submitted in October, 1998 along with our continuing on-site work with planners in many states confirms the

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observation made in the Program Letters that: "[t]here is no magic number of programs or a single delivery model that fits all states,"⁵ and that "[e]ach state has its own demography, geography, resources and history, and state planners must take into account these and other factors in determining what configuration maximizes services for clients."⁶ What works in one state will not necessarily translate to another. We continue our commitment to working closely with each state through the planning process to develop a plan that meets the unique needs and addresses the unique circumstances in each state.

Conclusion

Thank you again for your letter of February 16, and for your continuing effort to work with us on the state planning initiative. We hope that we have answered the specific questions posed in your letter. We further hope that we have clarified the context and framework of our state planning initiative. We look forward to a continuing dialogue with you and many others as we work together to deliver on the promise of equal justice for millions of vulnerable and poor Americans.

Very truly yours,

/s/

Karen J. Sarjeant
Vice President for Programs

/s/

Robert D. Gross
Senior Counsel for State Planning