



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. The term private attorney involvement (PAI) is used here 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. The term pro bono is used in this report to mean any activity that uses volunteer lawyers to provide legal assistance to the poor.

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 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 1990s, LSC began promoting 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 Methodology

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.

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. 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 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

The study found that one of the most important factors related to reconfiguration is that *reconfiguration is very difficult*. There was near unanimity amongst the interviewees on this point. Also, 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,” rather just low on the priority list. This study did not ask specifically about program priorities, but 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.

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where leaders were determined to improve their pro bono function. Increased costs were noted as a general problem with reconfiguration, and to the extent that improving pro bono requires additional expense, it may be put off if other priorities require new expense as well.

Differences in Pro Bono Models

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

In-house pro bono programs: The LSC-funded program has its own project 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, often in the areas of attorney recruitment, training and recognition.

Independent pro bono programs: Usually run through a state or local bar association, but sometimes as a stand-alone entity, the independent programs take referrals from LSC-funded programs. Frequently, though, the LSC program does intake and determines which cases should be assigned to the separate pro bono program, 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 fulfilling some or all of its PAI requirement through a sub-grant to the pro bono program.

Contract work with the private bar. Here, LSC programs pay members of the private bar reduced rates 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

The study identified two factors that seemed to have an impact on whether pro bono is seriously considered during the reconfiguration process. One factor is the initial compatibility of the merging pro bono systems. Only two of the programs interviewed included a major change in their pro bono system as part of the early reconfiguration 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 figured more prominently in the 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.

The study also showed 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 attention available to be focused on the pro bono systems or their delivery.

Recommendations

Ideally, management staff in reconfiguring programs 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 are suggested strategies for having a positive impact on a reconfiguring pro bono program without a lot of up-front work:

- 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.
- Where possible, designate 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 can bring fresh ideas to the table; help keep the focus on how to best meet the needs of clients; and may help to mediate disagreements.
- 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 and sustain a vision for the pro bono component including its staffing, operation and integration within the program.

Developing Pro Bono Models

This study sought models of strong pro bono components within reconfiguring programs. 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 — all programs who went through reconfigurations prior to the late 1990s. 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. It appears that when these ele-

ments are operationally separated out and put into the hands of a skilled executive director, there is more time, energy and willingness to focus on improving these functions and figuring 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. Some of their success very likely is due to the small geographical 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. However, the search to develop a big program model might begin with a further investigation into these early reconfigurations that seem to be working well.

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 to take 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.

1 Meredith McBurney is the Director of the American Bar Association's Project to Expand Resources for Legal Services Programs. This article was originally published in the Division for Legal Services, Access to Justice, *Dialogue*, Summer 2003. Thanks to the ABA for permission to reprint this article.