

April 25, 2003

By hand delivery

Hon. Frederic Block, U.S.D.J.
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Velazquez v. Legal Services Corporation*, 97 CV 00182 (FB), and
Dobbins v. Legal Services Corporation, 01 CV 8371 (FB)

Dear Judge Block:

A.

At oral argument on April 18, 2003, you suggested that the issues pending before the Court could be made more manageable by voluntarily dismissing without prejudice the separate legal claims of the donor-plaintiffs and the lawyer-client plaintiffs, subject to their right to re-file if necessary without risking the running of applicable statutes of limitation. Plaintiffs agree that simplifying the issues before the Court in connection with this motion is a sensible way to proceed. May we suggest, however, that simplification of issues can be obtained without voluntary dismissal if plaintiffs agree to withdraw all motions filed on behalf of the donor-plaintiffs or the lawyer-client plaintiffs, leaving the Court with a pared-down preliminary injunction motion filed solely on behalf of four grantee-plaintiffs: South Brooklyn Legal Services (SBLS), Legal Services for New York City (LSNY), MFY Legal Services, and Farmworker Legal Services of New York. If the pending preliminary injunction motion is pared down to a challenge by the grantee-plaintiffs to LSC's program integrity regulation on the ground that compliance with the physical and personnel separation aspects of the regulation would impose an undue burden on their First Amendment right to use non-LSC funds, the Court need not consider overlapping legal arguments raised by other categories of plaintiffs, which may well become moot if the grantee-plaintiffs are successful.

The Court may also wish to defer consideration of plaintiffs' challenge to the statutory ban on the use of Legal Services Corporation (LSC) funds to inform prospective clients of their legal rights, and to offer to represent them in court. The so-called anti-solicitation ban raises constitutional issues that are significantly different from the issues raised by the program integrity regulations, and that may be separately considered at the Court's convenience, along with other challenges before the Court. *See* Pls.' PI Br., dated Dec. 14, 2001, §§ IV, V; Pls.'

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Mem. in Reply to Govt.'s Opposition to PI Mot. & in Opp. to Govt.'s Motions to Dismiss, dated June 19, 2002, §§ IV, V.

Thus, if it meets with the Court's approval, plaintiffs ask leave to withdraw all pending motions other than the request by the three grantee-plaintiffs for injunctive relief from the requirement that they establish and maintain physically and "objectively" separate legal programs staffed by separate personnel in order to use their non-LSC funds to provide a full range of representation to their indigent clients. 45 C.F.R. § 1610.8. Once that motion has been resolved, there will be an opportunity to decide whether any additional issues remain for consideration.

B.

In response to your suggestion at oral argument on April 18, 2003, that plaintiffs' "as applied" challenge to the program integrity regulation be presented in the form of a specific proposal similar to the proposal submitted by Queens Legal Services (QLS) in 1997, the grantee-plaintiffs respectfully submit the enclosed proposed configuration. The enclosed configuration is somewhat more detailed than the 1997 QLS proposal, but retains its basic contours. For the Court's convenience, we enclose, as well, a copy of the original 1997 proposal, together with LSC's letter of rejection.

As you can see, the proposed configuration provides for separate legal affiliates with readily distinguishable names; careful accounting, bookkeeping and timekeeping rules designed to allocate all costs fairly and accurately; extensive disclaimers and notices designed to limit the possibility of confusion over funding and endorsement; shared equipment with careful allocation of costs; a single physical setting with careful allocation of costs; and shared personnel, with careful allocation of costs.

The proposed configuration more than satisfies the government's concern with endorsement and financial integrity, while permitting plaintiffs to utilize their non-LSC funds effectively and efficiently to carry out protected First Amendment activities free from undue burdens imposed by the government. Given the particular clients the plaintiffs serve, the particular types of services they provide, and the crushingly high level of need in their client communities, a greater degree of compulsory physical or personnel separation would impose undue burdens in the form of programmatic, administrative, and financial costs on the use of non-LSC funds for activities that the Second Circuit has recognized go to the heart of the First Amendment. *Velazquez v. Legal Servs. Corp.*, 164 F.3d 757, 767 (1999), *cert. denied*, 532 U.S. 903 (2001).

Under the test proposed by the Second Circuit, LSC may not impose an "undue burden" on the use of non-LSC funds by LSC grantees. *Id.* In order to decide whether a burden is "undue," a reviewing Court must balance the burdens imposed by compliance with LSC's

requirements of physical and personnel separation against the government interest asserted. If, as here, the burdens are shown to be substantial, the government must justify such substantial burdens on First Amendment activities by demonstrating that the regulations are narrowly tailored to advance an extremely important government interest. *See Watchtower Bible & Tract Soc’y v. Village of Stratton*, 536 U.S. 150, 164-65, 168 (2002); *United States v. Playboy Entertainment Group*, 529 U.S. 803, 812-13 (2000); *Reno v. ACLU*, 521 U.S. 844, 874-75 (1997); *Rockefeller v. Powers*, 917 F. Supp. 155 (E.D.N.Y.), *aff’d*, 78 F.3d 44 (2d Cir. 1996); *Brooklyn Inst. of Arts & Sciences v. City of N.Y.*, 64 F. Supp. 2d 184, 200 (E.D.N.Y. 1999).

The motion papers before the Court unquestionably demonstrate that the burdens imposed by compliance with LSC’s requirement of physical and personnel separation are substantial.¹ *Programmatically*, the regulations force plaintiffs to isolate lawyers engaged in day-to-day legal representation from lawyers participating in class actions and many types of lobbying. Such an artificial isolation denies the day-to-day lawyers the ability to interact with lawyers engaged in those other tasks, and deprives the lawyers involved in those other tasks of the invaluable window into the community and the substantive issues that must inform their work. Years of experience have taught that such artificial isolation of lawyers exacts an enormous programmatic toll on both programs.²

The regulations impose other programmatic burdens on the plaintiffs, as well. For example, forced physical and personnel separation, and the resulting need to shuttle clients between physically separate offices, make it more likely that the migrant farmworker clients of Farmworker Legal Services of New York will be unable to locate an appropriate lawyer.³ Forced physical and personnel separation also makes it far more difficult for legal programs like MFY and LSNY Manhattan, which value the ability to address a client’s legal needs in a “holistic”

¹LSC’s assertion that these burdens would disappear if the plaintiffs affiliated with existing legal services offices that receive no LSC funding is undermined by LSC’s own acknowledgment that plaintiffs cannot exercise their First Amendment rights by merely “affiliating” with organizations whose boards, and thus activities, it cannot control. *See* Pls.’ Mem. in Reply to Govt.’s Opposition to PI Mot. & in Opp. to Govt.’s Motions to Dismiss, dated June 19, 2002, at 4 n.5.

²*See* Decl. of John C. Gray, dated Nov. 29, 2001, ¶¶ 12, 13 (attached as Ex. E to Pls.’ PI Br. dated Dec. 14, 2001); Decl. of Lynn Kelly, dated Dec. 11, 2001 ¶¶ 3, 5, 6, 12, 22 (attached as Ex. G. to Pls.’ PI Br. dated Dec. 14, 2001). *See also* Pls.’ PI Br. at 26-27.

³*See* Pls.’ PI Br. at 27; Decl. of James F. Schmidt, dated Nov. 15, 2001, ¶¶ 18-20 (attached as Ex. K to Pls.’ PI Br. dated Dec. 14, 2001). *See also* Decl. of John C. Gray, dated Nov. 29, 2001, ¶ 13 (attached as Ex. E to Pls.’ PI Br. dated Dec. 14, 2001) (describing a similar programmatic burden in the context of South Brooklyn Legal Services).

manner, to provide legal services sufficient to meet client needs.⁴

Administratively, LSC's insistence on physically separate legal programs staffed by separate personnel is a nightmare, requiring case allocation decisions at an unrealistically early point, and requiring a series of impossibly complex personnel judgments.⁵

Financially, the redundancy and inefficiency of requiring artificial physical and personnel separation is reflected in the hard-edged assessment that creation of a physically separate affiliate staffed by separate personnel would cost SBLIS approximately \$380,000, or approximately 8% of its annual budget, with a concomitant reduction in workforce and ability to serve clients.⁶ The other grantee plaintiffs would suffer similar financial burdens.⁷

It is important to note that of several hundred legal services programs in the United States, only a small handful have elected to endure the costs of complying with the program integrity regulations, and even those programs complain bitterly about the undue burdens placed upon the use of their non-LSC funds.⁸ In fact, LSC itself warns that operating multiple small programs – as the program integrity regulation requires – is likely to interfere with the programmatic effectiveness and administrative and economic efficiency of legal services

⁴See Decl. of Peggy Earisman, dated March 6, 2003, ¶¶ 11-12, 14.

⁵Decl. of Lisa E. Cleary, dated Dec. 5, 2001, ¶ 17 (attached as Ex. B to Pls.' PI Br. dated Dec. 14, 2001); Decl. of John C. Gray, dated Nov. 29, 2001, ¶ 12 (attached as Ex. E to Pls.' PI Br. dated Dec. 14, 2001); Decl. of Andrew Scherer, dated Dec. 7, 2001, ¶¶ 19-24 (attached as Ex. J to Pls.' PI Br. dated Dec. 14, 2001); Decl. of James F. Schmidt, dated Nov. 15, 2001, ¶¶ 4, 15 (attached as Ex. K to Pls.' PI Br. dated Dec. 14, 2001). *See also* Pls.' PI Br. at 28-31.

⁶Decl. of Chip Gray, dated June 19, 2002, ¶¶ 16-23 (attached as Ex. H to Pls.' Mem. in Reply to Govt.'s Opposition to PI Mot. & in Opp. to Govt.'s Motions to Dismiss, dated June 19, 2002).

⁷See Decl. of Lisa E. Cleary, dated Dec. 5, 2001, ¶¶ 14-18 (attached as Ex. B to Pls.' PI Br. dated Dec. 14, 2001); Decl. of Lynn Kelly, dated June 19, 2002, ¶¶ 19-23 (attached as Ex. M to Pls.' Mem. in Reply to Govt.'s Opposition to PI Mot. & in Opp. to Govt.'s Motions to Dismiss, dated June 19, 2002); Decl. of Andrew Scherer, dated Dec. 7, 2001, ¶¶ 21, 25 (attached as Ex. J to Pls.' PI Br. dated Dec. 14, 2001); Decl. of James Schmidt, dated Nov. 15, 2001, ¶¶ 3, 21, 22 (attached as Ex. K. to Pls.' PI Br. dated Dec. 14, 2001); Decl. of Peggy Earisman, dated March 6, 2003, ¶¶ 4-9, 13-14. *See also* Pls.' PI Br. at 31-34.

⁸See Pls.' Mem. in Reply to Govt's Opp. to PI Mot. & in Opp. to Govt.'s Mots. to Dismiss, dated June 19, 2002, at 13-14.

programs.⁹

The motion papers before the Court also establish that the government's interest in imposing such substantial burdens is extremely weak. All agree that the government interest asserted in *Rust* is not present in this case. In *Rust*, the Supreme Court held that the government's interest in assuring that its message was not garbled by contrary, privately funded speech justified a requirement that the privately funded speech take place in a separate physical setting. *Rust v. Sullivan*, 500 U.S. 173 (1991). But, unlike *Rust*, the government is not a speaker in the legal services context. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541-43 (2001). Accordingly, it has no interest in preventing its message from being garbled.

Moreover, this Court has already ruled that the government's interest in assuring that LSC funds do not subsidize non-LSC activity is adequately protected by the elaborate timekeeping and accounting rules that are in place. *Velazquez v. Legal Servs. Corp.*, 985 F. Supp. 323, 339 (E.D.N.Y. 1997), *aff'd in part, rev'd in part*, 164 F.3d 757 (2d Cir. 1999), *rev'd on other grounds*, 531 U.S. 533 (2001). These rules include the cost allocation and timekeeping rules discussed in the plaintiffs' configuration proposal.¹⁰ Indeed, LSC itself has determined that these rules are adequate to ensure that no LSC funds are spent to directly or indirectly subsidize activities that LSC grantees conduct in the same offices and with the same employees as they conduct their LSC-funded activities.¹¹ Among the activities that LSC grantees may conduct in their offices and with the same employees as they conduct their LSC-funded activities, so long as they ensure that no LSC funding is directly or indirectly used, are lobbying state and local legislatures regarding their own funding, engaging in public rulemaking proceedings, assisting otherwise ineligible aliens who are victims of domestic violence, and assisting clients with

⁹See Pls.' PI Br. dated Dec. 14, 2001, at 27, 28, 34; Abel Decl., dated Dec. 14, 2001, ¶¶ 11-14, 16-36.

¹⁰See 45 C.F.R. § 1612.10 (accounting regulation); 45 C.F.R. § 1630.3 (cost allocation regulation); 45 C.F.R. § 1635.3 (timekeeping regulation).

¹¹See 62 Fed. Reg. 68219, 68221-68222 (Dec. 31, 1997) (acknowledging that the procedures mandated by the cost allocation regulation permit LSC grantees to account for both direct costs, such as attorney time, and indirect costs, such as a proportion of the cost of renting space used to serve clients under the LSC grant, so as to ensure that the LSC grant is charged for only those activities attributable to it); 45 C.F.R. § 1612.10 (requiring LSC grantees to use accounting procedures adequate to ensure that "[n]o funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with" certain specified activities).

preparing living wills involving suicide, euthanasia or mercy killing.¹²

The sole remaining possible interest is the government's desire to prevent confusion over whether LSC funds or endorses legal activity that goes beyond LSC's program. That interest is, however, clearly satisfied by the extensive notice and disclaimer rules proposed by plaintiffs.¹³ Indeed, given *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 769 (1995), any effort to impose burdens more severe than notice and disclaimer obligations violate the First Amendment. *See also Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 87 (1980); *Pacific Gas & Elec. Co. v. Public Utils. Comm'n of Calif.*, 475 U.S. 1, 16 n.11 (1986).¹⁴

Finally, the government's argument that a strict requirement of physical and personnel separation is genuinely necessary to prevent confusion over endorsement is made even less persuasive by the President's promulgation of an Executive Order, and by Congress' passage of "charitable choice" legislation, permitting "faith-based" federal grantees to engage in privately funded religious activities without requiring either physical or personnel separation.¹⁵ As plaintiffs have argued, such differential treatment of privately-funded religious and secular speech independently violates the First Amendment. *Texas Monthly v. Bullock*, 489 U.S. 1 (1989) (invalidating sales tax exemption limited to religious periodicals); *Good News Club v. Milford Central Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995). At a minimum, the government's failure to require physical and personnel

¹²45 C.F.R. § 1612.6 (lobbying and public rulemaking); 45 C.F.R. § 1626.4 (domestic violence exception to the aliens restriction); Assisted Suicide Funding Restriction Act of 1997, Pub. Law 104-12 §§ 5, 9(i) (1997).

¹³LSC has acknowledged that disclaimers can be sufficient to satisfy its interests. *See, e.g., Ex. 26 to Abel Decl.* dated Dec. 14, 2001 (authorizing a grantee to share a website with an affiliate that received no LSC funding and engaged in restricted activities so long as it "provide[d] clear language that distinguishes the grantee from" the affiliate).

¹⁴This argument is discussed more extensively in Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, dated December 14, 2001, at 36-37, and in Plaintiffs' Memorandum in Reply to the Government's Opposition to Preliminary Injunction Motion and in Opposition to Government's Motions to Dismiss, dated June 19, 2002, at 31-32.

¹⁵The existing charitable choice regimes are described in Plaintiffs' Memorandum of Law in Reply to the Government's Opposition to Motion for a Preliminary Injunction and in Opposition to the Government's Motions to Dismiss, dated June 19, 2002, at pages 32 to 33. Executive Order No. 13279, promulgated on December 12, 2002, is published at 67 Federal Register 77141. The relevant government guidelines for its implementation are attached as Exhibit B to the Declaration of Laura K. Abel dated March 6, 2003.

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separation in the context of privately funded religious speech by federal grantees dooms the government's effort to argue that such separation is genuinely needed to prevent the appearance of government endorsement of privately funded secular speech by federal grantees.¹⁶ Indeed, the Supreme Court has explicitly ruled that the government's failure to pursue an asserted interest in other settings precludes it from invoking the interest in question to support censorship.¹⁷ *See, e.g., The Fla. Star v. B.J.F.*, 491 U.S. 524, 538 (1989). See discussion *supra* pages 5 to 6 for a description of other settings where physical and personnel separation is not required by LSC.

Thus, when the thin government interest in preventing confusion over endorsement is weighed against the substantial burdens imposed by requiring physical and personnel separation, and when the capacity of signage and disclaimers to satisfy the government's concern is considered, together with the government's failure to require physical and personnel separation in other settings, it becomes clear that any restriction more onerous than the proposed configuration proposed by plaintiffs would impose an "undue burden" on plaintiffs' use of non-LSC funds to advance crucial First Amendment interests.

Respectfully submitted,

Burt Neuborne

Enclosures

cc: by fax and overnight delivery

Stephen L. Ascher, Esq.

Joseph Lobue, Esq.

¹⁶The configuration proposed by the plaintiffs contains a number of additional types of separation that the President's faith-based initiative does not require. For example, plaintiffs propose creating a legally separate entity that receives no LSC funds, that has a different name, and that has a separate board, and they also propose using extensive signage and disclaimers to distinguish the two entities.

¹⁷Plaintiffs discuss the argument contained in this paragraph more extensively in their Plaintiffs' Memorandum in Reply to the Government's Opposition to Preliminary Injunction Motion and in Opposition to Government's Motions to Dismiss, dated June 19, 2002, letters to the Court dated Feb. 11, 2003 and March 6, 2003, Supplemental Memorandum of Law in Connection with the Issuance of Executive Order No. 13279, and Reply Memorandum of Law Discussing the Combined Effect of Executive Order No. 13279 and LSC's "Program Integrity" Regulation.

Configuration Proposal

Each grantee-plaintiff¹⁸ submits for review by the Legal Services Corporation (“LSC”) the following proposal designed to satisfy LSC’s program integrity regulations, while respecting the First Amendment protection afforded to grantees and donors to utilize their non-LSC funds free from “undue burdens” imposed by the government.

1. **Legal separation:** Each grantee-plaintiff (the “LSC grantee affiliates”) seeks permission to establish a legally separate, separately incorporated affiliate (occasionally referred to in this memorandum as the “non-LSC grantee affiliate”) to receive and administer funds received from sources other than LSC. The non-LSC grantee affiliate will be authorized to provide all forms of legal representation to clients consistent with its mission. The LSC grantee affiliate will restrict its activities to forms of representation permitted by the LSC Act and LSC appropriations bills.
2. **Easily distinguishable names:** The non-LSC grantee affiliate will be named in a manner that conveys its separate legal, financial and programmatic status.
3. **Separate Boards of Directors:** The two affiliates will maintain separate governing structures, including separate Boards of Directors. The membership of the non-LSC grantee affiliate Board of Directors may consist of some or all of the persons who sit on the LSC grantee Board of Directors.
4. **Non-subsidization:** The two affiliates will ensure that LSC funds do not subsidize activities that the LSC Act or LSC appropriations bills bar LSC from funding. The actual economic cost of all other activities will be borne by the non-LSC grantee affiliate, unless LSC explicitly permits the LSC grantee to use non-LSC funds for those purposes. The two affiliates will adopt and utilize accounting procedures to ensure that each affiliate bears a fair and accurate proportionate share of all fixed and variable expenses incurred during the joint operation of the affiliates.

The accounting procedures that both affiliates will follow to ensure

¹⁸The phrase “grantee plaintiffs” includes the current grantees Legal Services for New York City and South Brooklyn Legal Services, each of which receives support from LSC, as well as substantial support from private and other government donors. The phrase “grantee plaintiffs” also includes the former grantee Farmworker Legal Services of New York, which now receives all of its support from private and other government donors, and which submits this proposal with the understanding that, if it is approved, or if the Court rules that LSC must permit the operation of this configuration, it will be eligible to re-apply for LSC funding.

that LSC funds do not subsidize activities that the LSC Act or LSC appropriations bills bar LSC from funding will include the following established procedures:¹⁹

a) All procedures that the LSC grantee plaintiffs currently utilize to satisfy LSC's accounting regulation, which requires LSC grantees to ensure that "[n]o funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with" certain specified activities. 45 C.F.R. § 1612.10.

b) All procedures that the LSC grantee plaintiffs currently utilize to satisfy LSC's cost allocation regulation, which permits LSC grant recipients to allocate costs to their LSC grant only if they can demonstrate that the cost is "[i]n compliance with" the appropriations and LSC Act restrictions on grantee activities, and only if the costs benefit the grant. 45 C.F.R. § 1630.3(a)(4), (c).

5. **Employee timekeeping measures:** All legal personnel employed by either affiliate and spending any time on LSC-funded activities will maintain time records of their activities to ensure that accurate summaries of their activities are readily available in order to ensure that LSC funds are not expended for activities that the LSC Act or LSC appropriations bills bar LSC from funding. The records will be sufficient to satisfy LSC's timekeeping regulation, which requires that "[t]ime records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient." 45 C.F.R. § 1635.3(b). In accordance with LSC regulations, for accounting purposes employee time may be allocated based on personnel activity reports, which are prepared monthly, and which contain a reasonable, after-the-fact estimate of the distribution of the activities of each compensated employee whose time is charged directly to an LSC grant. 45 C.F.R. § 1630.3(d).

¹⁹ LSC has already found these procedures to be adequate to ensure that LSC funds are not used to pay for certain non-LSC funded activities that are currently performed in the same offices and with the same personnel as are utilized to perform LSC-funded activities. *See* 62 Fed. Reg. 68219, 68221-68222 (Dec. 31, 1997) (acknowledging that the procedures mandated by the cost allocation regulation permit LSC grantees to account for both direct costs, such as attorney time, and indirect costs, such as a proportion of the cost of renting space used to serve clients under the LSC grant, so as to ensure that the LSC grant is charged for only those activities attributable to it); 45 C.F.R. § 1612.10 (requiring LSC grantees to use accounting procedures adequate to ensure that "[n]o funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with" certain specified activities).

6. **Signage and Disclaimers:** The two affiliates will ensure that clients, judges, government officials and the general public are informed that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any of the activities of the non-LSC grantee affiliate. Notification will include the prominent display of the separate names of the affiliates, including separate letterheads, business cards, and litigation backs. It will also include prominently displayed signage on the front doors, in the waiting areas, in conference rooms, and in attorney offices explaining that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate. A written explanation will be made available to all persons entering the premises of the program explaining that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate. Letters will be filed with courts, agencies and government officials that routinely come into contact with either affiliate explaining that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate. Contacts with the media will specify whether the activity in question is funded by LSC, and will explain the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate.
7. **Equipment:** The two affiliates will share equipment, such as telephone lines, computers, case management systems, libraries, legal research facilities, office furnishings, printers, fax machines, and web sites. Each affiliate will bear its fair and accurate share of the costs attributed to any shared equipment, pursuant to the accounting procedures described in paragraph 4. Notices and disclaimers will be displayed making it clear that the non-LSC grantee affiliate is not expending LSC funds in connection with activities that the LSC Act or LSC appropriations bills bar LSC from funding, pursuant to the signage and disclaimer measures described in paragraph 6.
8. **Physical premises:** The two affiliates may operate in the same physical premises. The affiliates will utilize the accounting measures described in paragraph 4 above to allocate the cost of rental or ownership between the two affiliates in a fair and accurate manner that reflects usage.
9. **Employee time:** The two affiliates may share legal, support and supervisory personnel (including an Executive Director, who may direct both programs), who may work part-time for each affiliate. Pursuant to the accounting procedures described in paragraph 4, and the time records described in paragraph 5, the cost of personnel will be allocated between the LSC grantee affiliate and the non-LSC grantee affiliate in strict compliance with the nature of the activities undertaken. No activity that the LSC appropriations bills bar LSC grantees from performing

will be allocated to the LSC grantee. No employee may engage in activities barred by the LSC restrictions during time paid for with LSC funding.

10. **Intake:** The two affiliates may share a common intake and allocation mechanism to refer clients and cases between the two affiliates at the commencement of any representation, and as the representation proceeds. The affiliates will ensure that the LSC grantee does not bear more than its fair share of the intake and allocation mechanism in accordance with usage.