



# AMERICAN BAR ASSOCIATION

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**COMMENTS OF  
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**ADMINISTRATION ON AGING LISTENING FORUM  
ON REAUTHORIZATION OF THE OLDER AMERICANS ACT  
ALEXANDRIA, VIRGINIA  
FEBRUARY 25, 2010**

Good afternoon. I am Erica Wood, Assistant Director of the American Bar Association Commission on Law and Aging. I am here on behalf of the American Bar Association and its Commission on Law and Aging. The ABA Commission is a 15-member interdisciplinary body of experts in aging and the law, professionally staffed by six lawyers with several decades of combined experience working at the national, state, and local levels of the law and aging field. Its mission is to strengthen and secure the legal rights, dignity, autonomy, quality of life and quality of care of elders. The Commission on Law and Aging has served as a national legal assistance support project for the Administration on Aging since the 1980s.

The American Bar Association has supported authorization of the OAA since 1981, when its House of Delegates, the policy arm of the Association, adopted the following policy statement:

Be it resolved, that the American Bar Association urges that the Older Americans Act of 1965, as amended, be reauthorized and that it continue to place a high priority on the delivery of legal services to the needy elderly.

## **Legal Services as Access Services**

Elders today increasingly need legal assistance to navigate the gauntlet of complex rules to qualify for essential programs and benefits necessary to maintain a healthy independent life in the community or to maintain their rights in an institutional setting.

Legal assistance and related elder rights advocacy under the Act gives voice and power to elders who face hurdles in securing basic services. Legal services are access services. They ensure, to the full extent legally entitled, the individual's access to essential public benefits such as Social Security, Medicare, and Medicaid; to housing security; to autonomy and protection under the law in the face of diminished capacity, abuse, or consumer fraud; and to essential services such as transportation, in-home care, nutrition and other key community-based and institutional supports. Legal services under the Act are targeted to individuals with the greatest economic or social needs. Without a strong, independent, high-quality legal assistance component, it is those with the greatest needs who are placed in the greatest jeopardy.

## **Three Layered Shield of Elder Legal Advocacy**

The legal assistance and elder rights advocacy components of the Older Americans Act form what may be thought of as a three-layer protective shield. Each layer builds upon the others and all three layers, woven together, offer the strongest and most effective elder rights protection and advocacy system.

The first layer is made up of the direct providers in the field – providers of Title III-B legal assistance, as well as legal “helplines” and pension counseling, plus long-term care ombudsman programs whose job it is safeguard the rights and advocate for the needs of elders in community-based and residential settings.

The second layer is the state's legal assistance developer, mandated in Title III and Title VII. A highly qualified, full-time legal services developer is important to the functioning and improvement of a statewide, efficient, well-trained, well-supported network. The legal assistance developer is expected to provide the coordination and resources to galvanize the Title VII mandate that the State Unit on Aging take the lead in

protecting elder rights. Without an effective Developer, legal assistance can stray into a scattershot array of providers lacking consistency and strength.

Finally, behind the legal assistance developer and the State Unit on Aging are the national support services and other resource centers mandated under the Act. Title IV provides currently funds for five national legal assistance support projects that are currently partnering in the National Legal Resource Center (the ABA Commission on Law and Aging, the National Senior Citizens Law Center, the National Consumer Law Center, the Center for Elder Rights Advocacy, and The Center for Social Gerontology). The NLRC provides much needed substantive expertise, technical assistance and training to advocates at all levels. The National Center on Elder Abuse, the Long-Term Care Ombudsman Resource Center, and the National Pension Assistance Resource Center) all funded under Title II, also provide substantive expertise, technical assistance and training on elder rights to lawyers, prosecutors, judges and court staff, other advocates including ombudsmen, adult protective services staff, law enforcement officers, researchers, and others.

### **Shortcomings of the Current Legal Assistance and Elder Rights Framework**

I have been with the Commission on Law and Aging since before it began serving as an Administration on Aging national legal assistance support project in the 1980s. From this perspective, I offers the following comments in my personal capacity.

While approximately 1000 legal assistance providers plus other elder rights advocates throughout the country have steadfastly labored to protect the rights of elders, there are both funding and structural limitations in the system that deserve attention and creative thinking to overcome:

1. The locus of funding decisions for legal assistance are made at the local area agency on aging (AAA) level with the result that legal assistance funding is extremely variable and fragmented, both within states and from state to state. Legal assistance funded at the local level ranges from the funding of full-time attorneys working in public interest law offices to part-time paralegals to the funding of an occasional community education program, to virtually no funding whatsoever. Statewide coordination and strategic planning are generally lacking.

2. The funding for legal assistance flows through Title IIIB and competes for funding with the full panoply of elder service needs. Having legal services in Title III-B with other supportive services means it will often lose when AAAs have to choose between cuts in legal services versus cuts in concrete nutrition and social services provided to elders. The impact of legal assistance is typically less immediately visible to AAAs, although it often has profound lasting effects benefiting elder clients, often giving greater “bang for the buck” of funds allotted.
3. AAAs vary tremendously in the nature and extent of data they collect on the value of legal services they fund. There is no consistent, meaningful, national data collection about the nature, type, and most importantly, outcomes of cases handled by III-B legal services providers.
4. In funding legal assistance, AAAs often have an inherent conflict of interest arising from their direct provision or funding of services in which access issues may arise. Legal assistance providers may have to advocate on behalf of clients against a position taken by a provider or the AAA or a government entity. Zealous advocacy for elders is chilled when one’s funding may be at stake.
5. Aging network/AAAs are often limited in their ability to evaluate quality legal work or select providers who are both particularly appropriate and skilled and connected to legal and advocacy networks capable of examining patterns of legal problems statewide. Systemic legal advocacy is often much more cost effective, yet the current system tends to subordinate it to one-on-one legal problem solving.
6. The Administration on Aging has funded some important and exciting efforts to bridge fragmentation, such as Model Approaches to Statewide Legal Assistance Systems” under its discretionary grant program. This program is intended to help states develop and implement cost-effective, replicable approaches creating comprehensive, statewide, quality legal services and maximum impact from legal resources. It also seeks to develop service delivery and to integrate senior legal “helplines” into the broader array of state legal service delivery networks. Twenty-four states have received funding since 2006. Unfortunately, these programs are time-limited grants, and in the end, do not change the underlying structural barriers to creating a comprehensive and integrated legal service delivery system.

7. At the state level, the role of the legal assistance developer has been underutilized, underfunded, and unempowered in many states. Sec. 731 sets out the functions of the developer, including leadership and coordination in the provision of legal assistance; technical assistance and training to AAAs, legal assistance providers, ombudsmen and others; ensuring the state's capacity to aid older individuals in understanding and exercising their rights; and more. The role is demanding and requires a great deal of skill and knowledge of legal services and institutions of law. Yet currently, many state developers have little or no legal training, have little authority to initiate advocacy initiatives, and cannot devote full time to these critical tasks, as they have many other unrelated duties as part of their job. Unlike the ombudsman program, the developer program has no dedicated funding under appropriations for the Act.
8. At the state level, the Act's Title VII elder justice provisions are sometimes implemented without adequate collaboration with legal assistance developers and legal assistance providers. Their lack of involvement weakens efforts to develop, strengthen, and carry out the array of programs for prevention of elder abuse, neglect, and exploitation that are authorized in Sections 721(b) and 752 of the Act.
9. At the national level, the Administration on Aging has made significant strides in enabling coordination among the partner organizations that make up the National Legal Resource Center under Title IV. Yet, there is relatively little structural or operational integration across other national support components that exist in Title II (legal assistance/development, long-term care ombudsman support, Title II (ombudsman national support, elder abuse national support, and pension assistance national support), and Title VII (legal assistance development and vulnerable elder rights protection activities) and elsewhere (e.g. senior health insurance counseling and assistance programs under CMS).

*An Opportunity for Creative Rethinking.* One of the realities of such an extensive, oft-amended act as the Older Americans Act is that it has been constructed and revised in multiple increments with add-ons, carve-outs, and discreet new initiatives from time to time. This reality inevitably increases complexity and fragmentation.

Reauthorization presents an opportunity for stepping back and looking at the big picture of how the Act is constructed and how resources are marshaled for what purposes.

There are no obvious or easy recommendations for system-wide improvement. Our Commission and staff and other legal advocacy groups have discussed a range of options that go beyond merely tweaking the system. I am sharing some of the emerging ideas here in order to stimulate creative thinking and discussion. Neither the ABA nor I am actively advocating for any one of them at this stage, because the process of shaping them, evaluating their pros and cons, and prioritizing them is still a work in progress:

1. Move the responsibility for contracting with and funding legal services providers from the AAA level to a state-level entity that has knowledge of legal services delivery systems. Such entities could include State Access to Justice Commissions, Bar Foundations, Interest on Lawyers Trust Account (IOLTA) Commissions, or the State Unit on Aging itself. The Assistant Secretary could be authorized to designate the appropriate entity through an application process that establishes standards for applicant entities. Funding would flow from the Administration on Aging to the designated entity and then to legal assistance providers which would apply for funding under standards set by the Assistant Secretary. This state-level process could dramatically enhance the ability to achieve an effectively integrated legal services delivery system, because a state-wide entity could engage regional or state-wide legal assistance providers most capable of serving elders with the greatest economic and social need, in all parts of the state in a coordinated and competent manner. Other components of this framework could include:
  - Use of a national legal advisory group to assist the Assistant Secretary to develop standards for state entities responsible for distributing the funds and standards for legal services providers. The advisory group could be comprised of experienced groups such as the American Bar Association, the National Senior Citizens Law Center, other national support organizations, the Legal Services Corporation, state poverty law programs, and others.
  - Uniform standards could be established, with the help of the advisory group, to ensure that legal assistance providers have the organizational capability of providing high quality legal services in part or all of the state in coordinated manner, and effectively targeting those individuals with the greatest economic and social need and older individuals at risk for institutional placement.

- Placing the legal services developer in the designated state-level entity and elevating the job requirements to that of a lawyer with experience in managing legal services delivery systems.
  - Merging the authority for decisions about legal helpline funding into the designated state entity and establishing standards for effectively integrating legal helplines into legal services delivery.
2. Merge all three layers of the “fabric” of legal assistance into Title VII as an essential component of the elder justice system. Described earlier, those three layers are the Local (currently Title III-B funded legal assistance providers, helplines, and pension counseling), State (the legal services developer currently under Title III and VII) and national support (the National Legal Resource Center, currently funded under Title IV). Such a move between titles of the Act has the potential for both beneficial and adverse consequences with respect to authorization of funding and appropriations and would need to be examined further.
  3. Ensure accurate, consistent, and meaningful data are collected on the case types, dispositions and the value of advice or representation to the client. Models already exist for data collection that could be built upon, such as that utilized by the Legal Services Corporation. Data collection can be implemented consistent with professional ethical obligations of confidentiality and attorney-client privilege. Such data collection would enable better evaluation, coordination and strategic planning at the local, state, and national levels.
  4. Explicitly elaborate that elder rights is much broader in meaning than the protection of vulnerable adults, and mandate the creation of structural and operational bridges among the diverse advocacy components under the Act. Currently, at state and national levels there is little required relationship among the various elder rights components. For example, legal assistance providers and legal assistance developers are often not fully involved in efforts to develop, strengthen, and carry out the array of programs for prevention of elder abuse, neglect, and exploitation that are authorized in Sec. 721(b). Similarly, legal assistance providers are often not involved in coordinating efforts under the auspices of grants to promote comprehensive state elder justice systems that are authorized under Sec. 752. Nor is there optimum coordination with other elder

rights related entities such as the senior health insurance counseling and assistance programs under CMS, pension programs, the courts, mediation providers and others in the “elder rights constellation.” The goal is to build an advocacy system that functions cohesively, comprehensively, and effectively.

Again, these are all concepts to stimulate new and we hope fruitful thinking about the future of advocacy systems under the Older Americans Act. We hope they will engender a willingness to think big and to think creatively about the goal of creating the best advocacy system possible for the empowerment of elder rights. Thank you for the opportunity to comment on the legal assistance and elder rights provisions under the Act, and as we move toward reauthorization. The ABA and its Commission on Law and Aging stands ready to work with the Administration on Aging and with Congress to move reauthorization ahead.