

consideration in a number of states and is a reality in certain local jurisdictions. It is the intent of the Committee that legal services attorneys be permitted to undertake outside representation to fulfill any mandatory professional obligations to provide pro bono assistance to which they are now or may be subject in the future.

List of Subjects in 45 CFR Part 1604

Legal services.

For the reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1604 to read as follows:

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

- 1604.1 Purpose.
- 1604.2 Definitions.
- 1604.3 General policy.
- 1604.4 Permissible outside practice.
- 1604.5 Compensation.
- 1604.6 Use of recipient resources.
- 1604.7 Court appointments.

Authority: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

§ 1604.1 Purpose.

This part is designed to authorize recipients to adopt written policies that permit legal services attorneys employed by recipients to engage in pro bono legal assistance and to comply with the reasonable demands made upon them as members of the Bar and as officers of the Court, as long as those demands do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act. Nothing in this part shall be construed to permit recipients to unduly restrict the ability of any attorney to engage in such activities.

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to eligible clients.

(c) A recipient may also adopt policies that apply to outside practice by attorneys employed part-time by the recipient, but are not required to do so under the provisions of this part.

§ 1604.4 Permissible outside practice.

A recipient may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) The attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group; or

(5) Satisfying an obligation to participate in pro bono work under applicable State or local rules or practices of professional responsibility.

§ 1604.5 Compensation.

(a) A recipient may permit a full-time attorney to seek and receive personal compensation for work performed pursuant to § 1604.4(c)(1).

(b) A recipient may permit a full-time attorney to seek and accept a fee paid by, awarded or approved by a court or administrative body or included in a settlement if—

(1) The attorney is acting pursuant to § 1604.4(c) (2) through (5);

(2) Subject to the applicable law and rules of professional responsibility, any such fees paid to the attorney are remitted to the recipient; and

(3) The fee is not deducted from the individual client's recovery of compensatory damages or retroactive benefits.

(c) From the fees remitted to the recipient pursuant to paragraph (b)(2) of this section, the recipient may reimburse any individual or organization for actual costs or out-of-pocket expenses incurred in the representation.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use de minimis amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c) (2) through (5), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7 Court appointments.

(a) A recipient may permit a full-time attorney to accept a court appointment if the director of the recipient determines that:

(1) Such an appointment or case is consistent with the attorney's responsibilities to the recipient's clients;

(2) The appointment was made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A full-time attorney may identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on