

OFFICE OF LEGAL AFFAIRS

**ADVISORY OPINION
AO-2013-011****SUBJ:** Attestation of Citizenship by PAI Attorneys
DATE: December 11, 2013

QUESTION PRESENTED

Whether an attorney in private practice participating in a recipient's Private Attorney Involvement ("PAI") program who is appointed as a guardian *ad litem* may attest to the citizenship of his/her ward?

BRIEF ANSWER

Yes. 45 C.F.R. § 1626.6 requires recipients to obtain citizenship attestations from all applicants for legal assistance. Like parents, legal guardians are vested with control and responsibility over their ward's care, custody, and welfare. Because of the ward's infancy, incapacity, or disability, legal guardians have the ability to sign documents for or on behalf of their ward. The scope of a guardian *ad litem*'s role and authority is typically defined by the specific terms of the court order appointing him/her, as well as the laws of the jurisdiction governing the guardian *ad litem*. The preamble to the final rule of Part 1626 makes clear, however, that a guardian *ad litem*'s authority to sign a citizenship attestation on behalf of his/her ward should be treated as equivalent to that of a parent or legal guardian. The preamble also makes clear that a recipient may not attest to citizenship, even if the recipient may be the applicant's guardian for other purposes. A "private attorney," as that term is defined in Part 1614, participating in a recipient's PAI program is neither a "recipient" nor a recipient's "staff attorney." Therefore, a private attorney, appointed as a guardian *ad litem* as part of a recipient's PAI program, may attest to the citizenship of his/her ward.

ANALYSIS

LSC's 1996 Appropriations Act, *Omnibus Consolidated Rescissions and Appropriations Act of 1996*, Pub. L. No. 104-134, Title V, § 504(a)(11), 110 Stat. 1321, 1321-54, and each subsequent annual appropriation to LSC, prohibit the Corporation from providing funding to any recipient that provides legal assistance to aliens ineligible for such assistance.¹ Part 1626 of the

¹ The LSC FY 1996 appropriation restrictions are incorporated in the LSC FY 1998 appropriation, which has been incorporated in every subsequent LSC appropriation. *E.g., Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998*, Pub. L. 105-119, Title V, § 502(a)(2), 111 Stat. 2440 2510 (1997), and incorporated by reference in *Consolidated and Further Continuing Appropriations Act, 2013*, Pub. L. 113-6, Div. B, Title IV, 127 Stat. 198, 268 (2013). Congress has made some modifications to the 1996 restrictions that are not relevant to this opinion.

LSC regulations implements this statutory prohibition. 45 C.F.R. § 1626. In particular, section 1626.6(a) mandates recipients, with limited exceptions, to “require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens. . . .”:

§ 1626.6 Verification of citizenship.

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone which does not include continuous representation.

45 C.F.R. § 1626.6(a).

The preamble to the final rule recognizes that legal guardians, including guardians *ad litem*, may attest on behalf of an applicant incompetent to attest to his/her own citizenship:

[T]he Corporation has long recognized that legal guardians often must act for clients who are incompetent. For example, Office of [Legal Affairs] opinions have approved such guardians acting on behalf of clients seeking assistance as eligible clients under the Corporation’s poverty guidelines in 45 CFR Part 1611. Although not expressly provided for in the rule, for the purposes of [Part 1626], *an attestation of citizenship for applicants who are children and incompetent adults may be done*, for example, by a parent, legal guardian, *guardian ad litem*, or other legal representative of the child or incompetent adult. Such attestation may not be done, however, by the recipient, even though the recipient may be the applicant’s guardian for other purposes.

62 Fed. Reg. 19409, 19412 (April 21, 1997) (emphasis added). Like parents, legal guardians are vested with control and responsibility over their ward’s care, custody, and welfare.² Because of the ward’s infancy, incapacity, or disability, legal guardians have the ability to sign documents for or on behalf of their ward. The scope of a guardian *ad litem*’s role and authority is typically defined by the specific terms of the court order appointing him/her, as well as the laws of the jurisdiction governing the guardian *ad litem*. The preamble to the final rule makes clear, however, that a guardian *ad litem*’s authority to sign a citizenship attestation on behalf of his/her ward should be treated as equivalent to that of a parent or legal guardian. Although the preamble thus expresses the clear intention to permit a guardian *ad litem* to attest to the citizenship of his/her incompetent client, two caveats must be examined with regard to this issue.

First, the preamble makes clear that “attestation may not be done . . . by the recipient.” Part 1626 does not define “recipient.” Therefore, we rely on the definition for this term found in

² Unif. Probate Code § 5-208 (2010). Each state has adopted the Uniform Probate Code or some variation of it.

section 1600.1 that applies to all LSC regulations unless otherwise provided. Section 1600.1, defines a “recipient” as “any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the [Legal Services Corporation] Act.” 45 C.F.R. § 1600.1. Private attorneys, as individuals, are not “recipients” unless they are receiving grant funds from LSC pursuant to section 1006(a)(1)(A). Although under section 1006(a)(1)(A)(i) of the LSC Act individual attorneys could hypothetically receive LSC grant funds directly from the Corporation for the purpose of providing legal assistance to eligible clients, LSC does not currently provide grant funds to individual attorneys.

Second, the PAI regulation “is designed to ensure that recipients of Legal Services Corporation funds involve *private attorneys* in the delivery of legal assistance to eligible clients.” 45 C.F.R. § 1616.1(a) (emphasis added). The term “private attorney” is defined in LSC’s PAI regulations as “an attorney who is not a staff attorney as defined in § 1600.1 of these regulations.” 45 C.F.R. § 1614.1(d). The definition of “staff attorney” in section 1600.1 is “an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the [Legal Services Corporation] Act.” 45 C.F.R. § 1600.1. Thus, in order to meet the regulatory definition of “private attorney” an attorney in private practice must not receive more than half of his or her professional income from a recipient, subrecipient, grantee or contractor, and, in meeting this requirement, would also not be considered a “staff attorney” of a recipient as defined under Part 1600. Therefore, it is permissible for a “private attorney” participating in a recipient’s PAI program to attest to the citizenship of his or her ward when s/he is appointed to serve as a guardian *ad litem*.

CONCLUSION

Although Part 1626 requires recipients to obtain citizenship attestations from all applicants for legal assistance, the preamble to the final rule expressly permits such attestation to be made by a guardian *ad litem* on behalf of an incompetent client, but not by an LSC recipient who may be the client’s guardian for other purposes. An attorney in private practice who meets the definition of “private attorney” in the PAI regulation, and who is appointed as a guardian *ad litem* may attest to the citizenship of his or her ward unless s/he is a “recipient” (that is, an individual receiving grant funds directly from LSC).



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