



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2003-1012

**To:** Hadassa Santini Colberg, Esq.  
Compliance Officer  
Servicios Legales De Puerto Rico, Inc.  
1859 Ave. Ponce de Leon, Pda. 26  
Santurce, Puerto Rico 00909

**Date:** July 23, 2003

**Subject:** 1618 Compliance; 1604 Outside Practice of Law

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Pursuant to the requirements of 45 CFR Part 1618, you asked this Office for an opinion on whether you are correctly interpreting the Corporation's regulations on the outside practice of law at 45 CFR Part 1604 prior to taking disciplinary action against an attorney on your staff for an alleged violation of Part 1604. Specifically, you ask whether a full-time attorney employed by a program who represented a person in a criminal proceeding without first seeking and obtaining permission of the director has violated the outside practice of law requirements of Part 1604.

***Brief Answer***

Yes, a full-time attorney employed by a recipient who represents a person in a criminal proceeding without first seeking and obtaining permission of the director of the recipient has violated the outside practice of law requirements of Part 1604.

***Background***

We understand the facts to be as follows: Manuel Martinez Rosario, an attorney employed full time with Servicios Legales De Puerto Rico's ("SLDPR"), represented a defendant, Eddie Martinez Hernandez, in a criminal domestic violence case, appearing as the attorney of record for the defendant at both the preliminary hearing and arraignment. SLDPR does not accept criminal cases and does not represent criminal defendants. Mr. Martinez never requested authorization from the Director of SLDPR to represent Mr. Hernandez in this criminal case and no authorization was given by the SLDPR director. Nor was Mr. Martinez acting pursuant to a court appointment. SLDPR believes Mr. Martinez's participation in this case to be a violation of 45 C.F.R. Part 1604 and desires to take disciplinary action against Mr. Martinez on that basis.

*Analysis*

Your interpretation of Part 1604 is correct. Generally, under the LSC Act and regulations, full-time attorneys employed by recipients are prohibited from engaging in the outside practice of law, subject to a few exceptions. Section 1007(a)(4) of the LSC Act states that:

The Corporation shall...insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation.

This general prohibition is implemented in LSC's regulations at 45 CFR Part 1604. More specifically, 45 C.F.R. § 1604.3 sets forth the general limitation on the outside practice of law: "[n]o attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities." Sections 1604.4 and 1604.5 of the regulation, which set forth the situations in which the outside practice of law may be permitted, also clearly limited those circumstances to those in which "§ 1604.3 is satisfied." The "outside practice of law" is defined in the regulation as "the provision of legal assistance to a client who is not entitled to receive legal assistance from the employer of the attorney rendering assistance...."45 C.F.R. § 1604.2(b).

Under the facts as we understand them, Mr. Martinez appears to have violated Part 1604. By appearing as the attorney of record on behalf of Mr. Hernandez, Mr. Martinez was providing legal assistance to a client who was not entitled to receive legal assistance by SLDP. Thus, Mr. Martinez was engaged in the outside practice of law. By failing to seek and obtain authorization from SLDP's director before engaging in the outside practice of law, Mr. Martinez violated the general limitation set forth in § 1604.3.<sup>1</sup> Accordingly, SLDP may pursue whatever disciplinary actions as may be appropriate under its applicable employment policies and bargaining agreements, if any.

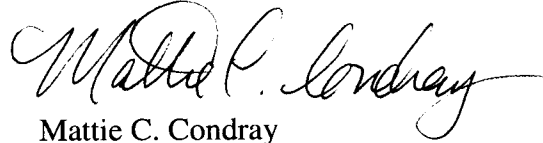
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<sup>1</sup> Moreover, assuming that Mr. Hernandez is not a close friend or family member to Mr. Martinez, SLDP would not be allowed to permit Mr. Martinez to engage in the representation at issue even if Mr. Martinez asked permission. Sections 1604.4 (compensated outside practice) and 1604.5 (uncompensated outside practice) only allow a recipient to permit an attorney to engage in the outside practice of law if the attorney is a new attorney with a professional responsibility to close ongoing cases (§ 1604.4(a)), the attorney is appointed pursuant to a court rule of equal applicability (§§ 1604.4(b), 1604.5(a)), the attorney is acting on behalf of a close friend or family member (§ 1604.5(b)), or the attorney is acting on behalf a religious, community or charitable group (§ 1604.5(c)). However, as we understand the facts, none of these conditions apply. Moreover, even if the outside practice had fallen into one of the categories of permissible representations under the regulations, Mr. Martinez' participation in this case still would have violated Part 1604, because he failed to seek and obtain authorization as required by § 1604.3.

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Very truly yours,



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