

External Opinion
File # 99-15

336-8817

August 16, 1999

Gunnar Gunnarsson, President of the Board
Cook County Legal Assistance Foundation
1500 Shermer Road, Suite LL8
Northbrook, IL 60062

Dear Mr. Gunnarsson:

This is a response to your July 28, 1999 request for a confirmation under §1618.4(c) that the interpretation of Cook County Legal Assistance Foundation (CCLAF) of 45 CFR Part 1604 is consistent with that of the Legal Services Corporation (ALSC or ACorporation) before CCLAF sanctions an employee for violation of Part 1604.

Part 1618 requires that, before a recipient suspends or terminates an employee for violating a prohibition of the LSC Act, the recipient must consult the Corporation to ensure that the recipient's interpretation of the Act is consistent with that of the Corporation. 45 CFR §1618.4(c). In your letter, you stated that your program had discovered that a full time employee had been engaged in the outside practice of law in violation of 45 CFR Part 1604, the Corporation's regulation restricting the outside practice of law. The letter also stated that the outside practice engaged in by the employee did not fall within any of the exceptions to the prohibition in Part 1604.

Part 1604 prohibits any attorney who is employed full time¹ in legal

¹ Attorney for the purposes of Part 1604 is defined in §1604.2(a) as:

Person who is employed full time in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is rendered.

assistance activities supported in major part by the Corporation from engaging in the outside practice of law except under a few narrow circumstances.² As a threshold matter, before a full time attorney may engage in any permissible outside practice, the attorney must receive prior permission from the recipient's director. See §§1604.2(a) and 1604.3. Permission may be granted by the director if the director has determined that the outside practice is consistent with the attorney's full-time responsibilities to the program. *Id.* You informed me in a phone conversation this morning that the attorney did not request or receive prior permission to engage in the outside practice. Because no permission was obtained by the program's attorney, his involvement in the outside representation constitutes a violation of Part 1604.

If prior permission is granted by the program director, Part 1604 permits an attorney to engage in outside practice only in the following situations. First, the attorney may engage in *compensated* outside practice if the attorney is newly employed and needs to close out cases from his previous law practice, §1604.4(a), or the attorney provides representation under a court appointment made under a court rule or practice equally applicable to all attorneys in the jurisdiction (court appointment), §1604.4(b). In addition, any compensation must be remitted to the recipient. Second, the attorney may engage in *uncompensated* outside practice only under a court appointment or on behalf of a close friend or

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^Outside practice of law is defined in §1604.2(b) 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, but does not include, among other activities, teaching, consulting, or performing evaluation.

The exceptions for teaching, consulting or performing evaluations have been strictly interpreted by the Corporation.

family member or a religious, community or charitable group, 1604.5. If the outside practice engaged in by your attorney does not fall into any of these categories, there has been a violation of the rule.

Although you provided our office with some information on the types of outside cases engaged in by the employee, you did not provide any information on whether the types of cases are those exempted from the outside practice restriction. If the general guidance above does not sufficiently inform your decision as to whether any of the outside cases engaged in by the attorney are exempt under 1604.4 and 1604.5, please provide us with more detailed information and we will further consider the matter.

I hope this adequately responds to your inquiry. Please let me know if I can provide any additional assistance in this matter.

Sincerely,

Suzanne B. Glasow
Senior Assistant General Counsel