



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2000-1019

To: Stan Foster
Executive Director
Legal Aid of Western Oklahoma, Inc.
Cameron Building, Suite 110
2901 Classen Boulevard
Oklahoma City , OK 73106

Date: November 1, 2000

Subject: **Eligibility of Citizen of American Samoa for Legal Services in Oklahoma; Applicability of Part 1635 Timekeeping Requirements to Public Defenders Employed by LAWO but Funded from Non-LSC Funds**

You have requested an opinion from this office on two unrelated items. One deals with the eligibility of a citizen of American Samoa for Legal Services and the other inquires about the applicability of LSC's timekeeping requirements to employees of Legal Aid of Western Oklahoma who serve a criminal public defenders and whose salaries and activities are fully funded by non-LSC derived funds. We will address these questions in turn.

Eligibility of American Samoans

A citizen of American Samoa, who is otherwise eligible, may be served by any Legal Services provider, including Legal Aid of Western Oklahoma. Section 1002(8) of the Legal Services Corporation Act defines a "state" as "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands¹, and any other territory or possession of the United States." An eligible citizen of any "State," as that term is defined in the Act, may receive legal services from any Legal Services Corporation grant recipient. Thus, your program may provide services to an otherwise eligible client who happens to be a citizen of American Samoa.

¹ The Trust Territory of the Pacific Islands has since been terminated, 42 U.S.C. §2996a Note, although the definition in the LSC Act has never been amended to reflect this change.

Application of Timekeeping Requirements to LAWO-Employed Public Defenders

As you have described it, LAWO employs Oklahoma City's public defenders. The public defenders, however, are situated in a separate facility, using separate resources, from other LAWO attorneys. The public defenders salaries and resources are paid for wholly by funds provided by the City and none of LAWO's LSC grant funds are used for any purposes related to the work of the public defenders. Under these circumstances, you inquire as to whether the public defenders are required to comply with the LSC timekeeping regulations at 45 CFR Part 1635.

The regulations require that time records must be kept "which comprise all of the efforts of the attorneys and paralegals for which compensation is paid for by the recipient." 45 CFR §1635.3(b)(1). On its face, since the public defender attorneys and paralegals employed by LAWO, a recipient, are receiving compensation from LAWO, the regulations could be interpreted to require timekeeping records for those individuals. However, it is the opinion of the Office of Legal Affairs that the regulation was not intended to apply to such individuals and should not be interpreted in such a manner.

The purpose of the Part 1635 requirements is to "improve accountability" by "[a]ssuring that allocations of expenditures of LSC funds . . . are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended" 45 CFR §1635.1.² To the extent that the activities of the public defenders are paid for wholly by non-LSC funds there are no LSC funds to account for related to their activity. Thus, the purpose of 1635 would not be effectuated by application of the regulations to the public defender personnel.

In addition, under §1635.3, attorneys and paralegals are required to keep time records of the time spent on LSC-eligible cases, matters, or supporting activities. As the public defenders spend no time on LSC-eligible cases, matters or supporting activities, the time records kept by the public defenders would be blank. This does not serve the purposes of the regulation. Moreover, part-time attorneys and paralegals who work on restricted activities in their non-LSC funded time are not required to account for those hours on their time records. Such part-time attorneys and paralegals must complete time records only reflecting their LSC-eligible and funded activities. A result where full-time attorneys engaging in no-LSC funded activities would be required to account for time which their part-time counterparts are not required to account is not justifiable.

In sum, we do not believe that application of the Part 1635 timekeeping requirements to the public defender attorneys and paralegals employed by LAWO was intended by LSC. Likewise, we do not believe that application of the rule in this case would serve any meaningful purpose in furtherance of the regulation. Accordingly, the

² Throughout the public discussions of the LSC Board of Directors and the Board's Operations and Regulations Committee about the recent revisions to Part 1635, it appears also to have been assumed that "compensation paid be the recipient" referred to compensation deriving from LSC grant funds for LSC eligible activities.

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LAWO need not maintain time records as specified under 45 CFR Part 1635 for its public defender attorney and paralegal employees.

We hope you find this information helpful. If you have any questions, please do not hesitate to contact us.

Very truly yours,

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