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Re: Outside Practice of Law – Consulting
Services for Legal Help Line

Dear Mr. Weeks:

This responds to your recent inquiry regarding the application of LSC's regulations on the outside practice of law to a full-time staff attorney with your program who wishes to provide some assistance to an internet-based commercial legal assistance service.

Specifically, the services of a staff attorney with Ohio State Legal Services are being sought to: (1) create some form documents which will be made available to persons seeking assistance at the website; and (2) to provide information for an on-line database that is set up in a FAQ (frequently asked questions) format. You seek an opinion as to whether this activity is permissible under the LSC regulations on the outside practice of law, 45 CFR Part 1604. Under the facts as we understand them, the proposed activity may be considered consulting and the attorney may accept the proposed assignment.

The Part 1604 regulations, with limited exception, prohibit the outside practice of law.¹ The outside practice of law is defined in § 1604.2 as:

[T]he 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.

At issue here, then, is whether the attorney's proposed services for the help line constitute the "outside practice of law" or can be considered "consulting" and, therefore, not subject to the general prohibition.

¹ Part 1604 implements section 1007(a)(4) of the LSC Act, which provides that:

The Corporation shall . . . (4) 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 practice of law except as authorized in guidelines promulgated by the Corporation.

The term “consulting” is not defined in the regulations, but has been interpreted by LSC as “providing advice or sharing an expertise in a particular area of the law to other attorneys [or] in a law school setting, as long as [the] activities are not within an attorney-client relationship.” (LSC Op. Ltr., 1/25/99) In light of the strict statutory prohibitions on the outside practice of law imposed by Congress, this interpretation is intended to provide for a limited set of activities which can be considered “consulting.” Without a narrow interpretation of that term, an attorney could circumvent the statutory and regulatory prohibitions on the outside practice of law by labeling as consulting what would otherwise be understood to be legal representation. Among the factors involved in analyzing whether a particular activity can be considered to be consulting is the extent the prospective work will involve client representation and the extent to which the attorney’s services are sought for the attorney’s expertise in and knowledge of a particular subject. Moreover, consultants are generally “paid a contractual fee for their services by the attorney or firm providing representation to the client.” (LSC Op. Ltr., 7/29/97)

The proposed activity, as described by the attorney, includes two elements: the drafting of form documents which will be made available to customers of the service and the provision of information for a database set up in a FAQ format. The attorney will prepare form documents which will be assembled into “kits” available for use by persons needing information and forms on a particular legal topic. The attorney will not be creating the forms and kits on a case-by-case basis, but rather in generic form and posted to the website. As the service works, a person using the service will be able to access the posted information and have the computer generate personalized forms automatically, using information submitted on-line by that person. The FAQ information will be generated by the attorney in response to generic questions that the service has determined that it wants to include in the FAQ section of the website. In each situation, there would be no interaction between the attorney and the person accessing the service at the website and, as I understand, no attorney-client relationship created between the attorney and any customer of the service. I further understand there is no proposed representation of the service or attorney-client relationship created between the attorney and the company sponsoring the service.² Accordingly, the attorney’s proposed activities may be considered a permissible consulting activity.

We hope you find this information helpful. If you have any questions regarding this opinion, please do not hesitate to contact me at 202/336-8817 or mcondray@lsc.gov.

Sincerely,

Mattie C. Condray
Senior Assistant General Counsel

² This view does not appear to be inconsistent with the definition of practicing law found in Ohio law.