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Sent via email at
JJohnson@ulspro.andjusticforall.org,
with hard copy to follow in mail.

Jennifer Johnson, Esq.
Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City , UT 84101

RE: Interpretation of 45 C.F.R. 1637, Opinion No. 2001-1013

Dear Ms. Johnson:

I am writing in response to your inquiry about whether your program may represent an applicant confined in a mental hospital, in light of 45 C.F.R. 1637, LSC’s Regulation prohibiting representation of prisoners. You indicated that you were recently contacted by an Administrative Law Judge who requested that you represent the potential client in a Social Security hearing. The potential client previously spent 90 days in a state mental hospital for the purpose of being deemed competent to stand trial on a criminal charge. After the initial 90 day period, he was deemed incompetent to stand trial and has been sentenced to an additional 90 days in the facility.

Your program *may* represent the potential client in the Social Security hearing. Section 1637.3 states, in relevant part, that “[a] recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison” Section 1637.2(b) defines ‘Federal, State or local prison’ as “any *penal* facility maintained under governmental authority.” [Emphasis added.] The interim version of Part 1637 (which controlled prior to implementation of the final regulation on May 21, 1997) explicitly prohibited representation of persons held involuntarily in mental health facilities if they were committed pursuant to arrest for a crime. *See* 61 Fed. Reg. 34755 (Aug. 29, 1996). As a result of public comments received on the interim regulation which expressed concern that the regulation equated confinement in a mental health facility with incarceration in a prison, the final regulation was changed to more narrowly prohibit representation of prisoners held in *penal* facilities maintained under governmental control. Accordingly, the final regulation permits representation of persons confined in mental health facilities,

regardless of the reason for confinement, as long as they are otherwise eligible (i.e. as long as they are financially eligible and fall within established priorities).

I am attaching, for your information, an Office of Legal Affairs opinion to Southeast Missouri Legal Services, Inc., dated May 29, 1997, which provides further discussion of this issue.

I hope that this information adequately addresses your inquiry. If you have questions or need additional assistance, please feel free to contact me directly at (202)336-8871.

Sincerely,

Dawn M. Browning
Assistant General Counsel

Victor M. Fortuno
General Counsel