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May 29, 1997

Warren E. Hearnese, Executive Director
Southeast Missouri Legal Services, Inc.
116 North Main Street
Post Office Box 349
Charleston, MO 63834

Re: Interpretation of 45 C.F.R. 1637

Dear Mr. Hearnese:

You have requested assistance in interpreting the restrictions on representation of prisoners in civil litigation. See 45 C.F.R. Part 1637. In particular, you asked if representation would be allowed: (1) on a child support matter for an applicant confined to a mental institution following a criminal trial in which he was found not guilty by reason of insanity; and (2) for persons released from prison, but who remain under house arrest.

On August 29, 1996, LSC published Part 1637 as an interim rule to implement the legislative restrictions on the representation of prisoners. Part 1637 became effective upon publication, although LSC also sought public comment on the interim rule. On April 21, 1997, LSC published Part 1637 as a final rule, and incorporated certain changes from the interim rule based on its evaluation of the public comment. The final rule became effective 30 days after its publication, or May 21, 1997.

The preamble to the interim rule specifically addressed your first question of representation of persons confined to mental institutions: "The definitions would include persons who are held involuntarily in a mental health facility if they were committed as a result of their arrest for a crime." 61 Fed. Reg. 34755 (Aug. 29, 1996). Thus, under the interim rules, applicants involuntarily confined to mental health facility as a result of an arrest, as opposed to a civil commitment, would not have been eligible for representation. This policy has been changed in the final regulations.

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LSC received a number of comments seeking reconsideration of a policy which was viewed as equating confinement in a mental health facility with incarceration in a prison. Based on these comments and other considerations, in the final rule, LSC has modified the definitions of "incarcerated" and "Federal, State or local prison," such that the restrictions on representation of prisoners apply to person involuntarily held in *penal* facilities maintained under governmental authority. Thus, under the final rule which is now in effect, representation of persons confined to mental health facilities, regardless of the reason for the confinement, would be permitted, provided they are otherwise eligible for such services.

With regard to your second question, the definition of "Federal, State or local prison" in the final rule, as well as the definition in the interim rule, would not include persons who have been released from prison, even if they are subject to house arrest. The person's private residence is outside the regulatory definition in that it is not a penal "facility maintained under governmental authority."

We apologize for the delay in responding to your inquiry. However, as the regulation that was the subject of your inquiry was undergoing revision, we thought it best to await the issuance of the final regulation before answering you questions. If we can be of any further assistance on this matter, please let us know.

Sincerely,



Susan D. McAndrew
Assistant General Counsel