

August 9, 1999

Ms. Allison Thompson
Executive Director, Three Rivers Legal Services
111 Southwest First Street
Gainesville, FL 32601

Dear Ms. Thompson:

This is a response to your February 1999 request for an opinion on the application of the Legal Services Corporation's (ALSC or ACorporation) retainer agreement requirement to cases referred by recipients to private attorneys under a recipient's Private Attorney Involvement (APAI) program.

For the reasons set out below, the better course would be to have the client execute two retainer agreements, one with the recipient and one with the PAI attorney.¹

The Corporation's regulatory requirement for retainer agreements provides in part, that:

A recipient shall execute a written retainer agreement, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement . . . shall clearly identify the relationship between the client and the recipient, the matter in which the representation is sought, the nature of the legal services provided, and the rights and responsibilities of the client. . . .

45 CFR §1611.8 (a).²

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For the agreement with the recipient, it is equally acceptable for a staff attorney, a supervisory attorney, or the executive director to sign the retainer agreement on behalf of the recipient. *O.G.C. Op.*, August 27, 1984.

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Retainer agreements are not required when the only service to be provided is *brief advice and consultation*. §1611.8(b)(emphasis added).

Section 1611.8 makes no specific provision for the different relationships a client referred under PAI would have with the recipient and the PAI attorney, most likely because it was adopted before the Corporation established the PAI requirement in Part 1614.³ However, Office of the General Counsel (AOGC≅) opinions have consistently applied the retainer agreement requirement to a recipient=s PAI cases. A 1983 OGC opinion found that Athe retainer agreement requirement applies to all legal services rendered by recipients, whether through staff attorneys or through various forms of private bar involvement programs.≅ External OGC Opinion (Dec. 28, 1983), enclosed. A 1984 OGC opinion found that the retainer agreement requirement Aapplies at least equally to a private attorney compensated by a judicare program as it does to a staff attorney.≅ External OGC Opinion (Feb. 13, 1984), enclosed.

Finally, a 1995 OGC opinion went further and recommended that, in addition to executing a retainer agreement with the recipient, the client should sign a separate retainer agreement with the PAI attorney, unless the recipient acts as co-counsel or is involved in the case in a substantive way. External OGC Opinion (Dec. 5, 1995), enclosed.⁴ Although there is no express requirement in Part 1611 that a separate retainer agreement be made with the PAI attorney, both the purpose and the requirements for retainer agreements support the need for one. Retainer agreements are intended to protect all parties and define the rights and duties of the parties in an attorney-client relationship; thus, they should state very clearly and specifically the relationship between the client and the program or attorney providing legal assistance. *See*

³ *See* 48 Fed. Reg. 54201, 54204 (Nov. 30, 1983)(Part 1611) and 49 Fed. Reg. 21328 (May 21, 1984)(Part 1614).

⁴ According to the opinion, a retainer agreement:

should be worded to state very clearly and specifically the relationship between the client and [the recipient]. *See* 45 C.F.R. §1611.8(a) (AThe retainer agreement shall clearly identify the relationship between the client and the recipient≅). I would also strongly recommend having the client sign a separate retainer agreement with the PAI attorney unless [the program] acts as co-counsel or is involved in the case in a substantive way.

External OGC Opinion (Dec. 5, 1995).

§1611.8(a). According to the preamble to the final rule:

The Corporation considers the universalization of [using retainer agreements] to be professionally desirable and in accordance with its mandate under Section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards and to assure that there is no misunderstanding as to what services are to be rendered. Retainer agreements protect the attorney and recipient in case of an unfounded malpractice claim, and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards.

48 Fed. Reg. 54204 (Nov. 30, 1983)(preamble to final rule). *See also* OGC Opinion (Feb. 13, 1984).⁵

In summary, according to §1611.8(a), retainer agreements are required to clearly identify the relationship between the client and the recipient, the matter in which the representation is sought, the nature of the legal services provided, and the rights and responsibilities of the client. In a PAI situation, the PAI attorney takes on the role of the client's legal representative while the recipient's role is often limited to intake, referral and administrative oversight. When a PAI attorney, rather than the recipient, represents the client's legal interests, a retainer agreement with the recipient would not sufficiently identify the nature of the services to be provided by the PAI attorney or establish the respective rights and responsibilities of the client and the PAI attorney. In order to protect all parties and ensure that all respective roles and relationships are clearly delineated, the better view is for the client to execute one retainer agreement with the recipient and another with the PAI attorney. The additional clarification and protection for all parties offered by two retainer agreements is well-worth any additional effort.

I hope that this adequately responds to your question. Please let me know if you need any additional assistance on this matter.

Sincerely,

Suzanne B. Glasow
Senior Assistant to the General Counsel

⁵ *See* 45 C.F.R. §1611.8(a). *See also* A MODEL CLIENT RETAINER AGREEMENT—memorandum to program directors (June 11, 1993), enclosed. Some provisions in this model agreement are outdated and do not reflect changes in statutory law governing LSC grants.