

LEGAL ACTION OF WISCONSIN, INC.

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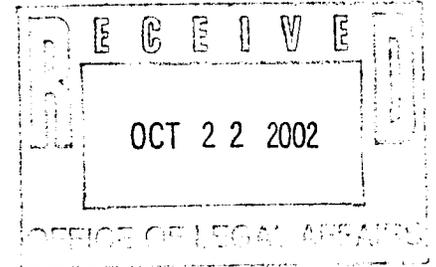
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October 15, 2002

Ms. Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 1st Street NE, 11th Floor
Washington, D.C. 20002-4250



Re: Legal Action of Wisconsin Comments
on Notice of Proposed Rulemaking,
Part 1604 - Outside Practice of law

Dear Ms. Condray:

Section 1604.1 Purpose

We believe that, with narrow exceptions, the outside practice of law should not be permitted. At Legal Action, we expect attorneys to work more than forty hours per week for the clients of the program. Even with this, we are not able to fully meet the demand presented by our clients because of our severe resource shortages. Therefore, we believe that Legal Action attorneys should be working forty-plus hours per week for program clients, and that there is precious little time available for the outside practice of law, whether compensated or uncompensated. We believe that pro bono is an obligation of the private bar, and the pro bono obligation is meant to mobilize additional resources for staff legal services programs. To expect legal services program staff attorneys to engage in pro bono representation is to divert resources away from the legal services program's mission. Therefore, we view it as very important that each program have the ability to adopt outside practice policies which are more restrictive than the LSC regulation.

Most of the requests which we have received from staff for permission to engage in the outside practice of law involve relatives, friends or other staff members at Legal Action who are unable to afford private counsel. We believe that it is appropriate for our staff attorneys to engage in this kind of uncompensated outside practice, especially because any given request has historically involved very little time. Therefore, we would like to preserve the ability to approve this kind of outside practice, while retaining the ability to prohibit significant outside practice.

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Section 1604.4 Permissible Outside Practice

It is good that the rule retains the requirement that the Executive Director determine that the representation is consistent with the attorney's responsibilities to the recipient's clients. This is a very significant requirement, and it would not help our clients to eliminate it. Therefore, we strongly favor its retention.

The expansion of the provision in the current rule that permits work on behalf of a close friend or family member to include work on behalf of the attorney himself or another member of the recipient's staff is a good one. As mentioned above, most of our requests for outside practice have been either on behalf of the attorney's family or a Legal Action staff member who is unable to afford private counsel. Especially in view of the very low salaries which legal services support staff are paid, it is beneficial to occasionally permit a program attorney to represent another program staff member.

Regarding the clarification that outside practice on behalf of a client referred by an organized pro bono or certain legal referral programs is permissible, we do not object to this, but, as stated above, would like to be able in our own policies to limit this kind of outside practice. Even if we agreed that legal service attorneys are subject to the same pro bono obligations as other members of the profession, we view those obligations as being met by working for a legal services firm more than forty hours per week at significantly below market salaries. We do not think that the pro bono obligation on legal services attorneys extends to taking outside pro bono clients in addition to the program's clients. Thus, we do not view the fourth and fifth categories as essential, and view them with some concern if we are not able to limit this kind of outside practice ourselves.

Section 1604.5 Compensation

We support the provision that permits a newly-hired attorney to receive compensation, including attorneys fees, for cases from a prior practice. To deny a newly-hired attorney this right would make it more difficult for us to recruit and hire quality attorneys.

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Section 1604.6 Use of Recipient Resources

We are opposed to the use of any recipient funds for outside practice, whether "de minimis," or "limited". Especially in this time of severely reduced resources, all recipient funds should be used for the representation of the recipient's clients, and none should be diverted to the outside practice of law. Prohibiting this avoids any potential problems with regard to program integrity or timekeeping. We consider it very critical that staff not be able to engage in the outside practice of law using program resources or on program time. We have great numbers of program clients who need the full attention of program staff, and to represent them adequately will require every bit of program resources and program time. We cannot afford a diversion of program resources or time to outside practice clients.

With regard to court appointments, staff attorneys should be permitted to accept court appointments, but the court should pay for the staff attorney's work on those cases, and thus timekeeping will probably be necessary in any event. We would like the ability to inform the courts that we are not permitted to accept court appointments without charging for our time. To permit the courts to appoint us to cases and not pay us for our time merely shifts the court's responsibility to pay for representation for low-income persons to legal services programs which are already extremely short on resources. At Legal Action in the past, we have sought court appointments in the family preservation area, but we have made certain that the courts agree that they will pay us for those appointments. In this way, we have been able to expand our service to an important group of clients, but also to expand available resources along with that expansion of service. We are very concerned that an LSC regulation permitting us to accept court appointments without charge will very seriously strain our resources.

Thank you for your consideration of these comments.

Yours truly,

A handwritten signature in black ink, appearing to read "John F. Ebbott". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

John F. Ebbott
Executive Director

JFE:caj