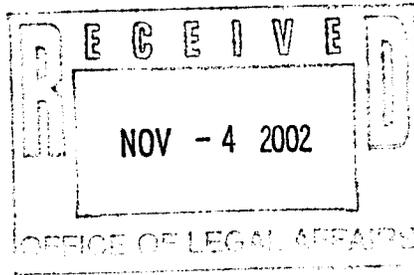




Northwest Justice Project

401 Second Ave S
Suite 407
Seattle, WA 98104
(206) 464-1519 Phone
1-888-201-1012 Toll Free
1-888-201-9737 TDD
(206) 624-7501 Fax
njp@nwjustice.org
www.nwjustice.org
Patrick H. McIntyre
Executive Director



October 30, 2002

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

Re: Comments on Proposed Amendments to 45 CFR 1604, Outside Practice of Law

Dear Ms. Condray:

I am writing on behalf of the Northwest Justice Project (NJP), the LSC grantee for the State of Washington, regarding the proposed amendments to 45 CFR 1604 (Outside Practice of Law) published in the Federal Register at 67 FR 57550-02.

First and foremost, NJP wishes to thank LSC for reviewing this regulation and proposing the published amendments. We believe the proposed amendments represent a very positive approach to the outside practice of law issue, and address many of the existing barriers to full participation by LSC funded staff attorneys in the *pro bono* obligations of the legal profession. We further believe that it is important to LSC's mission of providing access to justice for low-income persons for LSC grant recipient staff to be encouraged to participate in local bar organized *pro bono* efforts for persons who, due to lack of resources, cannot be represented by recipient programs. LSC recipient staff participation in these organized efforts sets a valuable example for the private bar and encourages broader *pro bono* participation. Therefore, we support the proposed changes.

With regard to the specific provisions for which LSC requests comment, we believe that any potential risks of inconsistency with other regulatory requirements imposed on grantees, including in the areas of timekeeping, program integrity, or the general restrictions on types of advocacy currently prohibited, are minimal (if they exist at all), and can be effectively addressed through recipients' written policies.

Comments on the specific proposed changes under each section of the regulation follow:



Board of Directors: • Lisa Atkinson • Scott E. Collins • Pamela DeRusha • Michelle Gonzalez • Barbara Kubik-Patten
Barbara Lindley • Patrick J. Oshie • Christopher W. Pazen • Margaret Smith • Claude M. Pearson, President Emeritus



1. Section 1604.1 – Purpose: The purpose statement is clear and very well written. It appropriately encourages recipients to allow their attorney staff to engage in limited outside practice under the guidelines set out. We support the revised purpose statement.
2. Section 1604.2 – Definitions: We support the definitions as revised. We also encourage LSC to explicitly exclude from the definition of “outside practice of law” participation in the military reserves as JAG Corps officers. We believe that this exclusion would appropriately recognize the value of this service by lawyers who serve in this capacity, and that recipients should not be permitted to inhibit participation in this service in any way.
3. Section 1604.3 – General Policies: We support the proposed revisions. NJP has always had a written policy on outside practice and the proposed revisions offer greater flexibility and discretion.
4. Section 1604.4 – Permissible Outside Practice: NJP strongly urges adoption of the proposed revisions, particularly subsections (3)-(5). These new provisions reflect the important value of *pro bono* work by all members of the profession, and LSC funded attorneys should be held to same obligations as private lawyers. Moreover, NJP has found that it can impair our efforts to encourage private lawyers to participate in organized *pro bono* programs if we ourselves are not able to participate. This is a really important change that we fully endorse.
5. Section 1604.5 – Compensation: The proposed revisions make sense and we support them. We also support the revised structure that eliminates the distinction between “compensated” and “uncompensated” outside practice. Because the regulation would authorize recipients to allow the limited use of resources for the outside practice, it is appropriate that any “fees” be remitted to the recipient. Moreover, we support the use of the recipient’s infrastructure for the limited disbursement and reimbursement of possible costs incurred in the representation. In short, we support the proposed changes.
6. Section 1604.6 – Use of Recipient Resources: LSC specifically asks for comment on the appropriateness of using recipient resources for any outside practice. NJP believes it is very appropriate to allow the limited or “de minimis” use of recipient resources consistent with recipient written policy for outside practice. We believe that this, again, acknowledges the importance that *pro bono* work plays in the profession and reflects the “equal” professional status of LSC grantee lawyers. The limited use of program resources further acknowledges that, as a practical matter, full-time recipient staff lawyers generally do not have easy outside access to the “instrumentalities” of modern day legal practice, *e.g.* fax machine, copier, electronic model pleadings, on-line research tools, etc. This revision is also consistent with the fact that most recipients’ malpractice coverage includes outside practice for its staff attorneys. The proposed revision furthers the purpose of the amendments and removes unnecessary and practical barriers to *pro bono* participation by LSC funded lawyers. Because the rules expressly prohibit use of *any* recipient program resources for LSC restricted activities, there is little chance that program integrity is compromised by this provision. We wholly support the proposed revision.

Ms. Mattie C. Condray, Senior Assistant General Counsel

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7. Section 1604.7- Court Appointments: NJP has little experience with court appointments except in the area of appointments as guardians *ad litem* (GAL) in certain contested custody proceedings. These appointments are typically uncompensated and for families who are otherwise eligible. However, such appointments have raised questions for staff about whether GAL work is allowable outside practice under the regulations. To expressly exclude these types of court appointments from the definition of "outside practice" would clarify this issue, and encourage staff to participate in these types of worthy activities on their own time. In short, we support the proposed revision.

We greatly appreciate the opportunity to comment and strongly urge you to adopt the proposed revisions. Should you have any questions regarding these comments, or generally NJP's experience with the Outside Practice regulation, please do not hesitate to contact me.

Sincerely,



Deborah Perluss

Director of Advocacy/General Counsel

Cc Patrick McIntyre

NJP Board