

ices Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"). Section 1007(a)(7) of the Act requires recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for review of appeals taken on behalf of clients.

A proposed regulation was issued on March 12, 1976 (41 FR 10629), and interested persons were given until April 11, 1976 to submit comments on the proposed regulation. All comments received by the Corporation with respect to appeals were given full consideration and the following issues were taken into account in redrafting the regulation:

Coverage of Part 1605. Section 1007(a)(7) of the Act requires all recipients to establish guidelines, consistent with Corporation Regulations, for review of appeals. Since the purpose is to insure efficient utilization of Corporation resources, this Part does not apply to any part of a recipient's practice that is undertaken with other than Corporation funds. (Comments received noted that the published draft did not address the problem of mixed practices.) The Part requires a recipient to establish a policy and procedure for review of every appeal, as defined by local usage, taken to an appellate court from the decision of any court or tribunal.

Standards for Review. Aside from that clarifying change, the only other changes are the addition of some relevant statutory language omitted from the published draft, and a fuller, but substantively unchanged, statement of the standards for review. A recipient is required to adopt a review policy that discourages frivolous appeals and gives appropriate weight to priorities in resource allocation required by the Act, the Corporation, or its own governing body, but does not interfere with an attorney's professional responsibilities to a client.

Accordingly, the Board of Directors of the Legal Services Corporation adopts the final regulation, as set forth below, to become effective on June 3, 1976, pursuant to section 1008(e) of the Act.

- Sec. 1605.1 Purpose.
- 1605.2 Definition.
- 1605.3 Review of appeals.

AUTHORITY: Sec. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

§ 1605.1 Purpose.

This Part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

- (a) Discourage frivolous appeals, and
- (b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but
- (c) Shall not interfere with the professional responsibilities of an attorney to a client.

THOMAS EHRLICH,
President,
Legal Services Corporation.

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PART 1612—RESTRICTIONS ON CERTAIN ACTIVITIES¹

Picketing, Boycotts, Strikes, Illegal Activities; Legislative and Administrative Representation

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("The Act"). Section 1006(b)(5) of the Act requires the Corporation to issue regulations implementing the Act's restrictions on picketing, boycotts, strikes and illegal activities by employees of the Corporation and of recipients, as well as restrictions on legislative and administrative representation using Corporation funds.

Temporary regulations were published on September 12, 1975 (40 FR 42362) and became effective on October 14, 1975. Proposed final regulations were published on March 5, 1976 (41 FR 9571), and interested persons were given until April 5, 1976 to submit comments on the proposed final regulations. All comments received by the Corporation with respect to the proposed final regulations were given consideration and the regulations were reorganized and revised substantially in light of those comments. In addition, Part 1600 was renumbered and now appears as Part 1612. This change was made to permit the inclusion of a general "Definitions" section [now Part 1600], and to establish a more logical order for future regulations.

The following considerations were taken into account in redrafting the proposed final regulations:

Prohibition Against Encouraging Action by Other People. The Act contains a number of provisions designed to prevent legal services attorneys from engaging in activities unrelated to the provision of legal assistance to eligible clients. The prohibitions against direct participation by attorneys presented no difficult issues of interpretation; but the prohibition against encouraging others to engage in lawful activities such as public demonstrations and picketing presented the major policy issue in this Part. In construing the prohibition we tried to reconcile demands presented by the Code of Professional Responsibility, the Constitution, and the intent of Congress.

We believe a lawyer is obligated to advise a client about lawful alternatives to litigation² and we do not think Con-

gress intended to prevent such advice.³ An appropriate construction of the term "encourage" would permit such advice, and at the same time, would satisfy the restriction against vagueness and overbreadth in the First Amendment area, and the parallel ethical constraint against external interference with a lawyer's professional judgment.⁴

The legislative history of the Act suggests that the intention of Congress was to prevent lawyers from deliberately prodding others toward activities they otherwise might not engage in; so from the many possible meanings of "encourage" we chose those that seemed best suited to convey that intention, and replaced "encourage" with the words "exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow." The definition of "encouraging" that appeared in Sections 1600.3(a)(2) and 1600.3(a)(3), as published, is now superfluous, and has been omitted.

Mens Rea Requirement. The final regulations modify the prohibitions of Section 1600.2 by the addition of mens rea requirements. To invoke Corporation sanctions, an employee's direct participation in prohibited activities must be undertaken "knowingly", and action leading another to engage in such activities must be taken "intentionally". These requirements were added in the belief that there is no place for absolute liability in the First Amendment area, and that Congress did not intend to impose it.

Other Illegal Activity. As published, the proposed regulations did not interpret the Act's prohibition against "other illegal activity". Section 1612.2(b)(1)(C), as here presented, bars illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation Regulations, or the Code of Professional Responsibility. These categories seem sufficient to cover the situations when the Corporation should add its sanctions to those imposed by the law.

Legal Assistance Activities. The definition of "carrying out legal assistance activities" that appeared in the published version of Section 1600.3(a)(1) included any time during which an attorney "could reasonably be expected to provide legal advice or representation." That phrase has been dropped because it introduced unnecessary uncertainty into a reasonably clear provision. The definition of "legal assistance activities" now appears in Section 1612.1.

Attorney-Client Relationship. A single provision, Section 1612.3, replaces the repetitive disclaimers and exception found in the published version of Section 1600.3(a)(2) and its terminal proviso.

¹ See Ethical Considerations 7-7 and 7-8 of the ABA Code of Professional Responsibility.

² See Section 1006(b)(3) of the Act; Conference Report p. 21-22; House Report p. 7.

³ See, e.g., ABA Committee on Ethics and Professional Responsibility, Formal Opinion 334 (1974), p. 7.

⁴ See FR Doc. 76-12951 supra.

RULES AND REGULATIONS

Legislative and Administrative Representation. Section 1600.4, now 1612.4, has been rewritten for greater clarity, but no substantive changes were made. It follows the Act in permitting "lobbying" efforts to be made on behalf of any client of the recipient if the client may be affected by a particular legislative or administrative measure, but prohibits soliciting a client for the purpose. For practical and economic reasons we permit a client to be represented for "lobbying" purposes by a different person than the one who may represent him in other matters. In allowing this we are supported by ABA Formal Opinion 334, note 3 supra, which states that the client of a legal services office "has a lawyer-client relation with its staff of lawyers which is the same as any other client who retains a law firm to represent him. It is the firm, not the individual lawyer, who is retained."

Subsection 1612.4(b) was added in response to comments received on the proposed regulations. It makes explicit what was previously implied, that the prohibition against "lobbying" does not prevent queries to the Corporation or to governmental agencies; nor does it prevent furnishing information to clients about legislative or administrative developments.

Enforcement. The only change in the Enforcement Section is the addition of sub-section 1612.6(b) (3), which requires a recipient to consult the General Counsel of the Corporation before suspending or terminating an employee for violation of the provisions of this Part. The requirement serves to promote uniform interpretation of the Part, and also insures that the Corporation will be notified of any serious violation.

Accordingly, the Board of Directors of the Legal Services Corporation adopts the final regulations, as set forth below, to become effective on June 3, 1976 pursuant to Section 1008(e) of the Act.

Sec.	
1612.1	Definition.
1612.2	Public demonstrations and other activities.
1612.3	Attorney-client relationship.
1612.4	Legislative and administrative representation.
1612.5	Enforcement.

Authority: Secs. 1006(b) (5), 1007(a) (5), 1011, 1008(e), P.L. 93-355, 88 Stat. 378 (42 U.S.C. 2906e(b) (5), 2906f(a) (5), 2906j, 2906g (e)).

§ 1612.1 Definition.

"Legal assistance activities", as used in this Part, means any activity:

- (a) Carried out during an employee's working hours;
- (b) Using resources provided by the Corporation or by a recipient; or
- (c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1612.2 Public demonstrations and other activities.

(a) While carrying out legal assistance activities under the Act no employee shall

- (1) Knowingly participate in any public demonstration, picketing, boycott,

or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While employed under the Act, no employee shall, at any time,

- (1) Knowingly participate in any
 - (i) Rioting or civil disturbance;
 - (ii) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or
 - (iii) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation Regulations, or the Code of Professional Responsibility; or
- (2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

§ 1612.3 Attorney-client relationship.

Nothing in this Part shall prohibit an attorney from

- (a) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof;
- (b) Attending a public demonstration, picketing, boycott, or strike for the purpose of providing legal assistance to a client; or
- (c) Fulfilling the professional responsibilities of an attorney to a client.

§ 1612.4 Legislative and administrative representation.

(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body; except that

- (1) An employee may engage in such activities in response to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient; and
- (2) An employee may engage in such activities on behalf of an eligible client of a recipient, if the client may be affected by a particular legislative or administrative measure; but no employee shall

(1) Solicit a client for the purpose of making such representation possible, or

(2) Solicit a group of clients for the purpose of representing it with respect to matters of general concern to a broad class of persons as distinguished from the interests of a particular client.

(b) Nothing in this section is intended to prohibit an employee from

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies; or

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation; or

(3) Communicating with the Corporation for any purpose.

§ 1612.5 Enforcement.

(a) The Corporation shall have authority, in accordance with procedures set forth in Title 45 of the Code of Federal Regulations, at § 1067.1-4(b) (relating to suspension), or at §§ 1067.1-5 through 1067.1-11 (relating to termination)

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient which fails to insure that its employees refrain from activities proscribed by the Act or by this Part; provided that

(1) No suspension of employment or financial assistance shall be continued for longer than 30 days unless the recipient or employee of the Corporation is provided notice and an opportunity for a hearing in accordance with the procedures relating to termination cited above, and

(2) The term "OEO" in the above-referenced regulations shall mean the Corporation, and the term "responsible OEO official" shall mean the President of the Corporation, or, if no President is in office, the Chairman of the Board or his designee.

(b) A recipient shall

(1) Advise employees about their responsibilities under this Part; and

(2) Establish procedures, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a provision of this Part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for the enforcement of this regulation; and

(4) Consult the General Counsel of the Corporation before suspending or terminating the employment of any person for violation of this Part.

THOMAS EBERLICH,

President,

Legal Services Corporation.

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Title 47—Telecommunication CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20147]

PART 91—INDUSTRIAL RADIO SERVICES

Report and Order; Correction

In the matter of amendment of Part 9 and 91 of the Commission's Rules and