

Under § 1607.3(d), only one member need be an eligible client when selected; the other members of the client component may be delegates or representatives. This realistic allowance is made because clients may be reluctant to speak up in the presence of a group of lawyers, and may feel that their own point of view would be presented more effectively by a spokesman of their choice. A client member who becomes ineligible for legal assistance because of a change in financial circumstances may, nonetheless, remain on the governing board.

The requirement in § 1607.3 that lawyers and the clients be selected from, or designated by, appropriate groups, follows from our overall concern to insure that membership is both representative of, and accountable to the interests it represents. The remaining members of a governing body need not represent any group, but must be interested in and supportive of legal services to the poor.

Section 1607.3(h) states that no category of governing board membership shall be dominated by persons serving as the representatives of a single association, group, or organization. It should be noted that the Regulation does not prevent drawing all attorney members, for example, from the same state or local Bar Association, so long as a dominant percentage of the attorney membership of the governing body has not been designated by that Bar Association as its representatives.

FUNCTIONS OF GOVERNING BODY

The Corporation believes that Formal Opinion 334 of the American Bar Association Committee on Ethics and Professional Responsibility (August 10, 1974) enunciates sound principles to guide a governing body in carrying out its responsibilities to a legal services program and its clients.

COMPENSATION

Section 1607.6 authorizes payment to governing body members for reasonable and actual expenses required for fulfillment of membership obligations, but the Corporation does not encourage members who can afford to pay such expenses themselves to seek reimbursement from the recipient.

The following regulation has been adopted by the Legal Services Corporation, to become effective July 23, 1976, pursuant to section 1008(e) of the Act.

Part 1607 is established to read as follows:

Sec.	Purpose.
1607.1	Definition.
1607.2	Composition.
1607.3	Functions of a governing body.
1607.4	Waiver.
1607.5	Compensation.

AUTHORITY: Sec. 1007(c); 42 U.S.C. 2996f(c).

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high quality legal as-

istance to those who otherwise would be unable to obtain adequate legal counsel, and to insure that the recipient is accountable to its clients.

§ 1607.2 Definition.

"Eligible client," as used in this Part, means a person eligible to receive legal assistance under the Act, without regard to whether the person is receiving assistance at the time of selection for membership on a governing body.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests and characteristics of the eligible clients in the area served.

(b) At least sixty (60) percent of a governing body shall be attorneys admitted to practice in a State in which a recipient is to provide legal assistance, who are supportive of the purposes of the Act and have interest in, and knowledge of, the delivery of quality legal services to the poor.

(c) The attorneys shall be selected from, or designated by, appropriate Bar Associations and other groups, including, but not limited to, law schools, civil rights or anti-poverty organizations, and organizations of eligible clients.

(d) At least one member of a governing body shall be, when selected, an eligible client, and at least one-third of the members shall be either eligible clients, or representatives of associations, groups, or organizations of eligible clients.

(e) The members who are, or who represent those who are, eligible clients shall be selected from, or designated by, a variety of appropriate groups including, but not limited to, client and neighborhood associations and organizations.

(f) The categories of "attorney" and "eligible client representative" are not mutually exclusive; a single individual may be counted toward satisfaction of both requirements.

(g) The remaining members of a governing body, whatever the method of selection, shall be individuals interested in and supportive of legal services to the poor.

(h) No category of governing board membership shall be dominated by persons serving as the representatives of a single association, group, or organization.

(i) Members of a governing body may be selected by appointment, election, or other means. The method of selection and composition shall be subject to approval by the Corporation. A recipient whose current governing body does not satisfy the requirements of this section shall submit for approval a plan for achieving compliance as soon as possible.

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(b) A governing body shall establish and enforce broad policies governing the operation of a recipient, but shall not interfere with any attorney's professional responsibilities to clients.

§ 1607.5 Waiver.

(a) Upon application, the President shall waive the requirements of this Part to permit a recipient that was funded under section 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such a non-attorney majority.

(b) The President may waive the requirements of this Part upon application of a recipient that demonstrates that it cannot comply with them because of

(1) The nature of the population or area served; or

(2) Special circumstances, including, but not limited to, conflicting requirements of the recipient's major funding source.

(c) A recipient seeking a waiver shall demonstrate that it has made diligent efforts to comply with the requirements of this Part.

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no member shall receive compensation from the recipient, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership.

THOMAS EHRLICH,

President,

Legal Services Corporation.

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PART 1608—PROHIBITED POLITICAL ACTIVITIES

Quality Legal Assistance

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"), for the purpose of providing financial support for legal assistance in non-criminal proceedings to persons financially unable to afford legal assistance. Sections of the Act, including sections 1005(b), 1006(b)(5), 1006(d)(3) and (4), 1006(e)(1) and (2), 1007(a)(6) and 1007(b)(2) prohibit certain political activities by the Corporation, recipients, and their respective employees.

A proposed regulation on prohibited political activities was published on May 5, 1976 (41 FR 18527), and interested persons were given until June 3, 1976 to submit comments. All comments received were given full consideration, but none raised any issue of substance, and the proposed regulation has been adopted without change.

The following issues were considered before adoption of the final regulation:

PURPOSE

Congress declared that in order to "preserve its strength, the legal services program must be kept free from the

influence of or use by it of political pressures"; and the Act contains several provisions that are designed to insure that Corporation funds will not be used to promote political interests. This part implements those provisions.

APPLICATION OF THE HATCH ACT

The Legal Services Corporation Act (hereinafter LSC Act) refers to the Hatch Act in two places, one affecting Corporation employees, and the other, staff attorneys. After passage of the LSC Act, a relevant portion of the Hatch Act barring employees from taking an active part in political campaigns was amended, and now bars only actual candidacy for elective public office. Before adopting a regulation implementing these Sections of the LSC Act, it was necessary to decide whether either or both of the references in the LSC Act constitute a specific incorporation of the unamended Hatch Act, precluding consideration of subsequent amendments.

Section 1006(e)(2) states that Corporation employees "shall be deemed to be State or local employees" for Hatch Act purposes. The emphasis is on identity of treatment with the other employees specified, and not on prohibiting particular activities. Therefore we concluded that Congress would have applied the amended Hatch Act to Corporation employees, and we have done so in § 1608.4.

The best reading of § 1007(a)(6), which requires the Corporation to insure that staff attorneys refrain from activities "of the type" prohibited by the Hatch Act, suggests that the Hatch Act is cited by way of example only, leaving specific proscriptions to the discretion and continuing experience of the Corporation. Support of such reading is found in the fact that the LSC Act requires the Corporation to limit both partisan and nonpartisan political activity by staff attorneys, but the Hatch Act never applied to nonpartisan activity. We concluded that neither the amended nor unamended provisions of the Hatch Act directly apply to staff attorneys, and that the Corporation has discretion to deviate from the Hatch Act in relation to them; but in the absence of experience justifying deviation, we have embodied the Hatch Act without any change except the addition of a prohibition against nonpartisan candidacy, as required by the LSC Act.

The following regulation has been adopted by the Legal Services Corporation, to become effective July 23, 1976, pursuant to § 1006(e) of the Act.

Part 1610 is established to read as follows:

- Sec. 1608.1 Purpose.
- 1608.2 Definition.
- 1608.3 Prohibitions applicable to the Corporation and to recipients.
- 1608.4 Prohibition applicable to all employees.
- 1608.5 Prohibitions applicable to Corporation employees and staff attorneys.
- 1608.6 Prohibitions applicable to attorneys and to staff attorneys.
- 1608.7 Attorney-client relationship.
- 1608.8 Enforcement.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1006(b)(3), 1006(b)(5)(B), 1006(d)(3), 1006(d)(4), 1006(e)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996(b)(2), 2996(b)(3), 2996(b)(5)(B), 2996(d)(3), 2996(d)(4), 2996(e)(1), 2996(e)(2), 2996(f)(a)(6), 2996(b)(2).

§ 1608.1 Purpose.

This Part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. The Part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§ 1608.2 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.

§ 1608.3 Prohibitions applicable to the corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the Act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment:

- (1) To any political party or association,
- (2) To the campaign of any candidate for public or party office, or
- (3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§ 1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under Section 1608.3; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§ 1608.5 Prohibitions applicable to corporation employees and to staff attorneys.

While employed under the Act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any

recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; and

(c) No staff attorney shall be a candidate for elective public office, whether partisan or nonpartisan; nor shall a Corporation employee be a candidate for partisan elective public office.

§ 1608.6 Prohibitions applicable to attorneys and to staff attorneys.

(a) While engaged in legal assistance activities supported under the Act, no attorney shall engage in:

- (1) Any political activity,
- (2) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or
- (3) Any voter registration activity.

(b) While employed under the Act, no staff attorney shall engage in the activities prohibited by paragraphs (a)(2) or (a)(3) of this section at any time.

§ 1608.7 Attorney-client relationship.

Nothing in this Part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.8 Enforcement.

This Part shall be enforced according to the procedures set forth in § 1612.5.

THOMAS EHRLICH,
President,

Legal Services Corporation.

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PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

Prohibitions and Accounting

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 375, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1010(c) of the Act, 42 U.S.C. 2996(c), restricts the use of funds received by recipients from sources other than the Corporation.

A proposed regulation on the use of non-Corporation funds was published on May 5, 1976 (41 FR 18528), and interested persons were given until June 3, 1976 to submit comments. All comments received by the Corporation were given full consideration, and, in addition to technical changes, the following revisions were made in the proposed regulation:

DEFINITION (§ 1610.1); WAIVER (§ 1610.4)

Several comments indicated confusion about what activities are prohibited by the Act. Therefore, a definition of "purposes prohibited by the Act or Corporation Regulations" was added, referring to the specific prohibitions in the Act.