

reclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

§ 1609.5 Acceptance of fees.

(a) A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if

(1) The requirements of § 1609.4 are met, and

(2) Funds received are not used for purposes prohibited by the Act, and are accounted for in the manner directed by the Corporation.

(b) If a legal fee is awarded or approved by a court or administrative body, it shall be remitted promptly to the recipient.

§ 1609.6 Acceptance of reimbursement.

When a case or matter subject to this Part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(a) The requirements of § 1609.4 are met, and

(b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

§ 1609.7 Application.

Nothing in this part shall prevent a recipient from

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

(b) Accepting a fee in a case that was initiated prior to adoption of this part; or

(c) Acting as co-counsel with a private attorney when appropriate, and accepting part of any fee that may result from a shared case.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FE Doc. 76-30220 Filed 9-9-76; 8:45 am]

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-358, 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 or matters to persons financially unable to afford legal assistance. Section 1007(b)(1) of the Act restricts the use of Corporation funds in criminal proceedings.

A proposed regulation was published on June 11, 1976 (41 FR 23728-9), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

DEFINITION

An initial policy question was whether to leave the scope of the prohibition against criminal representation to the varying definition of "criminal" in state and federal law, or to adopt a uniform definition. Consistent with the Corporation's policy seeking uniformity in application of the Act and its regulations, a uniform definition has been adopted.

Many minor infractions, such as housing, sanitation and traffic law violations, that are punishable by no more than a fine, are basically civil in nature. They are treated as civil in some states and in the Model Penal Code, and the ABA recommends their removal from criminal codes. "ABA Report, New Perspectives on Crime" iv (1972). Because the Corporation believes such offenses are basically civil in nature, and because the imposition of a fine may be extremely burdensome for the clients of legal services programs, the regulation permits representation of defendants in such cases.

The definition in the original draft has been amended to exclude cases prosecuted by private citizens to vindicate claims that are civil in nature, even though criminal sanctions or procedures may be provided by some states. Examples are child support and alimony cases. The change is consistent with the Conference Report, which states that the conferees understood "criminal proceedings" to refer to actions brought by governmental units.

The definition may leave a gap between cases where legal services lawyers can provide representation, and those where the Sixth Amendment right to counsel in criminal prosecution applies, because the Supreme Court has suggested that the Sixth Amendment is inapplicable when imprisonment is unlikely, although authorized. "Argersinger v. Hamlin," 407 U.S. 25 (1975). Recognizing that gap, the Corporation still believes that legal services lawyers should not participate in cases where an alternative jail sentence is authorized, even though they are arguably civil in nature. The Corporation's resources are too limited to accept the substantially expanded quasi-criminal caseload that might result if such representation were permitted.

If no more than a fine can result from conviction, the Part does not prohibit representation. But whether representation actually should occur is a question for a recipient to decide on the basis of its own priorities and resources, and the availability of other legal assistance in the community.

The prohibition of this part does not apply until adversary judicial criminal proceedings have been initiated by for-

mal complaint, indictment, or information. Choice of this point was suggested by the Supreme Court's decision in "Kirby v. Illinois," 406 U.S. 682 (1972), where the Court explained that "The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified It is this point, therefore, that marks the commencement of [a] 'criminal prosecution'" 406 U.S. 689.

AUTHORIZED REPRESENTATION

The legislative history makes it clear that certain limited exceptions to the general prohibition against criminal representation were intended.

In geographic areas where there is no Public Defender, and there are relatively few lawyers available, a legal services lawyer may be required by a court to accept appointment to represent an indigent defendant. If appointment is made pursuant to a statute or a court rule or practice of general applicability to all attorneys in the jurisdiction, § 1613.4(a) permits a legal services lawyer to fulfill an attorney's responsibility as an officer of the court, as long as criminal representation is not inconsistent with the primary responsibility of the legal services program to provide assistance to eligible clients in civil matters.

Occasionally a noncriminal matter undertaken on behalf of a juvenile evolves into a criminal proceeding (as for example, when a juvenile court waives jurisdiction). Section 1613.4(b) permits continued representation of the juvenile in the criminal proceeding, if required by professional responsibility.

Section 1613.4(c) was added to permit representation, if required by professional responsibility, in a case in which a criminal charge directly arises out of a civil matter in which a client has received or is receiving legal assistance from a recipient.

This Part does not prohibit legal assistance with respect to any matters that are not part of a criminal prosecution, such as probation revocation after sentence has been imposed, "Mempa v. Rhay," 389 U.S. 128 (1967), parole revocation, "Morrissey v. Brewer," 408 U.S. 471 (1972), or relief from illegal conditions of confinement.

Sec.

1613.1 Purpose.

1613.2 Definition.

1613.3 Prohibition.

1613.4 Authorized Representation.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

§ 1613.1 Purpose.

This part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the Bar.

§ 1613.2 Definition.

"Criminal proceeding" means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law, and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a "criminal proceeding".

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires continued representation of a juvenile pursuant to § 1614.6; or

(c) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

Effective date. This part becomes effective on October 12, 1976.

THOMAS EHRLICH,

President,

Legal Services Corporation.

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PART 1614—LEGAL ASSISTANCE TO JUVENILES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2998-2996i ("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 1007(b)(4) of the Act restricts the use of Corporation funds in the representation of juveniles.

A proposed regulation was published on June 11, 1976 (41 FR 23729), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

PURPOSE

The legislative history of the Act shows that Congress intended to prohibit legal services programs from providing legal assistance to a juvenile when doing so would create or exacerbate conflict between parent and child. At the same time, assistance is authorized when

family relationships have broken down or essential rights of a juvenile are at stake. This part is designed to meet these dual concerns.

REPRESENTATION AT THE REQUEST OF A PARENT, GUARDIAN, OR COURT

Section 1614.4 follows the Act in permitting legal assistance at the request of one of the juvenile's parents or guardians, or a court of competent jurisdiction. Requests made by agents or officials such as probation officers, youth workers and counselors, through whom a court normally acts, are considered requests of a court.

When a legal services program is asked to provide assistance to a juvenile who is tried as an adult in a criminal proceeding, the limitations of Part 1613 apply. The Act permits legal assistance to juveniles in noncriminal proceedings, but if a case is one in which a juvenile has a right to appointed counsel, Corporation funds should not be used to relieve governmental entities of their financial responsibilities. The original draft attempted to meet that concern in § 1614.3(c). However, many comments were received objecting that the provision went beyond the Act by unduly restricting representation of juveniles in cases in which there is a legal right to appointed counsel. It was pointed out that there are many situations when adults, as well as juveniles, may have a legal right to counsel compensated by the state (e.g., mental commitment proceedings), and there is no indication that Congress intended there to be greater restrictions on the representation of juveniles than adults in such cases. (The legislative history of the section indicates that the chief concern of Congress was to prevent legal services programs from providing representation injurious to the integrity of a family—a concern that is irrelevant in the types of cases at issue here.) Further, many comments stated that the right to appointed counsel in noncriminal cases is scarcely implemented, if at all, in many states. To the extent that the legal right to appointed counsel is a reality within a jurisdiction, the provisions of Part 1609, requiring referral of fee-generating cases, should be adequate to prevent legal services programs from competing with the private Bar, whether the potential client is a juvenile or an adult.

Because of the critical comments received, § 1614.3(c) was deleted and § 1614.7 added in its place. The new provision allows a recipient to adopt a policy consistent with its own resources and priorities, and the realities of practice within the jurisdiction. If a state provides adequate representation for juveniles, it may be assumed that a recipient will refrain from undertaking such cases.

REPRESENTATION WITHOUT THE REQUEST OF A PARENT, GUARDIAN, OR COURT

When the normal relationship between parent and child no longer exists, or the interests of parent and child conflict, the Act permits legal assistance to a juve-

nile without a request from a parent, guardian, or court. Sections 1614.5 (a) and (b) carry out the intent of the Act by providing that assistance may be given in cases of child neglect, as well as child abuse; and in proceedings involving guardianship, as well as custody. Section 1614.5(c) tracks section 1007(b)(4)(C) of the Act in permitting legal assistance to a juvenile in cases involving the initiation, continuation, or conditions of institutionalization.

Consistent with the balance struck by the Act between preserving parent-child relationships and protecting the legal rights of juveniles, section 1007(b)(4)(D) of the Act permits legal assistance to secure or prevent the loss of legal benefits or services, except when judicial action is commenced against a juvenile's parent or guardian. "Guardian", in this context, has been construed to mean "non-institutional guardian", because doing otherwise would shield institutional guardians from their legal responsibilities. This interpretation is supported by the legislative history of the provision. "Congressional Record," S. 12934, July 18, 1974.

If, after commencement of a case, a parent or guardian joins the action as a defendant or respondent, the Part permits legal representation of a juvenile to continue. Withdrawal at that point would violate Disciplinary Rule 2-110 of the ABA Code of Professional Responsibility; and the Corporation could not require it without violating section 1006(a)(3) of the Act, that prohibits interference with an attorney's fulfillment of professional responsibilities. Here, too, the regulation is supported by legislative history.

CONTINUITY OF REPRESENTATION

Proceedings initiated in a juvenile court are sometimes transferred to an adult court where criminal proceedings ensue. If a legal services lawyer has represented a juvenile prior to transfer, Disciplinary Rule 2-110 of the ABA Code of Professional Responsibility prohibits withdrawal until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client. Therefore, while requiring an attorney to make a good faith effort to be relieved from representation in the criminal proceeding, § 1614.6 permits continued representation unless the attorney is relieved by the court.

Sec.

1614.1 Purpose.

1614.2 Definitions.

1614.3 Policy.

1614.4 Request of a parent, guardian, or court.

1614.5 Representation without request of a parent, guardian, or court.

1614.6 Continuity of representation.

1614.7 Limitation policy.

AUTHORITY: Sec. 1007(b)(4) (42 U.S.C. 2996(b)(4)).

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal as-

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