

Act, it also requested and received comments on the new definition in preparation for possible reconsideration. After carefully considering comments received on the new definition, the Board of Directors on March 14, 1986, approved an amended version of § 1614.1 of Part 1614.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas A Bovard, Counsel to the Division of Policy Development, (202) 863-1842.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the Board of Directors approved an amended version of Part 1614 which was published in the *Federal Register* on November 26, 1985. Included in § 1614.1 of the amended version was a new definition of the term "private attorney." While the Board decided that Part 1614 as amended should be published as a final rule and go into effect at the expiration of the notice period required by the LSC Act and the Appropriations Act, it also requested and received comments on the new definition in preparation for possible reconsideration. The revised regulation was published on November 26, 1985, 50 FR 48586. A total of 21 comments, all timely, were received by the Corporation. After carefully considering these comments, the Board of Directors on March 14, 1986, approved an amended version of § 1614.1 of Part 1614.

In response to comments the Board voted to strike the last sentence of § 1614.1(d) which referred to the Ethics in Government Act (18 U.S.C. 207), and to add a new paragraph (e) at the end of § 1614.1. New paragraph (e) provides that after the effective date of the regulation no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years had been a staff attorney as defined in section 1600.1 of the Corporation's regulations.

The Board was informed that there were programs which had laid off staff attorneys and then contracted to pay them for services relating to the same matters they were involved with while on staff. Arrangements of this type pose at least two problems. First, they run counter to one of the purposes of PAI: to encourage growth in the number of lawyers participating in the provision of legal services to the poor. Second, these kinds of arrangements create an appearance of impropriety.

It should be noted that paragraphs (d) and (e) of § 1614.1 apply only for the limited purpose of determining whether funds given to a particular lawyer should be counted toward a recipient's

PAI requirement. There are many circumstances in which it would be best to give a client's case to someone who had been a staff attorney. Accordingly, paragraphs 1614.1(d) and (e) do not prohibit such a practice. They simply establish that fees given a private attorney who has recently been a staff attorney cannot be credited toward the PAI requirement.

In further response to comments, three provisos have been added to ensure that these two paragraphs are fairly applied and that they further the goals of PAI. First, because the Board recognizes that some programs may already have contracted to do PAI work with attorneys who have recently left staff, it has decided to permit recipients to honor these contracts for the rest of the 1986 fiscal year. Recipients may not, however, enter into any new contracts for direct payment to former staff attorneys.

Second, comments suggested that the prohibition on direct payments to former staff attorneys would place former staff attorneys who take part in *pro bono publico* or *judicare* programs at a disadvantage. It was alleged, for example, that this provision would prevent them from receiving reimbursement for actual out-of-pocket expenses incurred in representing *pro bono publico* clients even though all other participating attorneys receive such reimbursement. The Board did not intend paragraph (e) to curtail the participation of former staff attorneys in these programs. It wished simply to ensure that former staff attorneys who take part in them do not receive preferential treatment. Accordingly, it has added a proviso making clear that recipients may use PAI funds for *pro bono publico* or *judicare* projects in which former staff attorneys participate. In such cases the only applicable restriction is that programs must apply to former staff attorneys the same standards that they apply to other participating attorneys. Thus, while paragraph (e) prohibits making direct PAI payments to former staff attorneys, it does not prohibit practices such as the following: using PAI funds to reimburse former staff attorneys for actual out-of-pocket expenses incurred as the result of their participation in a project, as long as all other participating attorneys are similarly reimbursed; using PAI funds to conduct training programs in which former staff attorneys take part, as long as they do not receive preferential treatment; or using PAI funds to pay for training materials received by former staff attorneys, as long as other

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Final rule; amendment.

SUMMARY: On October 11, 1985, the Board of Directors approved an amended version of Part 1614 which was published in the *Federal Register* on November 26, 1985. Included in § 1614.1 of the amended version was a new definition of the term "private attorney." While the Board decided that Part 1614 as amended should be published as a final rule and go into effect at the expiration of the notice period required by the LSC Act and the Appropriations

participating attorneys receive the same materials.

Third, comments suggested that under the new definition recipients could not count towards PAI the work of private attorneys who practice in the same law firm with former staff attorneys since technically it is the law firm itself that represents a particular client and not just the attorney who renders the services. Because such an effect is not intended, the Board has added a proviso clarifying that paragraph (e) is not to be construed to restrict the payment of PAI funds as a result of work performed by an attorney who practices in the same firm with a disqualified former staff attorney.

List of Subjects in 45 CFR Part 1614

Legal Services, Private attorneys.

The Board voted to strike the last sentence of § 1614.1(d) which referred to the Ethics in Government Act (18 U.S.C. 207), and to add a new paragraph at the end of § 1614.1.

1. The authority citation for 45 CFR 1614 continues to read as follows:

Authority: Secs. 1007(a)(2)(C), 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

2. In § 1614.1 in paragraph (d), the last sentence is removed and a new paragraph (e) is added to read as follows:

§ 1614.1 Purpose.

(e) After the effective date of this regulation, no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years has been a staff attorney as defined in § 1600.1 of these regulations; provided, however, that, for the remainder of the 1986 fiscal year, recipients may honor contractual arrangements made to such private attorneys if these arrangements were made before the effective date of this regulation; provided, further, however, that this paragraph shall not be construed to restrict the use of PAI funds in a *pro bono* or *judicare* project on the same terms that are available to other attorneys; and provided further, however, that this paragraph shall not be construed to restrict the payment of

PAI funds as a result of work performed by an attorney who practices in the same firm with such former staff attorney.

Dated: June 10, 1986.

John H. Bayly, Jr.

General Counsel.

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