

Proposed Rules

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DATES: Comments should be received by August 15, 1994.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, Office of the General Counsel (202) 336-8810.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee of the LSC Board of Directors ("Committee") held public hearings on April 15, 1994, in Washington, DC and on May 13, 1994, in Atlanta, Georgia, to consider drafts of proposed revisions to 45 CFR part 1607, LSC's regulation on recipient governing bodies. At the meeting in Atlanta, the Committee approved a draft to be published in the Federal Register as a proposed rule for public comment.

The Corporation is extending the customary 30-day comment period to 60 days in order to allow bar associations and other organizations with a specific interest in this rule sufficient time to comment. Bar associations play a substantial role in the appointment of recipient board members, and the Committee encourages their involvement in this rulemaking process.

The Committee recognizes that reauthorization of the Corporation is presently under consideration by Congress. Whenever Congress does reauthorize the Corporation, the Corporation's regulations will be revisited and revised accordingly.

This proposed rule is intended to amend 45 CFR part 1607 and to supersede part 1607's interpretive guideline published at 48 FR 36820 (August 15, 1983).

Section 1607.1 Purpose

No change is proposed for this section.

Section 1607.2 Definitions

Most of the changes proposed for this section are technical and clarifying in nature. The section was reordered to put the definitions in alphabetical order. Also, definitions found in other parts of the regulations, but applicable to this part are included here for easier reference. In addition, language found in other sections of this part that, in fact, constitute definitions of terms are included here both for easier reference

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the Legal Services Corporation's ("LSC" or "Corporation") regulations, relating to governing bodies of recipients of LSC funds. Many of the revisions are simply intended to clarify current Corporation policy or to interrelate this part to other LSC regulations. However, a number of the proposed revisions represent changes in Corporation policy or interpretations with respect to issues that arise under the regulation. The proposal also includes a number of technical revisions to make the rule easier to apply and use.

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and to treat similar terms similarly. Some of the language has been clarified to make it consistent with past and current LSC interpretations.

Section 1607.2(a). The definition of *attorney member* was added to make it clear that national support center board members do not have to be admitted to practice in a state where the center actually provides legal assistance.

Section 1607.2(c). The definition of *eligible client member* has been changed in two principal ways. First, the language has been revised to make it clear that client board members must be eligible at the time of their appointment to each term of office. Thus, a client member who is financially eligible for services when first appointed to a recipient's board may not be reappointed to a second or subsequent term if, at the time of reappointment, the client board member is no longer financially eligible for LSC-funded services. However, nothing in the rule would require a client board member to resign during the course of a term if the client became ineligible subsequent to appointment. Second, language was added to deal with two additional, distinct issues. The proposed rule now makes it clear that the recipient should decide how client board member eligibility is determined. The proposed rule also makes it clear that the recipient should decide whether it or a particular group should make the determination, and that the recipient could decide, for some groups, the recipient will make the determination and for others it will leave the determination up to the appointing group.

The Committee considered and decided not to expand the definition of *eligible client member* to include individuals who are eligible for non-LSC-funded services provided by the recipient, because it wished to insure that the focus of the legal services program remains on the poor community.

Section 1607.2(d). The proposal revises the definition of *governing body* to clarify that, in addition to the governing bodies of recipients who have as a primary purpose the provision of legal assistance to eligible clients, it also applies to the governing bodies or policy boards created pursuant to § 1607.6(e).

Section 1607.2(e). This definition of *recipient* appears in 45 CFR part 1600, but is repeated here for clarity in interpreting this part.

Section 1607.3 Composition

Section 1607.3(a). The proposal includes general language, applicable to

all categories of board membership, that requires board members to be supportive of the purposes of the LSC Act, and to be interested in and knowledgeable about the delivery of quality legal services to the poor. The current regulation does not include any similar requirement for client board members, but does include similar, although not identical, requirements for attorney and "other" board members. The proposal removes the reference to the board reflecting "the characteristics" of the client community, in part because it is not clear what that language means and in part because it could be construed to be inconsistent with diversity requirements that are included later in the rule for each category of board membership.

Section 1607.3(b). With respect to attorney board members, the proposal revises the language of the rule that is based on the requirements of the McCollum Amendment, which require a majority of the board members to be appointed by state, county and municipal bar associations. The revision clarifies that the appointments can be made by one or more such bar associations, so long as those bar associations collectively represent a majority of attorneys practicing law in the recipient's service area. If there are minority or gender-based bar associations that represent attorneys practicing in a particular locality, those bar associations may be included in the mix of bar associations that make appointments of attorneys to a recipient's board, especially if their inclusion would help to insure that there is appropriate diversity among the attorney members of the board. In addition, although the rule, consistent with the language of the McCollum Amendment, states that the appointments are to be made by the "governing bodies" of the bar associations, the Committee recognizes that different bar associations should be free to exercise their appointment responsibility in a manner consistent with their own policies, procedures and practices. The McCollum Amendment does not direct LSC to impose any particular method of appointment on a bar association.

The proposed rule also adds language which is based on part of the McCollum amendment that makes it clear that national support centers are not required to use the American Bar Association ("ABA") or a collection of all state bars to appoint their attorney members, simply because they provide service nationally. The proposed rule also recognizes that some recipients, especially Native-American or migrant

programs, may have offices in one state, but also provide services in one or more adjacent or nearby states. The language is intended to permit those programs, if they so decide, to have the bar associations of the other states in which they provide service make appointments as well as the bar of the state in which their principal office is located.

In addition, the proposed rule explicitly states what is implicit in the language of the current regulation, i.e., that the additional ten percent of the board members who must be attorneys, but who are not covered by the McCollum amendment, may be selected by the recipient's governing body, if it so chooses. The proposed rule does change current law with respect to the additional ten percent of attorney board members in one respect, however. Under the current regulation, the additional attorneys must be representatives of bar associations or other legal organizations, e.g., law schools. This requirement is not contained in the LSC Act. Under the proposed regulation, the recipient may select attorneys who are not representatives of any particular bar or legal organization, or may select attorneys who are affiliated with non-legal organizations, as long as they are admitted to practice in a state within the recipient's service area, and as long as the organization has an interest in the delivery of legal services to the poor. Thus, the recipient would be able to select lawyers who represent the business community or the United Way and may be helpful in fundraising, or lawyers who provide substantial pro bono services to the client community and may be helpful in designing a recipient's private attorney involvement program.

Finally, the proposed regulation revises and relocates the section that relates to diversity among attorney board members. This provision is a variation of the language previously found in § 1607.3(c). It is revised to incorporate a more current statement of the concerns addressed by that subsection, but no substantive change is intended. While the language of the proposed rule specifically mentions race, ethnicity and gender, it also includes a reference to other factors that may be relevant in a particular legal community and population of the area served by the recipient, including, for example, age, physical abilities and religious belief.

Section 1607.3(c). The proposal includes a number of changes in the language that relates to client board members. The principal revision addresses an issue that has remained

ambiguous under the language of the current regulation and has caused problems for some LSC recipients. The proposed revision would codify the current LSC interpretation of the language to require that client board members be selected by client groups that have been designated by the recipient. This proposal also adds language that more accurately reflects the kind of groups or organizations that would be appropriate client groups for purposes of eligible client member selection. In addition, the proposal adds a diversity goal for client board members that is similar to the requirement for attorney board members.

Section 1607.3(d). With respect to the "other" board members, i.e., those that are neither attorney members nor eligible client members, the proposal makes it clear that recipient boards are permitted to fill the remaining "other" slots. This gives recipients flexibility to include board members who can help them with fundraising, community relations, coordination with other social service providers, or any other locally identified need. Law school professors who cannot count as "attorney members" because they are not admitted to practice in a state within the recipient's service area, could be selected for this category of membership. Although there is no comparable language in the current regulation, this provision is consistent with longstanding LSC interpretations. In addition, the proposal includes language that makes it clear that "other" board members should be selected with the goals of diversity in mind.

Section 1607.3(e). This proposal adds language to the "domination" provision in the current regulation to make it clear that the provision was not intended to prevent recipients from designating a single regional or statewide client council as the appointing organization for client board members, so long as that client council represents numerous smaller client groups.

Section 1607.3(f). The proposal deletes language which could be incorrectly interpreted to give LSC authority to veto particular methods of selecting local board members. In addition, the proposal states affirmatively that recipients may recommend names to and consult with bar associations and other appointing groups to insure that appropriate appointments are made. This revision recognizes that bar associations or other groups may request information on who would make a good legal services program board member and may rely on

input from the recipients in making the appointments.

Section 1607.3(g). The proposed rule includes a new provision that is intended to establish standards for dealing with recipient board vacancies. It establishes a standard of reasonable and good faith efforts to insure that governing body vacancies are filled promptly, but recognizes that recipients often have no control over the appointment process other than to change the groups that they have designated to make the appointments if a particular group fails to make an appointment in a timely manner. In order to avoid the creation of vacancies, recipients, through their own by-laws or board policies, could take a number of actions when appointing organizations are slow in making appointments, refuse to make them, or are unable to make them for whatever reason. For example, a recipient's board could permit its members to hold over until replacements are appointed, or could make short-term interim appointments, if necessary, until regular appointments can be made.

Section 1607.3(h). The proposed regulation includes a new provision that grants the recipient the authority to reject an appointment of a board member when the recipient determines that the person who has been appointed does not meet the criteria set out in the regulation, including financial eligibility for client board members, or where the person appointed has a significant individual or institutional conflict of interest with the recipient or its client community. The ABA's Standards for Providers of Legal Services to the Poor states, in Standard 7.2-5, that "governing body members should not knowingly attempt to influence any decisions in which they have a conflict of interest with provider clients" and Standard 7.2-6 states that "members should not be selected by * * * any institution or agency which is in conflict with the provider or its clients." The Commentary to those standards contains discussions of both institutional and individual conflicts of interest and suggests that when such conflicts arise with respect to a sitting board member, the member and the recipient should be guided by laws of the jurisdiction regarding disclosure and recusal. While the Standards state an absolute rule prohibiting appointments by institutions or agencies that have a conflict with the recipient or its clients (e.g. a welfare department or county attorney's office should not make appointments to a recipient's board), they also note that:

If a person is employed by or is otherwise significantly connected with an institution that is in conflict with the provider's clients, generally that person should not serve on the governing body. That person may serve, however, if there is evidence * * * that the particular individual is not in actual conflict * * *

Thus, the question of whether it is appropriate for government attorneys or other public employees or elected officials, or attorneys representing finance companies or real estate developers, to serve on recipient governing bodies as members appointed by a bar association as its representative is a factual issue. The Commentary recognizes that:

(c) conflicts may arise in the representation by attorney board members of institutions or individuals who are in conflict with provider clients. Concern about the risks associated with conflicts should not exclude from the governing body every person identified with an institution or individual with an adverse interest. A strict rule could exclude persons with skills and experience of benefit to the provider and could inhibit development of an effective relationship between the provider and the private bar. In rural areas particularly, where the pool of potential members is relatively small, it may be impossible to avoid all conflicts. The provider, however, should assure that the presence of members with potential conflicts does not inhibit forceful representation of clients.

The proposed provision suggests a way that, under appropriate circumstances, the recipient can assure that individuals with clear and substantial conflicts of interest do not serve on its governing body, while permitting it to seat other individuals who may have a less substantial or merely potential conflict, and leaving it to the guidance of the applicable rules of professional responsibility when actual conflicts arise.

Section 1607.4 Functions of a Governing Body

Section 1607.4(a). This proposal deletes the requirement for "effective" prior public notice, which has proven to be a difficult concept to enforce and may be very fact-specific. The Committee felt that truly effective public notice is virtually impossible to achieve, even if a recipient spent huge amounts of money on advertising. The Corporation does not wish to promote such wasteful expenditures or assume that the efforts were not "effective" simply because few members of the public showed up at a board meeting. Instead, the standard should be that of "reasonable" prior public notice, so that recipients would only be required to do

what is reasonable under the specific local circumstances.

The Committee also considered whether it should include within the regulation specific guidance as to what kinds of matters were properly discussed in executive session. Instead, it decided to recommend that recipients look to the kinds of matters described in the LSC bylaws and Sunshine Act regulation (45 CFR part 1622), state Sunshine Act provisions, or other provisions in state non-profit corporation law for guidance as to the kinds of matters that should appropriately be discussed out of the public eye. A recipient should determine, based on that review and local circumstances, how it should conduct its business.

Section 1607.4(b). The proposed regulation includes new language to make it clear that recipient governing bodies have, in addition to the specific functions described in the regulation, the authority and responsibility inherent in their status as boards of non-profit corporations. The Committee felt that the current regulatory language did not grant the governing body the general authority, for example, to hire and fire a program's executive director, and there should be language that granted such authority.

In addition, there is new language that was added to make the section consistent with ABA opinions on the role of governing bodies of legal assistance programs under the Model Rules, especially with respect to the governing bodies' interference with an attorney's representation of a client or with the conduct of any ongoing representation. The Committee wished to make clear that while Board members were prohibited from such interference, the Board as a whole should be encouraged to adopt policies to guide the executive director's actions when he or she discovers that the recipient has undertaken representation in a case that is inappropriate under the restrictions of the LSC Act or regulations.

Section 1607.4(c). This new provision is intended to make it clear that it is up to recipients to design their own bylaws. The Corporation would have authority to review a program's bylaws, as well as any revisions that are made in them, for the purpose of ensuring that they comply with the LSC Act and regulations.

Section 1607.5 Compensation

Section 1607.5(a). The proposed regulation makes two significant changes in the current rule dealing with recipient board member compensation. First, since the provision of the LSC Act

that prohibits compensation applies only to attorney board members, it would be consistent with the Act to permit a recipient to pay compensation to a client or other non-attorney board member for board service or other service to the recipient. The regulation was revised to make it consistent with the restriction in the Act.

Second, this proposal reverses the policy decision made by the LSC Board in 1988, which interpreted the language of the LSC Act to prohibit a recipient board member from receiving compensation from any recipient, not just the one on whose board the member sat. The effect of the 1988 revision was to prohibit field program staff from sitting on state and national support center boards, and vice versa. It prevented support centers from being accountable through their boards to the programs that they were intended to serve. This proposed language restores and clarifies the prior LSC policy that was in existence from 1975 to 1988 and which reflects the intent of Congress. Both the Legal Services Corporation Reauthorization bill that passed the House in 1992 (H.R. 2039) and the bill that was approved by the Senate Committee on Labor and Human Resources the same year (S. 2870) would have amended the LSC Act in a manner consistent with the proposed revision.

In addition, the proposal clarifies that all board members may receive a per diem payment for expenses in lieu of actual expense reimbursements, so long as such a payment is reasonable in light of actual average costs. Such a per diem may be easier for programs to administer and may encourage board members to save money on items such as meals and lodging by setting the per diem at a relatively low rate. The last phrase of the sentence was deleted to make it clear that reimbursement could be made for expenses incurred by recipient board members, on the same terms and conditions that are applicable to non-board members when such board members are involved in other program activities not directly related to their board membership or service, e.g., attorney board members who volunteered to drive a program client to a meeting or a hearing could receive reimbursement for automobile expenses, or attorney board members who did pro bono work on behalf of the program could receive reimbursement for travel expenses for attending an out-of-town settlement conference.

Sections 1607.5 (b) and (c). The proposal includes two new provisions that clarify how the compensation prohibition relates to a recipient's

private attorney involvement program. One provision makes it clear that the Corporation could partially waive the compensation prohibition for those rural programs that operate in areas where there are so few attorneys that it is difficult or impossible to find attorneys willing to serve on program boards if that means that their partners and associates are barred from participating in judicare or other compensated PAI activities. The second provision was added to clarify that attorney board members can receive referrals of fee-generating cases and participate freely in the recipient's pro bono PAI programs on the same terms as any other attorney. This is particularly important for rural areas where there are few private attorneys.

Section 1607.6 Waiver

Section 1607.6(a). There is no change in this waiver provision which was designed to cover those programs, primarily reservation-based Native-American programs, that existed prior to the creation of the Corporation and had nonattorney majorities on their boards. In lieu of attorneys, most of those programs include tribal advocates who practice in tribal courts.

Section 1607.6(b). This new provision was added to permit the Corporation president the discretion to waive the requirement of one-third client membership when the president has determined that a recipient, like the National Clearinghouse for Legal Services or the Food Research & Action Center ("FRAC"), does not have as a primary purpose the provision of legal assistance to clients. The waiver provision requires a specific determination by the Corporation president, rather than a self-determination by the recipient, and does not permit waiver of the client board member requirement so long as the recipient has as a primary purpose the provision of legal assistance to clients. Such a waiver does not conflict with the statutory provision governing client membership because that provision applies only to those recipients that are organized "solely for the provision of legal assistance to eligible clients." It is anticipated that this waiver will be used sparingly for exceptional circumstances.

Section 1607.6(c). This provision was revised to clarify that the Corporation president could waive any provisions of the regulation, as long as the waiver conforms with applicable law. It also allows partial waivers to be granted. In addition, language was added to make it clear that the nature of the legal community could be considered as a basis for a waiver, as well as

requirements of state law. The Committee recognized that there may be programs, especially in rural areas, where there are peculiar problems or situations within the legal community that may make it necessary or desirable to permit the recipient to have a governing board that varies from the normal. An example would be for those programs that serve native-American populations and practice in tribal courts. The president, through the waiver authority, could permit the recipient to substitute one or more tribal advocates for attorney board members. In addition, this provision could be used as authority for partial waiver of the compensation prohibition, to permit a recipient to adopt policies that would allow partners or associates of a board member to participate in compensated PAI activities supported by the recipient.

Section 1607.6(d). The only change made in this subsection was a reference to the previous subsection.

Section 1607.6(e). This new provision was added to permit the LSC president to require an organization that is not principally a legal assistance organization but gets an LSC grant for legal assistance activities, to set up a policy board, similar to those established for several of the Delivery Systems Study programs during the late 1970's, to govern the activities covered by the LSC grant.

Deletion of Section 1607.7 Compliance

The compliance section of the current regulation is no longer applicable, since it refers to the changes that were made in the regulation in 1983. None of the proposed revisions would require programs to change anything about their board structures in order to come into compliance, although they would permit programs to make numerous changes and still remain in compliance with the regulation. Therefore the Committee proposal deletes the provisions on compliance. The Corporation should insure compliance with the new regulation in the same manner as it insures compliance with the other regulations.

List of Subjects in 45 CFR Part 1607

Legal services.

For the reasons set forth in the preamble, LSC proposes to amend 45 CFR part 1607 as follows:

PART 1607—GOVERNING BODIES

1. The authority citation for part 1607 is revised to read as follows:

Authority: 42 U.S.C. 2996f(c).

2. Section 1607.1 is revised to read as follows:

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

3. Section 1607.2 is revised to read as follows:

§ 1607.2 Definitions.

(a) *Attorney member* as used in this part means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* refers to a member of a recipient's governing body.

(c) *Eligible client member* as used in this part means a person who is eligible to receive legal assistance under the Act at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s), in accordance with policies adopted by the recipient.

(d) *Governing body* refers to the board of directors or other governing policy board or body of a recipient receiving funds under section 1006(a)(1)(A) of the Act.

(e) *Recipient* refers to any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

4. Section 1607.3 is revised to read as follows:

§ 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 of the eligible clients in the area served and consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in

the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations that are designated by the recipient and have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous

smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with applicable State law.

Recipients may recommend candidates for governing body membership to the appropriate bar associations or other appointing groups and may consult with appointing organizations to insure that appointments are made consistent with the provisions of this part.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) A recipient may reject the appointment of a board member if the recipient determines that:

(1) The person does not meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible client members, or

(2) The person has an actual and significant individual or institutional conflict of interest with the recipient or the recipient's client community that could influence the person's ability to exercise independent judgment as a member of the recipient's governing body.

5. Section 1607.4 is revised to read as follows:

§ 1607.4 Functions of a governing body.

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

(b) In addition to other powers and responsibilities that may be provided for by state law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation timely notice of any changes in such bylaws.

6. Section 1607.5 is revised to read as follows:

§ 1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that

recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other reasonable out-of-pocket expenses.

(b) Pursuant to a waiver granted under § 1607.6(c)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area, (1) to accept referrals of fee-generating cases under part 1609 of this chapter, (2) to participate in any uncompensated private attorney involvement activities supported by the recipient, (3) to seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to paragraphs (c)(1) and (2) of this section, and (4) to receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to paragraph (c)(2) of this section.

7. Section 1607.6 is revised to read as follows:

§ 1607.6 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 nonattorney majority.

(b) Upon application, the president may waive § 1607.3(c) for those recipients which the president has determined do not have as a primary purpose the provision of legal assistance to clients.

(c) Upon application, the president may grant any waivers of the requirements of this part which are permitted by applicable law if a recipient demonstrates that it cannot comply with them because of (1) the nature of the population, legal community or area served, or (2) special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

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

(e) As a condition of granting a waiver under paragraph (c) of this section, the

president may require that a recipient establish a policy board or body, whose membership is selected consistent with the requirements of § 1607.3, to establish and enforce policy, consistent with the provisions of § 1607.4, with respect to the services provided under any grant or contract made under the LSC Act.

Dated: June 10, 1994.

Victor M. Fortuno,
General Counsel.

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