

OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2004-1005

**To:** Rhodia Thomas, Esq.  
Executive Director  
MidPenn Legal Services  
213-A North Front Street  
Harrisburg, PA 17101

**Date:** September 17, 2004

**Subject:** **Review of Relationship Between MidPenn Legal Services and Dauphin County Bar Association**

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You asked this Office for an Opinion as to whether MidPenn Legal Services' arrangement with the Dauphin County Bar Association's is consistent with the Legal Services Corporation's program integrity requirements, 45 CFR Part 1610.

***Brief Answer***

As the Dauphin County Bar Association ("Bar Association") does not engage in any restricted activities, the relationship between MidPenn Legal Services ("MidPenn") and the Bar Association raises no concerns with respect to LSC's program integrity requirements of 45 CFR Part 1610. We would suggest, however, that MidPenn add some additional signage inside MidPenn's office space to further clarify the distinction between the Bar Association's pro bono coordinator's office and the MidPenn offices. Such an action would help ensure that the relationship would be consistent with the program integrity requirements of Part 1610 should the Bar Association wish to engage in any restricted activities at some future date.

***Background***

We understand the facts to be as follows:

- The Dauphin County Bar Association and MidPenn Legal Services are each separately incorporated Pennsylvania non-profit corporations.
- The Dauphin County Bar Association has a building, out of which it operates. MidPenn rents offices from the Bar Association. The MidPenn offices are on floors separate from the floor which the Bar Association occupies (with one exception, addressed below). MidPenn is in the back part of the building with a separate entrance on the side of the building. The Bar Association is in the front

of the building, and the Bar Association's offices are accessed by the entrance at the front of the building.

- There is signage outside the building (both in the back and front) that directs individuals to MidPenn and to the Bar Association.
- MidPenn and the Bar Association do not have any of the same employees or Board members.
- MidPenn and the Bar Association maintain entirely separate records.
- The Bar Association has a pro bono referral program, staffed by one Bar Association employee.
- The pro bono coordinator is physically housed in an office within the office suite rented by MidPenn. There is currently no interior signage designating the pro bono coordinator's office as Bar Association property, and not part of MidPenn.
- The office space occupied by the pro bono coordinator is specified as not part of the space leased by MidPenn and this is reflected in the rent paid by MidPenn to the Bar Association. Under MidPenn's lease from the Bar Association, the landlord (the Bar Association) pays the cost of all utilities.
- The phone, fax and computer system used by the pro bono coordinator are part of the Bar Association's phone and computer network; the pro bono coordinator has no access to MidPenn's intake system or computer network.
- The pro bono coordinator has access to MidPenn's copier only to copy letters that are sent to pro bono attorneys who are doing work on behalf of MidPenn clients. Similarly, when a pro bono attorney comes to the office he/she is allowed to use the copier to make copies of client documents.
- MidPenn has confidentiality protections in place to secure information in regards to clients served by MidPenn. Specifically, MidPenn offices are locked, there is no sharing of client information, and no access to client files. When clients walk-in they are seen by the MidPenn receptionist in the reception area which is separate from the pro bono coordinator's office.
- Neither the pro bono coordinator nor the Bar Association engages in any restricted activities; the pro bono coordinator arranges for the referral of cases, some of which are not LSC-eligible, and does the majority of the work required over the phone. If the Bar Association were to, at some future point, engage in restricted activities, such activities would not involve the pro bono coordinator.

***Analysis***

Under the LSC program integrity standard, a recipient “must have objective integrity and independence from any organization that engages in restricted activities.” 45 CFR §1610.8(a). Restricted activities are those which are prohibited by, or inconsistent with the requirements of the LSC Act, Corporation’s FY 1996 appropriations act and the implementing LSC regulations. See 45 CFR §1610.2(a) and (b). As we understand the facts, the Bar Association does not engage in any restricted activities. Thus, MidPenn is not required to maintain objective integrity and independence from the Bar Association. Accordingly, the relationship between MidPenn and the Bar Association does not raise any issues of compliance with respect to Part 1610.

It may be, however, that in the future, the Bar Association will desire to engage in restricted activities. At such point, MidPenn would be required to have “objective integrity and independence” from the Bar Association, consistent with the requirements of Part 1610. You have asked us to consider what, if anything, MidPenn would need to do to ensure that MidPenn’s relationship with the Bar Association would meet the program integrity requirements of Part 1610, should compliance become necessary. Of course, we cannot provide a definitive assessment of compliance with Part 1610 without knowledge of all the relevant facts and we would encourage MidPenn to consult further with this Office for further guidance should the Bar Association seek to engage in restricted activities in the future. However, we can provide the following guidance to assist MidPenn in understanding how the program integrity requirements would apply and how MidPenn should be thinking about the relationship between the organizations.

Under Part 1610 “objective integrity and independence” requires that:

1. The other organization is a legally separate entity;
2. The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and
3. The recipient is physically and financially separate from the other organization. Mere bookkeeping separation for LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on a totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but will not be limited to:
  - i. the existence of separate personnel;
  - ii. the existence of separate accounting and timekeeping records;
  - iii. the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

- iv. the extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR §1610.8(a).

Applying the standard set forth above to the relationship between the Bar Association and MidPenn, there would be three areas of analysis: 1) whether MidPenn and the Bar Association are legally separate entities; 2) whether MidPenn is providing any transfer of funds or subsidy to the Bar Association; and 3) whether the totality of the circumstances presented is consistent with the Part 1610 physical and financial separation requirement.

MidPenn and the Bar Association are legally separate entities. As such the first requirement for objective integrity and independence would appear to be met.

As noted above, MidPenn's lease does not include the office of the Bar Association's pro bono coordinator, and MidPenn is providing no overhead or equipment for the Bar Association or the pro bono coordinator, other than allowing the pro bono coordinator to use MidPenn's copier for document related to work being done on behalf of MidPenn clients. As such, MidPenn is making no transfer of funds to the Bar Association and MidPenn is not subsidizing the Bar Association. Assuming no change in this situation, the second requirement for objective integrity and independence would appear to be met.

Although we cannot provide a complete assessment of physical and financial separation at this time, we can provide a partial assessment, addressing three of the four specific factors listed in §1610.8(a)(3). Assuming no change from the current circumstances, the first two listed factors would appear to be met since MidPenn and the Bar Association maintain fully separate staffs and records. Further, the fourth listed factor, having to do with signage and other forms of identification which distinguish the organizations, would appear to be met if MidPenn added some signage in the interior of its office space clearly designating the pro bono coordinator's office as Bar Association property, not affiliated with MidPenn. In this way, the additional signage, combined with the existing signage and the different physical space occupied by the respective organizations, along with the fact that there is no indication that there is no other way in which the Bar Association or MidPenn would otherwise be identified with the other organization, taken together, would appear to satisfy the fourth factor. The third §1610.8(a)(3) factor cannot be assessed at this time because we would need to know the extent of the restricted activities the Bar Association would be engaging in and the degree to which such restricted activities would be occurring in separate facilities from MidPenn (as indicated by the third factor listed above) in order to assess the totality of the circumstances.

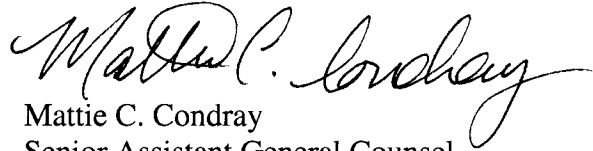
Finally, MidPenn should be mindful that the §1610.8(a)(3) list of factors is not exhaustive. On the basis of the information available, there do not appear to be any other circumstances relevant to the determination of physical and financial separation in this case which would indicate a lack of physical or financial separation. However, should

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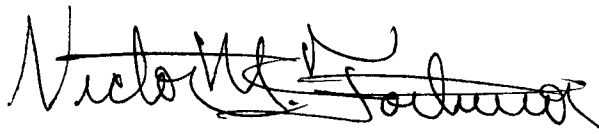
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other elements of the relationship between MidPenn and the Bar Association change, such changes could potentially affect the program integrity assessment.

Very truly yours,



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