

under the Act of the recipient or the Corporation."

§ 1613.5 Enforcement. [Existing.]

(a) The Corporation shall have authority, in accordance with procedures set forth in Title 45 of the Code of Federal Regulations, at § 1007.1-4(b) (relating to suspension), or at §§ 1007.1-5 through 1007.1-11 (relating to termination).

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and
(2) To suspend or terminate financial assistance to a recipient which fails to insure that its employees refrain from activities proscribed by the Act or by this Part; provided that

(i) No suspension of employment or financial assistance shall be continued for longer than 30 days unless the recipient or employee of the Corporation is provided notice and an opportunity for a hearing in accordance with the procedures relating to termination cited above; and

(ii) The term "OEO" in the above-referenced regulations shall mean the Corporation, and the term "responsible OEO official" shall mean the President of the Corporation, or, if no President is in office, the Chairman of the Board or his designee.

Section 1612.5. Subsection (a) of this section should be amended to read as follows:

The Corporation shall have authority in accordance with the procedures set forth in Part 1606 and Part 1623 of this chapter;

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient who fails to insure that its employees refrain from activities proscribed by the Act or by this Part.

Comment. Section 9(c) of the amendments expanded the restriction in section 1007(a)(5) of the Act regarding legislative representation to include activities designed to include the outcome of State proposals by initiative petition, expanded the exceptions to the prohibition to include lobbying regarding measures directly affecting the activities of the recipient or the Corporation, and clarified the restriction on soliciting clients for purposes of legislative representation to include only activities that violate the Code of Professional Responsibility. Section 1612.4(a) of the regulations has been revised to include the new language. In addition, section 1612.5(a) has been revised to reflect the fact that the Corporation has published in proposed form procedures governing suspension and termination proceedings. Thus, it is no longer necessary to rely on OEO regulations for enforcement of Part 1612.

It bears emphasis that the new exception for matters "directly affecting" a recipient does not permit lobbying on poor people's issues generally. To the contrary, an amendment in the

House Bill that would have permitted such lobbying was dropped in conference. The exception extends only to appropriations or other measures directed to the recipient or its employees, as opposed to eligible clients. See Conf. Rep. 95-825, 95th Cong., 1st Sess. (1977), at 18.

PART 1615—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

§ 1613.4 Authorized representation. [Existing.]

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.

Section 1613.4. Paragraph (b) of this section should be deleted.

Comment. Section 10 of the amendments repealed the restriction on juvenile representation formerly contained in section 1007(b)(4) of the Act. There is, therefore, no longer a basis for Part 1614 of the regulations, and it should be repealed.

Section 1613.4 refers to juvenile cases as instances when representation may be provided in criminal proceedings. Now that such cases are no longer subject to special treatment, however, the general provisions relating to authorized criminal representation should apply. Section 1613.4 has been modified accordingly.

PART 1614—LEGAL ASSISTANCE TO JUVENILES

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal assistance when it is necessary to protect essential rights of a juvenile.

§ 1614.2 Definitions.

As used in this part:

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education, or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

§ 1614.3 Policy.

Corporation funds may be used to provide legal assistance to a juvenile when authorized by this Part.

§ 1614.4 Request of a parent, guardian, or court.

(a) Legal assistance may be provided to a juvenile:

(1) When the written request of a parent or guardian of the juvenile is received; or

(2) At the request of an official or agent of a court of competent jurisdiction; but

(b) Legal assistance shall not be provided to a juvenile who is tried as an adult in a criminal proceeding, as defined in section 1613.2, unless required as part of an attorney's professional responsibilities, pursuant to section 1613.4, or section 1614.6.

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

Legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in:

(a) cases, proceedings, or matters;

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for treatment, services, supervision or control, including but not limited to proceedings formally designed for persons in need of supervision (PINS) under State law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; or

(b) When no judicial action is commenced against the parent or noninstitutional guardian of the juvenile, legal assistance may be provided:

(1) To secure or prevent the loss of benefits or services; or

(2) To prevent the imposition of services against the will of the juvenile.

§ 1614.6 Continuity of representation.

If a criminal proceeding, as defined in § 1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this Part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceeding, but may continue to provide representation unless relieved by the court.

§ 1614.7 Limitation policy.

A recipient shall adopt policies designed to insure that Corporation funds are not used to relieve a governmental entity of its legal responsibility to provide compensated counsel to represent juveniles in particular categories of cases, matters, or proceedings.

(Part 1614—Revision)

Part 1614. This part should be repealed.

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

§ 1620.2 Procedure. [Existing.]

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

(1) The resources of the recipient;

(2) The population of eligible clients in the geographic area served by the recipient;

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(3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(4) The urgency of particular legal problems of the clients of the recipient; and

(5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

Section 1620.2. The word "clients" should be deleted from the second sentence of subsection (a), and the following inserted: "all significant segments of the client community * * *"

Subsection (b)(2) should be revised to read as follows: "(2) The population of eligible clients in the geographic area served by the recipient, including all significant segments of that population with special difficulties of access to legal services or special legal problems;"

The word "and" should be deleted from subsection (b)(4) and the following subsections added:

(c) The need of the recipient's employees for specialized training in particular areas of the law; and,

(7) the need for and availability of outreach services in the area served by the recipient.

Comment. Section 9(b)(1) of the amendments requires that recipients adopt procedures for setting and implementing priorities taking into account the relative needs of eligible clients, "including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems * * *." The elderly and handicapped are cited as examples of groups with such problems.

The legislative history of this provision makes clear that it was not meant to establish a preference for certain groups of eligible clients. See Conf. Rep. No. 95-825, 95th Cong., 1st Sess. (1977), at 12; S. Rep. No. 95-172, 95th Cong., 1st Sess. (1977), at 13. Rather, it is intended to insure that the needs of all significant segments of the client community are considered in setting priorities and that the consideration extends to a need for expanded access to service as well as substantive problems. Part 1620 of the regulations should be amended to make these requirements explicit.

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