

in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice," is based on the language relating to court appointments currently found in sections 1604.4 and 1604.5 of the regulation, rather than the following language in § 1006(d)(6) of the Act:

Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

The proposed definition on appointments is broader than the statutory one, which applies only to uncompensated appointments; but LSC believes it is appropriate because it is more protective of program resources.

Two of the field commenters supported the definition as proposed. The OIG suggested that the phrase "under a statute or court rule or practice" should be changed to "statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made." The OIG noted that the language suggested follows the statutory language more closely and make it clear that it refers to statutes, rules or practices of general applicability and applies to administrative agencies in addition to courts. LSC believes that the change suggested by the OIG is appropriate without changing the intent of the original language proposed in the NPRM. Accordingly, LSC is adopting a revised definition of court appointment as an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

Section 1604.3 General Policy

LSC proposed to expand and amend this section to require recipients to adopt written policies relating to the outside practice of law, rather than permitting programs to determine on an ad hoc basis, whether outside practice is to be permitted in a particular instance (as is the case under the existing rule). LSC intended that such policies would give the recipient's executive director substantial discretion in making outside practice of law determinations to ensure that recipients can adopt policies that balance the demands of the profession, the attorney's desire to do outside work, and the needs of the community served by the program. To this end, LSC proposed that the required policies

would be permitted to permit the outside practice of law by full-time attorneys only to the extent permitted by Part 1604, but would be permitted to contain additional limitations not imposed by Part 1604.

LSC received one comment supporting this section as proposed and two comments recommending conflicting changes. One commenter recommended deleting the language expressly authorizing programs to adopt more stringent limitations out of a concern that such language would imply that LSC was encouraging programs to adopt such limitations. The other commenter, however, opposed the proposed revision as implying that LSC was encouraging the outside practice of law.

LSC does not believe that paragraphs (a) and (b), as proposed, imply a policy preference on the part of LSC either in favor of or against the outside practice of law. LSC recognizes that there are demands of the profession occasionally imposed upon all attorneys and that some attorneys desire to do outside work, while also noting that recipient programs have scant resources and that the needs of the community served by programs require a significant commitment of time and effort by full-time program attorneys. LSC believes that paragraphs (a) and (b) represent an acknowledgement and balancing of these concerns. Indeed, LSC believes that the provisions in the LSC Act concerning the outside practice of law, which provide the basis for this regulation, recognize and dictate such a balance. However, LSC does believe that the language as proposed can be improved by adding an explicit reference to the LSC Act to ensure that the statutory basis for the parameters of permissible and impermissible outside practice of law are clearly understood.

The restrictions of this part, as currently applicable and as proposed, apply only to full-time attorneys. Although LSC did not propose to address the outside practice of law by part-time attorneys, the NPRM expressly proposed to provide that recipients' policies may include restrictions on outside practice by part-time attorneys.

One commenter from the field specifically urged LSC to eliminate the reference to part-time employees from the rule as unnecessary and, again, implying that LSC was encouraging programs to adopt more stringent policies. The OIG, on the other hand, recommended that part-time attorneys be specifically covered by this Part because of the increased incidence of part-time employment and the implications on program integrity

requirements (45 CFR Part 1610). One other commenter supported proposed paragraph (c) as written.

While LSC disagrees that the proposed paragraph (c) implied a policy preference for stricter outside practice of law policies, LSC does agree that the rule should not reference part-time attorneys. The statutory mandate applies only to full-time attorneys; LSC, therefore, believes that the regulation should address itself only to full-time attorneys. Recipients would have the discretion to include part-time employees in its policies even without such express language in the regulation. LSC disagrees with the OIG that program integrity concerns require including part-time attorneys in the ambit of 1604. Part-time attorneys are not limited by the LSC Act or applicable appropriations laws in what they can do on their own time and with their own resources. As such, LSC does not consider it appropriate to require regulation of the outside activities of these attorneys. To the extent that there could be program integrity concerns, LSC believes that the program integrity and timekeeping rules provide all the protection necessary to ensure that the programs remain in compliance with the program integrity requirements.

Accordingly, LSC is adopting paragraphs (a) and (b) as written, with the addition of explicit reference to the LSC Act, but declines to adopt proposed paragraph (c).

Section 1604.4 Permissible Outside Practice

LSC proposed to combine and revise the provisions currently in sections 1604.4, Compensated Outside Practice, and 1604.5, Uncompensated Outside Practice, into one section retitled Permissible Outside Practice. Except as noted below, all of the comments generally supported this section as proposed and LSC adopts it as proposed, with some modifications.

Under the current structure of the regulation, the general rule on the outside practice of law is stated in the negative; that is, the outside practice of law is prohibited except as provided. LSC proposed, instead, to state the rule in the affirmative, providing guidance on the terms under which the outside practice of law may be approved. LSC is retaining this structure, but modifying the language proposed to refer to a recipient's policies to underscore the requirement that recipient will have to adopt policies relating to the outside practice of law and that the regulation provides guidance on what the policies must require and may permit.