

The revision also refers to a full-time attorney's responsibilities to clients, rather than simply "full-time responsibilities." LSC intends an executive director (or that person's designee) to make a case-by-case determination as to whether involvement in a specific case or matter would be consistent with a full-time attorney's responsibilities to the program's clients. A full-time attorney's responsibilities to program clients should be determined by reference to the program's definition of "full-time" (such as used for the determination of employee benefits), not by reference to a specific attorney's working habits. Thus, an attorney in the habit of working substantial amounts of overtime on program activities should not be penalized for deciding to allot some of that attorney's own time to an outside practice case rather than to program activities. In addition, an attorney should be permitted to take reasonable amounts of leave to engage in permitted outside practice.

LSC also includes language intended to address a concern that, if a program attorney handled outside practice cases that were controversial or dealt with areas prohibited to the recipient (e.g., abortion litigation), the employing recipient would be seen as handling the cases and viewed as using outside practice as a way to get around applicable restrictions. The language, which is similar to language in the regulation on prohibited political activities, would require the attorney to make it clear that this was not a program case, and to do whatever was necessary to ensure that it not be perceived as such. In practical terms, the restriction might require the attorney to use a home address or post office box for correspondence, or a home telephone number or direct dial number that would not go through the recipient's switchboard or voice mail greeting, or other similar processes to ensure that the recipient was not identified as the sponsor of the representation. The restriction on identification would not apply to court appointments or to cases which are undertaken to fulfill a mandatory pro bono obligation, which are treated separately in the regulation.

Paragraph (c) sets forth the specific situations under which recipients' policies may permit the outside practice of law: a newly employed attorney closing cases from a previous law practice; when the attorney is acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; when the attorney is acting on behalf of a religious, community, or charitable group; or

when the attorney is participating in a mandatory pro bono program or a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

With respect to newly employed attorneys, paragraph (c)(1) is intended to make explicit what has always been implicit under the current Part 1604, i.e., that work for a client from a previous practice should not be done on program time.

The revised rule will expressly permit an attorney to represent another member of the recipient's staff without having to prove that the individual is a close friend. LSC is also adding language to make it clear that the attorney may represent him or herself. LSC received one comment urging LSC to require recipients' policies to permit an attorney to represent him or herself. LSC sees no justification for treating this situation different than other potential outside practice situations in terms of the program's discretion to permit or restrict such outside practice. LSC can imagine a situation in which a recipient's director would have no problem permitting a full-time employee to represent him or herself. At the same time, LSC can imagine a situation in which the recipient's executive director is concerned that the attorney's activities representing him or herself could be so time consuming as to interfere with the attorney's responsibilities to the programs clients. In such a situation, the program needs the discretion to disallow that outside practice. Accordingly, LSC declines to require recipients' policies to permit an attorney to represent him or herself.

LSC is amending the current provision permitting representation of religious, community or charitable groups, to permit the representation of an individual client who has been referred to the attorney by such a group through a formal *pro bono* or referral program that does regular referrals. For example, under the revised rule it would be permissible for an attorney to represent a client who has been referred by the ACLU, NAACP or Catholic Charities. Prior General Counsel opinions have permitted outside practice both on behalf of organizations as well as on behalf of individuals referred by those organizations and LSC believes that it is appropriate to incorporate these interpretations into the rule.

LSC received one comment specifically addressing this provision. Although the commenter did not object to the proposed revision, the commenter

noted that they did not view this category as essential and requested that the preamble make clear that program policies could restrict such practice. As with all of the provisions in this section, recipients' written policies are permitted to allow for the approval of outside practice through a referral program, but need not do so. This is a matter committed to the discretion of the program.

LSC proposed to add a paragraph, (c)(5), to make it clear that legal services attorneys should be permitted to act in the same way as other attorneys with respect to *pro bono* work that is undertaken to meet professional obligations, whether the obligation is aspirational, as under state rules that are modeled on Rule 6.1 of the American Bar Association's ("ABA") Model Rules of Professional Conduct, or mandatory, as is now the case in a few local jurisdictions across the country. LSC received one comment from a program noting that they did not view this category as essential and requesting that the preamble make clear that program policies could restrict such practice. The OIG suggested that this section apply only to "mandatory" *pro bono* and that the phrase "and practices" should be deleted as too vague.

LSC believes that the reference to other than mandatory pro bono would be redundant in light of paragraphs (3) and (4) which already address voluntary *pro bono* activities. Moreover, LSC believes that a separate paragraph referencing mandatory pro bono is not required as mandatory pro bono is covered under section 1604.7, Court Appointments. Accordingly, LSC is not adopting proposed paragraph (5). As with all of the provisions in this section, recipients' written policies are permitted to allow for the approval of outside practice as set forth herein, but need not do so, and where permitting it, may address circumstances and limitations thereon. This is a matter committed to the discretion of the program.

Section 1604.5 Compensation

The 1995 NPRM contained a new proposed provision on compensation, providing, among other things, that a recipient would be allowed to permit an attorney to accept attorneys' fees for certain cases, as long as the fees would be remitted to the recipient. While this proposed provision was clearly permissible at the time it was proposed, LSC has determined that it is no longer consistent with the current statutory and regulatory restrictions on the claiming, collection and retention of attorney's fees. Accordingly, LSC is not