

compensation for appointed cases handled by legal services attorneys, when private attorneys appointed to similar cases would have been paid. Paragraph (a)(3) is also a requirement carried over from the current Part 1604. LSC notes that, in the case of court appointments, recipients are permitted to retain attorneys' fees made to a recipient or employee of a recipient notwithstanding the general attorneys' fees ban because such fees are excluded from the definition of attorneys' fees in 45 CFR section 1642.2(b)(1).

LSC proposed to add a new paragraph (d) providing that, if an attorney is mandated to engage in pro bono representation by applicable state or local court rules or practices or by rules of professional responsibility, such representation shall be treated in the same manner as court appointments for the purposes of paragraphs (a)(1), (a)(3), (b) and (c) of this section. While LSC recognizes that the ABA Model Rules do not currently mandate pro bono services for any attorney, LSC also recognizes that mandatory pro bono has been considered in a number of states and is a reality in certain local jurisdictions. It is the intent of LSC that legal services attorneys be permitted to undertake outside representation to fulfill any mandatory professional obligations to provide pro bono assistance to which they are now or may be subject in the future. Two comments concurred in paragraph (d) as proposed, while the OIG recommends making it clear that attorneys may not receive compensation for mandatory pro bono activities and adding a requirement that mandatory pro bono activities must be in cases or matters that are not prohibited because of the use of LSC resources permitted by the rule. LSC believes that the rule as proposed would not permit an attorney performing mandatory pro bono service to receive compensation, but has no objection to making this point clearer in this preamble or the regulatory text. In addition, LSC agrees with the OIG regarding limitation on mandatory pro bono activities to cases or matters not otherwise prohibited and clarifies the rule on this point.

Finally, this section allows a full-time attorney to use program resources to undertake representation required by court appointment or mandatory pro bono, and allows the attorney to identify the recipient as his or her employer when engaged in such representation. LSC received no objections to these provisions (paragraphs (b) and (c)) and adopts them as proposed.

LSC received one other comment on this section, suggesting that the reference in this section to the

program's executive director should include the executive director's designee. LSC agrees that this language is consistent both with its usage elsewhere in this rule and with other rules under consideration for adoption by LSC.

List of Subjects in 45 CFR Part 1604

Legal services.

■ For the reasons set forth in the preamble, LSC revises 45 CFR part 1604 to read as follows:

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

- 1604.1 Purpose.
- 1604.2 Definitions.
- 1604.3 General policy.
- 1604.4 Permissible outside practice.
- 1604.5 Compensation.
- 1604.6 Use of recipient resources.
- 1604.7 Court appointments.

Authority: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

§ 1604.1 Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) *Court appointment* means 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.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4 Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in 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.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and § 1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney