May 5, 2000

Ed Berg, Esq.
Program Director
Mid-Missouri Legal Services Corp.
205 East Forest Avenue
Columbia, MO 65203

Re: Outside Practice of Law – Date of Termination of Employment

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John McKay

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Harrisburg, PA

ment with the prog ram would also be Ma y 1, 2000, a date picked to enable him to remain eligible for employee benefits through the month of May. The attorney did not seek approval from you for this action. You have asked us to comment on your interpretation that, because the LSC 1604 regulations generally prohibit the outside practice of law for compensation and because the former employee was making himself available for the outside practice of law for compensation as of May 1, 2000,[1] the former employee's termination date would have to be considered to be April 30, 2000, in order to avoid a violation of the regulations.

We agree with your interpretation. As you know, attorneys employed by recipients are generally prohibited from engaging in the outside practice of law. This prohibition stems from Section 1007(a)(4) of the LSC Act, which reads, in pertinent part:

> The Corporation shall . . . (4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation.

[1] We do not believe that there is a meaningful distinction between holding one's self out as "available for the practice" of law and "practicing" law. Rather, the act of holding one's self out as available for practice is necessarily included in

These statutory requirements are reflected in our regulations at 45 CFR § 1604.4, Compensated outside practice, and 45 CFR § 1604.5, Uncompensated outside practice.[2] Under §1604.4, an attorney may engage in the outside practice of law for compensation under two circumstances: (1) the attorney is newly hired and is closing out cases from his or her previous practice; and (2) the attorney is acting pursuant to a court appointment. Under the given circumstances, it is clear that the first exception to the general prohibition is not applicable. It is not clear that the second exception, relating to court appointments, could not apply (i.e. the attorney could intend to take cases under court appointment), but your characterization of his announcement in the Boone County Bar Association Newsletter implies that his intent is to attract private clients to his law practice and not simply handle court appointed matters. If this is the case, then the second exception is likewise inapplicable. Thus, the attorney's opening of his private practice while still an employee of MMLS would constitute an impermissible outside practice of law under the statute and regulations.

Moreover, any outside practice of law, whether or not for compensation, may only be undertaken with the approval of the director of the recipient. 45 CFR § 1604.3. As the attorney did not seek and did not receive your approval, any outside practice of law engaged in by the attorney while still an employee of your program would be a violation of the Part 1604 requirements. The only way to avoid this result would be to eliminate the overlap between the attorney's period of employment with MMLS and his private practice. This could be accomplished, as you propose, by considering his last day of employment with the program as April 30, 2000.

Sincerely,

Mattie C. Condray
Senior Assistant General Counsel

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