



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2000-1020

To: David B. Neumeyer, Esq.
Executive Director
Virginia Legal Aid Society, Inc.
513 Church Street
P.O. Box 6058
Lynchburg, VA 24505-6058

Date: November 6, 2000

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- 1) continued representation of a former private client for over three years after the beginning of the attorney's full time employment with the recipient,
- 2) services provided to a private law firm relating solely to factual and legal matters involved in the law firm's representation of a single client.

Summary

Under ordinary circumstances, a full time attorney employed by a recipient for over three years cannot continue to represent a former private client. The reasonableness of continued (eness)Tj0.0002circ90q5 Tc j12 0 0 12n486234.36002 Tm(o)Tj12 0 0 12 2392ctim
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required explicit approval from the recipient's Executive Director. The Executive Director has the discretion to grant or deny such requests consistent with an informed understanding of LSC regulations.

A full time attorney employed by a recipient cannot provided services to a private law firm relating solely to factual and legal matters involved in that firm's representation of a single client. Such services constitute prohibited outside practice of law under §1604.2(b), and are not considered 'consulting' by LSC.

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Background

The terms ‘newly employed’ and ‘as expeditiously as possible’ in this regulation are not defined and subject to reasonable interpretation in application. Nonetheless, after three years it is clear that an attorney is no longer ‘newly employed’ by a recipient. Similarly it is clear that three years does not, under most circumstances, qualify as closing a case ‘as expeditiously as possible.’ LSC recognizes that it may be possible in extreme and compelling circumstances that an attorney may not be able to extricate himself or herself completely from a case even after three years. Such circumstances do not appear to be present here though. It is well within your discretion, as the Executive Director of VLAS, to determine that this attorney did not comply with the requirement to close the case in question consistent with the regulation. LSC would expect any recipient attorney to at least keep the recipient’s Executive Director apprised of the status of any prior case that is not concluded soon after the attorney started full time employment at the recipient.

LSC most recently addressed the definition of the term ‘consulting’ in §1604.2 in OLA External Opinion 2000-1011 issued on May 16, 2000. In that opinion, OLA summarized LSC’s position as follows:

The term “consulting” is not defined in the regulations, but has been interpreted by LSC as “providing advice or sharing an expertise in a particular area of the law to other attorneys [or] in a law school setting, as long as [the] activities are not within an attorney-client relationship.” (LSC Op. Ltr., 1/25/99) In light of the strict statutory prohibitions on the outside practice of law imposed by Congress, this interpretation is intended to provide for a limited set of activities which can be considered “consulting.” Without a narrow interpretation of that term, an attorney could circumvent the statutory and regulatory prohibitions on the outside practice of law by labeling as consulting what would otherwise be understood to be legal representation. Among the factors involved in analyzing whether a particular activity can be considered to be consulting is the extent the prospective work will involve client representation and the extent to which the attorney’s services are sought for the attorney’s expertise in and knowledge of a particular subject. Moreover, consultants are generally “paid a contractual fee for their services by the attorney or firm providing representation to the client.” (LSC Op. Ltr., 7/29/97)

The referenced January 25, 1999, opinion letter concluded that work for a private lawyer assisting in specified client cases, although not involving direct representation of the client vis-a-vis third parties, does not constitute ‘consulting.’

Furthermore, in a September 2, 1994, opinion letter, OLA (then the Office of General Counsel) specified that “it makes sense to interpret the exception [for consulting]

to include only those consultations outside of a situation where an attorney is providing legal assistance to a *specific client for a particular matter.*” Emphasis added. The VLAS attorney in question clearly entered into an agreement to provide services directly involving an individual client. As per prior OLA opinion letters, this type of arrangement is not ‘consulting’ for purposes of §1604.2(b).

If you have any further question regarding this matter, please contact me at 202-336-8829 or mfreedman@lsc.gov.

Very truly yours,

Mark Freedman
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