



OFFICE OF LEGAL AFFAIRS

EXTERNAL OPINION

External Opinion # EX-2003-1003

To: Jean Turner Carter
Executive Director
Center for Arkansas Legal Services
303 West Capitol Avenue, Suite 200
Little Rock, Arkansas 72201

Date: February 10, 2003

Subject: Request for Opinion on Outside Practice of Law, External Opinion

Dear Ms. Carter:

I am writing in response to your recent request for an opinion on the outside practice of law. You indicated that a full-time staff attorney with the Center for Arkansas Legal Services (CALs) has requested approval to work part-time for the Arkansas Access & Visitation Mediation Program (AAVMP), a program established by the Arkansas Alternative Dispute Resolution Commission. The staff attorney is primarily interested in mediating family law cases, and she has assured you that she would only engage in mediations held outside of regular office hours and away from your program's offices. The mediations undertaken by the attorney would be those referred to her by Arkansas courts, or cases in which she is hired by attorneys or private parties through the AAVMP program. She would be paid at a fixed rate per hour up to a maximum of 10 hours per mediation.

The Legal Services Corporation's (LSC) regulation on the outside practice of law provides that "no attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities." 45 C.F.R. ' 1604.3. "Attorney" is defined in this regulation as "a person who is employed full time in legal assistance activitie '

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employer of the attorney rendering

activity, is holding herself out as a lawyer or by another title; how the attorney is paid (e.g. at an hourly attorney's rate or by a flat fee per service); and whether that attorney is working directly with clients or whether she is hired by a firm or company. *Id.*

Among the factors used to assess whether a given activity amounts to the "outside practice of law," the definition of "practice of law" in a given jurisdiction is perhaps the most important. The State of Arkansas defines the "practice of law" as follows:

. . . any service rendered, regardless of whether compensation is received therefore, involving legal knowledge or legal advice. It shall include representation, provision of counsel, advocacy, whether in or out of court, rendered with respect to the rights, duties, regulations, liabilities, or business relations of one requiring the legal services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document or law. Inactive attorneys may not, at any time, or in any manner, hold themselves out as lawyers to the general public. Nonetheless, it shall not be considered the practice of law for attorneys to represent themselves or family members to the third degree of consanguinity.
ARK. CODE ANN., ARK. ST. CLE REGS, RULE

provision of counsel or advocacy rendered with respect to the rights, duties, regulations, liabilities or business relations of the participants in the mediation process, or that require the mediator to examine the law or pass upon the legal effect of any act, document or law.

The conclusion that the work of mediators in the AAVMP program is not intended to involve the “practice of law” is supported by the Arkansas Alternative Dispute Resolution Commission’s Guidelines for Mediator Skills and Qualifications. This document enumerates three guidelines dealing with mediator skills and qualifications. The first is a general guideline to advise the public on what it should expect of a mediator in terms of basic skills necessary for competent performance as a neutral mediator.¹ The second guideline sets out the requirements that must be met before a mediator can be placed on the roster of mediators maintained by the Arkansas Alternative Dispute Resolution Commission.² The third guideline is a set of standards that may be used by courts in establishing court-annexed mediation systems or selecting court-referred mediators, and it includes standa

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