



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2003-1011

**To:** Deborah Perluss  
Director of Advocacy/General Counsel

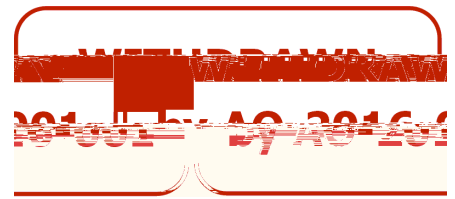


401 Second Ave., S.  
Suite 407  
Seattle, WA 98104

**Date:** July 9, 2003

**Subject:** Interpretation of 45 CFR 1638 (Restriction on Solicitation)

You asked this Office for an opinion as to whether the Northwest Justice Project (NJP) may, consistent with the restrictions on solicitation found in the Corporation's regulations at 45 CFR Part 1638, engage in activities otherwise defined as "in-person unsolicited advice" as part of a program incidental to "maintaining an ongoing presence



Prior to NJP's involvement with the program, the program coordinator would contact prospective clients at the courthouse, advise them of the availability of services and ask them if they wanted to discuss their case with a lawyer, and would represent the persons that day. The coordinator would also obtain the dockets for future cases and contact the tenants (presumably by phone) to see if the tenant was in need of legal assistance. Since taking over the administration of the program, NJP has ceased engaging in these direct client approach activities because of the restrictions on solicitation applicable to NJP. Instead, a signboard has been placed on an easel outside the courtroom, and, on occasion, the Clerk's Office or presiding Court Commissioner will refer tenants to HJP. NJP is concerned that, in the absence of direct client approach activities, there has been a decline in the usage of HJP services (which is not correlated with a drop in the number of landlord-tenant cases or a reduction in eligible client

population).

### *Analysis*

Section 504(a)(18) of the FY 1996 LSC Appropriations act provides that no LSC funds may be used to provide financial assistance to an entity unless the entity "agrees that [the recipient], and the employees [of the recipient], will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action..."<sup>1</sup> This restriction on solicitation has been incorporated by reference in each subsequent appropriations measure, including the current act. Pub. L. 108-7. LSC has implemented the solicitation restriction in regulations at 45 CFR Part 1638. The general prohibition on solicitation is contained in §1638.3(a), which provides that "[r]ecipients and their employees are prohibited from representing a client as a result of in-person unsolicited advice." Under the rule, "in-person" is defined as a "face-to-face encounter or a personal encounter via other means of communications such as a personal letter or telephone call." 45 CFR §1638.2(a). "Unsolicited advice" is defined as "advice to obtain counsel or take legal action given by

a recipient or its employee to an individual who did not seek the advice and with whom

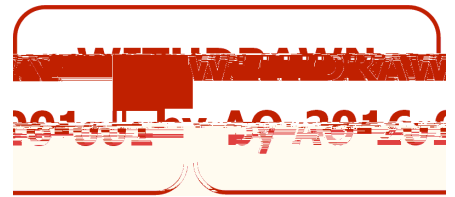


Your letter asks whether activities formerly undertaken under by the previous (non-recipient) program administrator - contacting prospective clients in person at the

discuss their case with a lawyer, followed by the representation of those persons that day and personally contacting tenants with upcoming court dates to inquire about a need for

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Very truly yours,

*Matthew Condray*

Senior Assistant General Counsel  
Office of Legal Affairs

A handwritten signature in black ink, appearing to read "Victor M. Fortuno". The signature is written in a cursive style and is positioned above the typed name.

Victor M. Fortuno  
General Counsel  
Office of Legal Affairs

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