

OFFICE OF LEGAL AFFAIRS

EXTERNAL OPINION

External Opinion # EX-2003-1015

To: Andrew Harrington, Executive Director
Alaska Legal Services Corporation
1648 Cushman Street, Suite 300
Fairbanks, AK 99701-6206

Date: December 1, 2003

Subject: Program Integrity Analysis of Relationship Between LSC Recipient ALSC
and non-LSC entity APBP.

In the 2002 you contacted LSC for guidance on the program integrity implications of the proposed restructured *pro bono* program for Alaska. At the time I provided you with informal advice that the scenario presented was consistent with the LSC program integrity requirements. This opinion formalizes that advice.

Issues Presented

Alaska Legal Services Corporation (ALSC) restructured its relationship with the Alaska

1. ALSC may purchase a joint insurance policy with APBP without transferring funds or subsidizing APBP under Part 1610 as long as ALSC pays no more than its fair share of the cost;
2. ALSC and APBP may share a non-attorney staff member whose work is clearly delineated between the two entities without transferring funds or subsidizing APBP under Part 1610 when ALSC does not support any APBP work;
3. ALSC can maintain overall physical and financial separation from APBP while having

[REDACTED]

described grant from APBP.

Furthermore, the applicable LSC authorities do not prohibit the shared staff member from working for APBP during paid leave time from ALSC. You have not raised any questions regarding the legally separate entity requirement. This opinion only addresses those matters explicitly discussed. In certifying program integrity pursuant to §1610.8(c), you should consider the nature of the relationship between ALSC and APBP.

joint policy would cover both programs with the two programs sharing the policy limits. Each organization will pay a proportional share of the premiums based on respective caseloads. Currently the two organizations appear to have comparable risk factors.

ALSC will hire a non-attorney full time *pro bono* coordinator who would not handle cases. APBP would like to hire ALSC's *pro bono* coordinator to work 15 hours per month to provide board meeting support, administrative support, bookkeeping, and computer technical support for APBP. Consequently, this employee may, occasionally, need to take leave from ALSC in order to perform APBP duties during regular business hours. ALSC will ensure that this employee does not perform any APBP work on ALSC premises or on ALSC time and that this employee's APBP work does not interfere with ALSC work.

For 2003, the Alaska Bar Foundation awarded the entire IOLTA grant to APBP. APBP plans to provide a subgrant to ALSC for placement and handling of LSC-permissible *pro bono* cases. APBP would handle non-LSC-permissible *pro bono* cases with non-LSC funds. Additionally APBP's board has changed since inception. While some people serve on both boards, the two memberships are no longer identical.

Relevant Statutory and Regulatory Provisions

Under the LSC program integrity standard, a recipient "must have objective integrity and independence from any organization that engages in restricted activities." 45 CFR §1610.8(a).
~~Such objective integrity and independence requires that:~~

1. The other organization is a legally separate entity;
2. The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and
3. The recipient is physically and financially separate from the other organization. Mere bookkeeping separation for LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on a totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

- i. the existence of separate personnel;

Analysis

[REDACTED]

an IOLTA subgrant to ALSC for handling LSC-permissible *pro bono* cases. ALSC will run its own PAI program. APRP will only handle cases that ALSC is prohibited from taking. In all

these matters each entity will pay its fair share of the cost. A part-time attorney, who will not be an ALSC employee, will administer APBP. The combination of these factors demonstrates a close working relationship between the two organizations to provide a comprehensive *pro bono* program in Alaska. Nonetheless, as described, each organization is clearly operating separately.