



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2004-1005

To: Rhodia Thomas, Esq.
Executive Director
MidPenn Legal Services
213-A North Front Street
Harrisburg PA 17101

Date: September 17, 2004

Subject: Review of Relationship Between MidPenn Legal Services and Dauphin

County Bar Association

of the building, and the Bar Association's offices are accessed by the entrance at the front of the building.

- There is signage outside the building (both in the back and front) that directs individuals to MidPenn and to the Bar Association.
- MidPenn and the Bar Association do not have any of the same employees or Board members.
- ~~MidPenn and the Bar Association maintain entirely separate records~~

- The Bar Association has a pro bono referral program, staffed by one Bar Association employee.
- The pro bono coordinator is physically housed in an office within the office suite rented by MidPenn. There is currently no interior signage designating the pro bono coordinator's office as Bar Association property, and not part of MidPenn.
- The office space occupied by the pro bono coordinator is specified as not part of the space leased by MidPenn and this is reflected in the rent paid by MidPenn to the Bar Association. Under MidPenn's lease from the Bar Association, the landlord (the Bar Association) pays the cost of all utilities.
- The phone, fax and computer system used by the pro bono coordinator are part of the Bar Association's phone and computer network; the pro bono coordinator has no access to MidPenn's intake system or computer network.

Analysis

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). Restricted activities are those which are prohibited by, or inconsistent with the requirements of the LSC Act, Corporation’s FY 1996 appropriations act and the implementing LSC regulations. See 45 CFR §1610.2(a) and (b). As we understand the facts, the Bar Association does not engage in any restricted activities. Thus, MidPenn is not required to maintain objective integrity and independence from the Bar Association. Accordingly, the relationship between MidPenn and the Bar Association does not raise any issues of compliance with respect to Part 1610.

It may be, however, that in the future, the Bar Association will desire to engage in restricted activities. At such point, MidPenn would be required to have “objective integrity and independence” from the Bar Association, consistent with the requirements of Part 1610. You have asked us to consider what, if anything, MidPenn would need to do to ensure that MidPenn’s relationship with the Bar Association would meet the program integrity requirements of Part 1610, should compliance become necessary. Of

- iv. the extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR §1610.8(a).

Applying the standard set forth above to the relationship between the Bar Association and MidPenn, there would be three areas of analysis: 1) whether MidPenn and the Bar Association are legally separate entities; 2) whether MidPenn is providing any transfer of funds or subsidy to the Bar Association; and 3) whether the totality of the circumstances presented is consistent with the Part 1610 physical and financial separation requirement.

MidPenn and the Bar Association are legally separate entities. As such the first requirement for objective integrity and independence would appear to be met.

As noted above, MidPenn's lease does not include the office of the Bar Association's pro bono coordinator, and MidPenn is providing no overhead or equipment for the Bar Association or the pro bono coordinator, other than allowing the pro bono coordinator to use MidPenn's copier for document related to work being done on behalf of MidPenn clients. As such, MidPenn is making no transfer of funds to the Bar Association and MidPenn is not subsidizing the Bar Association. A complete assessment in

this situation, the second requirement for objective integrity and independence would appear to be met.

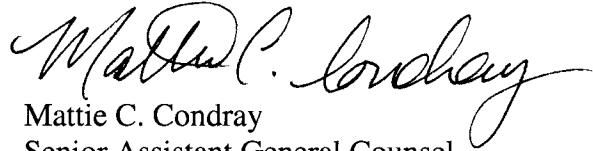
Although we cannot provide a complete assessment of physical and financial separation at this time, we can provide a partial assessment, addressing three of the four

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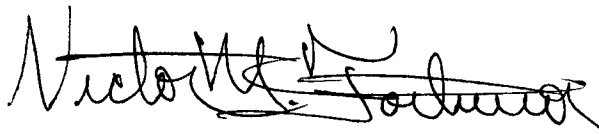
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other elements of the relationship between MidPenn and the Bar Association change, such changes could potentially affect the program integrity assessment.

Very truly yours,



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