

**LEGAL SERVICES CORPORATION****45 CFR Part 1608****Prohibited Political Activities****AGENCY:** Legal Services Corporation.**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation would revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to prohibited political activities. The proposed revisions both clarify existing law and substantively expand the scope of certain prohibitions. The proposal also includes a number of technical and structural revisions to make the rule easier to apply and use.

**DATES:** Comments should be received on or before November 29, 1994.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St., N.E., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336-8810.

**SUPPLEMENTARY INFORMATION:** On June 19 and July 15, 1994, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors held public hearings on proposed revisions to 45 CFR Part 1608, LSC's regulation on electoral political activities. At the July 15 meeting in Washington, DC, the Committee approved a draft to be published in the *Federal Register* as a proposed rule for public comment and agreed to extend the customary 30-day comment period to 60 days.

The Committee recognizes that Congress is currently considering reauthorization legislation for the Corporation. Whenever Congress does

pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

**Authority**

A technical correction has been made to the authority section. The reference to § 2996f(b)(2) is incorrect and has been replaced by reference to § 2996f(b)(4).

**Section 1608.1 Purpose**

No change is proposed for this section.

**Section 1608.2 Definitions**

The definition of "attorney" is based on the one found in Part 1600. It would apply to attorneys employed by a recipient as well as to PAI attorneys who are providing services to eligible clients referred by a recipient.

The definition of "political" in Part 1608 is intended to supersede the definition of "political" in 45 CFR Part 1600. The term applies only to restrictions in this part and needs revision to better reflect the scope of the statutory provisions implemented by this regulation. The definition is also revised from the definition in Part 1600 to delete references to "ballot measures" and "publicity and propaganda." Part 1608 implements several statutory restrictions on a variety of electoral political activities, so it is difficult to have a definition of political activities that is true to the meaning of the specific political activities regulated in each statutory restriction. Therefore, instead of a definition that refers to specific activities such as ballot measures, a more general definition is retained and "ballot measures" are dealt with in the section that sets out the restrictions on those activities. In addition, the term "publicity and propaganda" generally refers to grassroots lobbying activities which are not directly implicated by any of this part's restrictions and are better dealt with in the Corporation's regulations on lobbying, 45 CFR Part 1612.

The definition of "legal assistance activities" is proposed to be deleted. It has been difficult to interpret and is not based on any statutory language. The language is instead incorporated into the only provision (the proposed § 1608.7) that uses the phrase. Nothing in this part is intended to suggest that an employee may not use his or her own salary to make personal contributions to political organizations or campaigns.

A definition of "staff attorney" is added and is intended to supersede the definition of "staff attorney" currently found in 45 CFR Part 1600. The definition is modified to clarify that a "staff attorney" means an attorney who

is a salaried employee of a recipient and not a private attorney who has contracts with a recipient to provide part-time legal services to program clients. Section 1608.3 Attorney-client relationship.

This section has been moved from § 1608.7 in the current regulation to make it clear that all of the restrictions and prohibitions contained in Part 1608 are subject to the exception for legal representation. This section would apply to PAI attorneys when they are engaged in legal assistance activities supported by a recipient.

**Section 1608.4 Prohibitions**  
*Applicable to the Corporation and to Recipients*

The only change to this section is the addition of language intended to better reflect the statutory prohibition. The revision clarifies that no resources of the Corporation or of a recipient may be used for political activities or purposes. Section 1608.5 Prohibitions applicable to all employees

The current § 1608.4, which applies to all Corporation and recipient employees, and most of the current § 1608.5, which applies to Corporation employees and staff attorneys, have been merged into § 1608.5 in the proposed rule. The Committee believes that the rule's prohibitions concerning the misuse of official authority and coercion should apply to all Corporation and recipient employees. Section 1608.6 Prohibition applicable to Corporation employees and to staff attorneys.

There is no substantive change in this section other than to accommodate the merger reflected in the proposed § 1608.5. The prohibition on candidacy for partisan elective public office is still applicable only to Corporation employees and staff attorneys.

**Section 1608.7 Prohibitions**  
*Applicable to All Attorneys*

This proposal incorporates the relevant language from the current definition of "legal assistance activities" deleted from § 1608.2 into paragraph (a). Further, paragraph (a), together with paragraph (b), makes explicit what is not restricted by the Act, both with respect to individual attorneys and recipients.

First, consistent with the provision of the LSC Act that restricts these activities, the proposal makes it clear that recipients' non-LSC resources are not restricted, so long as they are used by attorneys who receive no LSC funding.

Second, this section would apply to all attorneys employed by a recipient as well as PAI attorneys who are providing

recipient supported legal assistance to the recipient's clients. However, an attorney may do the activities regulated by this section on "his or her own time." For an attorney employed by a recipient, that means any time outside of normal working hours (e.g., evenings, weekends, and leave time) so long as the attorney is not representing or providing legal assistance to the recipient's clients. Thus, an attorney employed by a recipient should not transport a recipient's clients to the polls on a workday, even if it is in the evening outside of normal working hours, if he or she could be presumed to be working for the recipient. But that same attorney could take leave to do so, or could do so if clearly identifying him or herself as a private citizen rather than as a legal services attorney, because the attorney would clearly be doing it on his or her own time.

For a PAI attorney, it means any time that the attorney is not actually working on PAI activities. Thus, a PAI attorney could participate in political activities as a regular part of his or her private practice, so long as the activity is not done while providing PAI services supported by the recipient. The restriction would not affect any other paid or pro bono work that the PAI attorney does.

Finally, paragraph (b) makes it clear that an attorney is free to contribute his or her own funds, including those derived from a salary from the recipient, to political activities.

Paragraph (c) is added to clarify the scope of the statutory restriction regarding voter registration activity. Clearly, Congress intended to prohibit legal services attorneys, while working on program time or using LSC resources, from participating directly in voter registration drives that could easily be tailored to achieve some partisan political purpose. However, the restriction applies only to attorneys and not to recipients specifically. Legal services programs are often requested by public officials to place nonpartisan information regarding voter registration procedures and qualifications in their waiting rooms to encourage voter registration among the clients. While many programs permit the materials in their offices, many others are hesitant to do so. In light of the developments such as the new "Motor Voter Registration" law and the fact that the LSC Act does not restrict voter registration activity by recipients, the regulation should state clearly that engaging in nonpartisan activities, such as making available nonpartisan voter registration information, is permissible.

**Section 1608.B Enforcement**

This section is proposed to be deleted. The current language refers to the enforcement provisions in § 1612.5. However, the enforcement provisions of Part 1612 were removed from § 1612.5 and are currently found in § 1612.12. Regardless, the Committee believes that the enforcement procedures dealing with other matters are not appropriate for this part and has decided to deal with compliance issues outside the context of this rule.

**List of Subjects in 45 CFR Part 1608**

Legal services, Political activities.

For the reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1608 to read as follows:

**PART 1608—PROHIBITED POLITICAL ACTIVITIES**

Sec.

- 1608.1 Purpose.
- 1608.2 Definitions.
- 1608.3 Attorney-client relationship.
- 1608.4 Prohibitions applicable to Corporation and to recipients.
- 1608.5 Prohibitions applicable to all employees.
- 1608.6 Prohibitions applicable to Corporation employees and to staff attorneys.
- 1608.7 Prohibitions applicable to all attorneys.

Authority: 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996(b)(5)(B), 2996dd(3), 2996e(d)(4), 2996e(e)(1), 2996e(k)(2), 2996ff(a)(6), 2996f(b)(4).

**§ 1608.1 Purpose.**

This part is designed to ensure that the Corporation's resources will be used to provide high-quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

**§ 1608.2 Definitions.**

As used in this part,  
(a) *Attorney* means a person who provides legal assistance to eligible clients of, or referred by, a recipient and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Political* means associated with a political party or the campaign of any candidate for elective public or party office, or engendering support for or opposition to any such political party or candidate.

(c) *Staff attorney* means an attorney who is employed by a recipient and more than one-half of whose annual

professional salary is derived from the proceeds of a grant from or contract with the Legal Services Corporation or is received from a recipient that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

**§ 1608.3 Attorney-client relationship.**

Nothing in this part is intended to prohibit an attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

**§ 1608.4 Prohibitions applicable to the Corporation and to recipients.**

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the Act.

(b) Neither the Corporation nor any recipient shall contribute or make available any Corporation or recipient funds, personnel or equipment, regardless of source:

- (1) To any political party or association;
- (2) To the campaign of any candidate for public or party office; or
- (3) For use in advocating or opposing any ballot measure, initiative or referendum.

**§ 1608.5 Prohibitions applicable to all employees.**

No employee of the Corporation or of any recipient shall—

- (a) intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for elective public or party office;
- (b) use any Corporation funds for activities prohibited to attorneys under §§ 1608.6 or 1608.7; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities;
- (c) use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for elective public office, whether partisan or nonpartisan; or
- (d) directly or indirectly coerce, attempt to coerce, command or advise any employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes.

**§ 1608.6 Prohibition applicable to Corporation employees and to staff attorneys.**

No Corporation employee and no staff attorney shall, at any time, be a candidate for partisan elective public office.

**§ 1608.7 Prohibitions applicable to all attorneys.**

(a) No attorney who is engaged in legal assistance activities supported in whole or in part by resources derived from a grant from or contract with the Corporation shall, during the hours the attorney is working for the recipient or while actually providing legal assistance to or representing clients of, or referred by, the recipient, engage in:

- (1) any political activity;
- (2) any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election; or
- (3) any voter registration activity.

(b) Nothing in this section shall prohibit any attorney from engaging in the activities prohibited in § 1608.7(a) on his or her own time or from contributing his or her personal funds or resources to support such activities.

(c) Nothing in this section shall prohibit a recipient from making available general, nonpartisan information on voter registration procedures or qualifications.

Dated: September 27, 1994.

Victor M. Fortuno,  
General Counsel.

[FR Doc. 94-24275 Filed 9-29-94; 8:45 am]  
BILLING CODE 7550-01-P

**45 CFR Part 1621**

**Client Grievance Procedures**

AGENCY: Legal Services Corporation.  
ACTION: Proposed Rule.

**SUMMARY:** This proposed regulation would revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to client grievance procedures. The proposed rule revises the procedural requirements for client grievances and conforms the rule to applicable rules of professional responsibility and the attorney-client privilege. The proposal also includes a number of technical and structural revisions to make the rule easier to apply.

**DATES:** Comments should be received on or before November 29, 1994.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation,

750 First Street NE., 11th Floor,  
Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT:  
Victor M. Fortuno, General Counsel,  
Office of the General Counsel, (202)  
336-8810.

**SUPPLEMENTARY INFORMATION:** On June 19 and July 15, 1994, in Washington, DC., the Operations and Regulations Committee ("Committee") of the LSC Board of Directors held hearings on proposed revisions to 45 CFR part 1621, LSC's regulation on client grievance procedures. At the July 15 meeting, the Committee approved a draft to be published in the *Federal Register* as a proposed rule for public comment and agreed to extend the customary 30-day comment period to 60 days.

The Committee recognizes that Congress is currently considering reauthorization legislation for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

**Section 1621.1 Purpose**

The revisions to this section are intended to clarify that there is no statutory entitlement to legal services or to a particular type of legal assistance. The intent of this rule is to provide for a mechanism whereby applicants for service or clients may complain about the denial of service or the quality of services provided.

The proposed revisions to this section also make it clear that the rules regarding complaints about the quality and manner of service apply only to recipients that actually provide services to clients and not to those support centers and other recipients that do not offer direct intake. They also clarify that the "applicants for service" and the "clients" are not, for the purposes of these rules, local legal services programs, but rather, that they are the financially eligible clients represented by LSC-funded programs. Finally, the revisions are intended to clarify that a recipient is not accountable to the entire client community with regard to client grievances, but only to its actual clients and, to a limited extent, to those members of the community who actually apply for services.

**Section 1621.2 Grievance Committee**

The proposed revision to this section would allow a recipient to include more than a proportionate number of clients on a grievance committee. The current rule requires that the committee be composed of lawyer and client members in approximately the same proportion in which they serve on the governing body.

However, there is no statutory requirement governing the composition of board committees and, for client grievance issues, it may be preferable in some situations to have more than one-third of the committee membership be clients. In any event, at least one lawyer must be on the committee.

#### *Section 1621.3 Complaints About the Quality or Manner of Providing Services*

Paragraph (a) is revised to clarify that the grievance procedure is available only to actual clients or their representatives, and not to opposing counsel or some other person who is disgruntled by the recipient's operations. It is also designed to address complaints not only about the quality of legal assistance, but also about a client's general treatment by the recipient's staff, including the receptionist, intake workers, or any other staff member who interacts with clients.

Paragraph (a) is also revised to require a program to establish procedures for complaints about PAI attorneys. These procedures need not be the same as they are for program staff. The Corporation has a strong interest in encouraging involvement of the private bar in its recipients' PAI projects and does not want the grievance procedures to act as a deterrent to such involvement. However, the Corporation also sees the value in providing some complaint mechanism for dissatisfied clients. Therefore, the Corporation is especially interested in receiving comments from the private bar on this issue. Such comments should address issues such as local ethical requirements to report malpractice on the part of attorneys, complaint procedures, and appropriate actions that should be taken when a complaint is found to have merit.

Paragraph (b) sets out the minimum requirements for a program's grievance procedures. It adds a requirement that complaints be in writing and retains the provision for transcription of oral complaints into writing, so that grievance committees would not have to respond to every oral statement made about a recipient. If a grievance committee does not satisfactorily resolve the matter based on the written complaint, the provision provides that the complainant then has an opportunity to address the committee in person or by teleconference. Although not required by the proposed rule, procedures may include a provision allowing a complainant to appeal the grievance committee's decision to the program's whole board of directors.

This provision also clarifies that there is no attorney-client relationship between the complainant and the

board's grievance committee. Thus, in order for the grievance committee to investigate a complaint, the client would have to consent to disclose any necessary confidential information. It is important to require that the consent be explicit, rather than simply treating the filing of a complaint as an implied consent. The consent called for is limited to those disclosures to the committee or the board necessary to consider the grievance.

Paragraph (c) adds a provision setting out what a grievance committee may do in response to a complaint made pursuant to this Part. This is an effort to make it clear that the committee could recommend any action that is consistent with the applicable rules of professional responsibility, but it would be up to the executive director to determine what action is appropriate and to implement such action.

Paragraph (d) requires a recipient to maintain a file, separate from the client's case file, containing a copy or summary of every written complaint and a statement of its disposition. In view of the second sentence of this paragraph, the requirement in the current rule that the file be preserved for review by the Corporation has been deleted. The second sentence adds a provision that prohibits the recipient from disclosing any information in the file that would violate the attorney-client privilege or the applicable rules of professional responsibility. Keeping the information the Corporation may need to see in a file separate from the client's case file would make it easier for the Corporation to have access to complaint information in a manner that would be less likely to jeopardize the confidentiality of client information. The Committee believes that the provisions on access to client information should be consistent with the applicable rules of professional responsibility and with section 1006(b)(3) of the LSC Act, which prohibits LSC from abrogating the authority of states and local jurisdictions to enforce those rules.

The ABA's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") has expressed great concern about the protection of client confidences, secrets, and other information gained in the course of representation, and has urged the Committee to adopt rules that would permit LSC to have access to information only in a manner consistent with the applicable rules of professional responsibility. The Committee proposal makes it clear that complaint information disclosed by a client should not be disclosed to LSC or to any third

party, except as permitted by applicable rules. Generally, that would mean that when the identity of a client is not known, information may be made available so long as it does not identify a client, either directly or indirectly. Thus, a client's name and any other information that could associate the document with a particular client, such as an address or the name of an employer, should be redacted.

Once a document has been purged of any information that could be used to identify a particular individual or that could be associated with a particular person, that document could be shared with LSC, consistent with the rules of professional responsibility. However, the Committee solicits comments as to whether other information than that which would identify a client may have to be withheld pursuant to local rules of professional responsibility. The comments should include specific examples of types of information that would have to be withheld.

In the event that LSC is investigating a specific complaint involving a previously identified client, unless the specific client has consented to the disclosure, the recipient may be under an obligation to withhold from LSC substantially more of the information provided by the client in order to ensure that secrets, confidences, and information gained in the course of the representation are not inappropriately revealed. Should the information thus provided prove insufficient to permit LSC to fulfill its obligation to ensure that recipients meet the requirements of this part, it is anticipated that the recipient and LSC will work together to devise an acceptable manner in which to proceed. Of course, if LSC is investigating a complaint at the request of a client, the client may consent to the disclosure of the information.

#### *Section 1621.4 Complaints About Denial of Assistance*

Paragraph (a) is revised to require recipients to establish simple procedures for the timely review of a complaint by an applicant for service regarding a decision to deny service.

Paragraph (b) sets out the requirements for such procedures, which should include instructions on how an applicant may obtain information on the reasons for a denial of service, including information on the recipient's priorities, eligibility guidelines, statutory restrictions on representation, and a recipient's case acceptance criteria. Case acceptance criteria would include, but would not be limited to, consideration of the merits of the applicant's case and any conflicts of

interest that may exist. The Committee would like to hear comments on other items that should be included as case acceptance criteria. The procedures should also contain information on how a complainant can make a complaint and confer with a recipient's director or a member of the grievance committee regarding the denial of service.

Proposed paragraph (c) requires recipients to make reasonable and appropriate efforts to inform applicants about the complaint procedures. What is reasonable and appropriate would vary depending on the resources of a recipient and the volume of its applicants. There are a variety of ways, depending on the circumstances, in which the standard could be met. They include, but are not limited to: (1) Providing written information about the complaint procedure to all rejected applicants whose eligibility is determined in person; (2) providing written notification to rejected applicants whose determinations are routinely acknowledged in writing; (3) using voice mail or other available technology, if appropriate and economically feasible; or (4) providing oral descriptions of the complaint procedures for rejected applicants who express dissatisfaction with the determination. The standard would not include a practice that would overwhelm a program's telephone system or exact too high an administrative cost.

Paragraph (d) prohibits the recipient from disclosing any information maintained by the recipient regarding a complaint of denial of assistance to the Corporation or any third party in a manner that would violate the attorney-client privilege or the applicable rules of professional responsibility. This paragraph does not require the recipient to maintain a file on complaints of denial of assistance.

Although recipients are not required to do so by the rule, they should make reasonable and appropriate efforts to ensure that non-English speaking individuals and those with communicative disorders understand the complaint procedures, have the tools to adequately express their complaints, and receive appropriate explanations of why their applications for service were denied or what actions are being taken in response to their complaints.

#### List of Subjects in 45 CFR Part 1621

Legal services.

For reasons set forth in the preamble, part 1621 is proposed to be revised to read as follows:

### PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.

1621.1 Purpose.

1621.2 Grievance Committee.

1621.3 Complaints about the quality or manner of providing services.

1621.4 Complaints about denial of assistance.

Authority: 42 U.S.C. 2996e(b)(3); 2996f(a)(1).

#### § 1621.1 Purpose.

By providing an effective complaint mechanism for an applicant for service who believes that legal assistance has been denied improperly, or for a client who is dissatisfied with the quality or manner of services provided, this part seeks to insure that recipients treat every client and applicant for service fairly and with dignity and respect and provide each client with high quality legal services.

#### § 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and eligible client members of the governing body. One third or more of the members of each grievance committee shall be eligible client members of the governing body.

#### § 1621.3 Complaints about the quality or manner of providing services.

(a) A recipient shall establish procedures for determining the validity of a complaint by a client about the manner or quality of services that have been provided to the client by members of the recipient's staff or by private attorneys under part 1614 of these regulations.

(b) The procedures shall provide at least:

(1) Information to a client at the time of the initial visit about how to make a complaint;

(2) Prompt consideration of each complaint by the director of the recipient, or the director's designee; and

(3) An opportunity for a complainant to submit a written complaint to a grievance committee established by the governing body pursuant to § 1621.2, if the director of the recipient or the director's designee is unable to resolve the matter to the complainant's satisfaction.

(i) Upon request, the recipient shall transcribe a brief written statement of the complaint, dictated by the complainant, for submission to the grievance committee.

(ii) Each written complaint shall include a signed statement by the complainant giving limited written

consent to disclose client confidences, secrets or other information relating to the representation of the complainant necessary to investigate the matters and issues raised by the complaint.

(4) The procedures shall also provide an opportunity for the complainant to appear before the grievance committee, either in person or by teleconference, if the grievance committee is unable to resolve the matter to the complainant's satisfaction based on the written complaint. The complainant may be assisted by another person.

(c) The grievance committee may recommend that the director of the recipient take appropriate action to correct any problems that it finds as a result of a review of a complaint made under this section. No actions shall be taken that are inconsistent with the applicable rules of professional responsibility.

(d) The recipient shall maintain a file, separate from the case file, containing either a copy or, if appropriate, a complete and accurate summary of every written complaint made pursuant to § 1621.3 and a statement of its disposition. The recipient shall not disclose the contents of this file to the Corporation or to any other third party in a manner that would violate the attorney-client privilege or applicable rules of professional responsibility, without the express written consent of the client.

#### § 1621.4 Complaints about denial of assistance.

(a) A recipient shall establish simple procedures for timely review of a complaint by an applicant for service regarding (1) a decision by the recipient to deny service and (2) the reasons for the denial.

(b) The procedures shall include instructions regarding how applicants for service can:

(1) obtain information necessary to explain why service was denied, including information describing the recipient's priorities, eligibility guidelines, applicable restrictions on representation contained in the Act and regulations, and case acceptance criteria. Such case acceptance criteria may include, but shall not be limited to, the merits of a client's claim and any conflicts of interest that may exist;

(2) make a complaint questioning the denial of assistance; and

(3) confer with the director of the recipient or the director's designee, and, to the extent practicable, with a member of a grievance committee established pursuant to § 1621.2 regarding the reasons for the decision denying service.

(c) Recipients shall make reasonable and appropriate efforts to inform applicants who have been denied service about the complaint procedures set out in § 1621.4(b).

(d) A recipient shall not disclose to the Corporation or to any third party any documents maintained by the recipient regarding denials of assistance that would violate the attorney-client privilege or applicable rules of professional responsibility, without the express written consent of the applicants for service.

Dated: September 27, 1994.

**Victor M. Fortuno,**

*General Counsel.*

[FR Doc. 94-24276 Filed 9-29-94; 8:45 am]

BILLING CODE 7050-01-P