



Office of Inspector General
Legal Services Corporation

Inspector General

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FRAUD ALERT **18-0073-A-FA**

TO: Executive Directors

FROM: Jeffrey E. Schanz
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SUBJECT: Unauthorized Outside Practice of Law

Background

The Legal Services Corporation (LSC), Office of Inspector General (OIG) has found that financial harm to grantees can result from the unauthorized outside practice of law by full-time grantee attorneys. OIG investigations have also identified significant monetary loss to eligible clients seeking legal assistance from LSC grantees, resulting from a grantee attorney's outside practice of law.

LSC Regulation 45 C.F.R. Part 1604 requires all LSC grantees to adopt written policies relating to the Outside Practice of Law (OPL) by full-time grantee attorneys. Part 1604 authorizes (but does not require) LSC grantees to permit full-time staff attorneys to engage in the outside practice of law only to the extent allowed by Part 1604, for example, representation of relatives or close friends on a pro bono basis. If the attorney expects compensation for the legal services provided, the attorney must be newly employed by the grantee, have a professional responsibility to close their cases from the previous law practice and must do so on their own time, as quickly as possible. Additionally, a grantee attorney may accept court appointed cases on behalf of the

grantee and if compensated, the attorney must remit any compensation received to the grantee.¹

Part 1604 further allows grantees to restrict the OPL altogether or to impose additional restrictions on the OPL as necessary to meet the responsibilities of its clients. A grantee's OPL policies should also require prior written approval by the grantee's Executive Director or designee.

Examples of unauthorized outside practice investigated by the OIG include instances of full-time attorneys making unauthorized outside court appearances and filings in bankruptcy claims; preparing unauthorized outside pleadings; and holding themselves out as private practitioners available to practice law for non-grantee clients.

One OIG investigation found a managing attorney and a staff attorney at a grantee branch office engaged in unauthorized paid representation of non-grantee clients over a two-year period. The two attorneys conducted most of the unauthorized outside work during program time and using program resources (including support staff time), in violation of Part 1604.6. In subsequent questioned cost proceedings, LSC disallowed \$21,000 in salary payments the grantee had made to the two attorneys.

In another case, a staff attorney's use of substantial grantee resources for unauthorized outside practice, as well as the executive director's own extensive unauthorized outside practice, were contributing factors in the closure of an LSC-funded program.

In a third case, an OIG investigation found that a grantee's supervising attorney had referred grantee clients to receive paid services from his business partner at an outside private law firm; in return, his partner split the resulting fees with him. Although many of the grantee clients were eligible for free legal services, they had instead paid the supervising attorney's law partner thousands of dollars in legal fees.

Unauthorized outside practice, especially when coupled with other problems, can have a severe negative impact on a grantee's reputation and may lead to criminal, civil, or administrative penalties. As a recent article in the *Philanthropy News Digest* noted, there is evidence bad publicity hurts nonprofits more than for-profit businesses, leading to a rapid loss of "donors, volunteers, and referrals."

Policies and Oversight

Well-designed and effective grantee policies and oversight practices will help to prevent unauthorized outside practice by full-time grantee attorneys.

¹ Neither the LSC Act nor Part 1604 prohibits outside practice, compensated or otherwise, by part-time staff attorneys.

Prevention

OIG investigations and reviews have revealed instances of unauthorized outside practice that resulted, at least in part, from grantee management's failure to properly inform employees of the restrictions on outside practice. An effective outside practice policy should both inform full-time grantee attorneys about the statutory and regulatory limitations on outside practice (as well as any additional restrictions contained in the grantee's own policy) and create a mechanism for the approval of permissible and appropriate outside practice. Grantees should ensure they instruct newly hired attorneys on the applicable restrictions and approval mechanisms, and periodically remind all full-time attorneys of them as well.

The OIG has identified the following best practices for preventing the unauthorized outside practice of law:

- adopt written policies which are consistent with Part 1604 requirements;
- ensure that new full-time staff attorneys receive onboarding training on the restrictions of Part 1604 and any additional restrictions included in the grantee's OPL policy;
- at least annually remind all full-time grantee attorneys of the program's OPL policy;
- require that outside practice requests receive prior written approval by the executive director (ED) or the ED's designee.
- create and maintain an outside practice request form that includes: the reason permission for outside practice is being requested; the scope of the proposed representation; the estimated time that will be required to complete the proposed outside practice; whether the proposed outside practice will be compensated or uncompensated; whether the proposed outside practice resulted from a court appointment; a section for the required ED approval with signature; and a certification that the attorney will inform the appropriate administrator when the proposed outside practice has concluded;
- implement an outside practice follow-up form that includes: attorney and client name; date of outside practice approval; and whether the matter has concluded. If the matter has not concluded, the attorney should estimate the time they expect it will take to conclude. The form should also include a certification that the attorney only used his or her personal time on the matter and will not use any program resources aside from those de minimis amounts allowed by Part 1604.
- when a full-time attorney provides assistance to a family member, friend, or another grantee employee pursuant to Part 1604.4(c)(2), ensure the representation does not violate the grantee's conflict of interest policy;
- ensure there are safeguards in place to prevent clients eligible for free legal services from being diverted to a grantee attorneys' outside practice;
- create a mechanism to ensure attorneys' fees obtained from court appointed cases are remitted to the grantee;
- to prevent potential time and attendance fraud in relation to outside practice, adopt a written policy requiring supervisors to verify that contemporaneous time records correspond to requests for travel reimbursements; and

- create a policy that encourages employees to report suspicious activities that may indicate unauthorized outside practice by grantee staff.

Indicators of Unauthorized Outside Practice

Effective outside practice policies and oversight must also assist program executives in recognizing indicators of unauthorized outside practice. In many OIG unauthorized outside practice investigations, the outside practice was occurring undetected for extended periods because the grantee's policies did not include effective mechanisms for detecting unauthorized outside practice.

OIG investigations have disclosed the following indicators that may be useful in identifying unauthorized outside practice:

- complaints from grantee clients regarding an attorney's availability;
- complaints from a court regarding an attorney's absence from court appearances;
- an attorney's maintenance of a large volume of older, unclosed cases;
- an attorney's time entry in a grantee's case management system that does not appear concurrent to the legal services provided;
- telephone calls received from an individual who claims to be a grantee client but whose name is not found in the grantee's case management system (this may be a diverted client);
- an attorney's contemporaneous time records do not correspond to associated files, court dockets, or travel vouchers and timesheets;
- complaints received from grantee support staff alleging they have been assigned to complete tasks for an attorney's private cases; and
- internet searches (including of state bar websites) using an attorney's name reveal connections to a law firm or other organizations, or list an LSC-restricted activity as an area of his or her expertise.

I am informing you of these practices to assist you in protecting your program funds from fraud, waste and abuse. Reporting these matters to the OIG can further help protect grantee funds. We encourage you to distribute this fraud alert to your staff. In addition, we welcome requests for OIG training, which are designed to increase awareness of potential fraud indicators at LSC programs.

I hope you find this Fraud Alert useful. Our Fraud Hotline telephone number is 800-678-8868 or 202-295-1670; email hotline@oig.lsc.gov; fax 202-337-7155.

If you have any questions concerning this Fraud Alert, please contact Dan O'Rourke, Assistant Inspector General for Investigations, LSC OIG, telephone 202-295-1651; email dorourke@oig.lsc.gov.