

NOTE: The form illustrated in § 101-26.4902-1424 is filed as part of the original document and does not appear in the FEDERAL REGISTER.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Effective date: This regulation is effective September 10, 1976.

It is hereby certified that the impact does not meet the inflation impact criteria for major rules or regulations.

Dated: September 2, 1976.

JACK ECKERD,

Administrator of General Services.

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Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1609—FEE-GENERATING CASES

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"). Section 1007(b) (1) of the Act, 42 U.S.C. 2996f(b) (1), prohibits the use of Corporation funds to provide legal assistance with respect to any fee-generating case, except in accordance with guidelines promulgated by the Corporation.

On May 5, 1976 (41 FR 18528) a proposed regulation on fee-generating cases was published. Interested persons were given until June 3, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

PURPOSE

Generally the private Bar is eager to accept contingent fee cases and cases in which there may be an award of attorneys' fees to be paid by the opposing party pursuant to specific statutory authorization. However, there may be instances when no private attorney is willing to represent an individual, because the recovery of a fee is unlikely, the potential fee too small, or for some other reason. The Act requires the Corporation to issue guidelines to insure that eligible clients will be able to obtain legal assistance in such cases, with appropriate safeguards to prevent legal services lawyers from competing with the private bar when private representation is in fact available.

The definition of "fee-generating case" in § 1609.2(a) includes every situation in which an attorney reasonably may expect to receive a fee for services from any source except the client.

SAFEGUARDS

Section 1609.3 prohibits representation in a fee-generating case unless other adequate representation is unavailable. Section 1609.4 sets forth the circumstances in which a fee-generating case may be accepted. The principal safeguard is in the requirement that either the client or the recipient attempt to find private representation through the local lawyer

referral service, or by request made to two private lawyers. Referral need not be attempted, however, if the recipient knows from past experience that it would be futile because the case is of a type that private lawyers ordinarily do not accept; and referral may be postponed if emergency circumstances require immediate action. Referral is not required when a client is obliged to pay a fee before a case will be considered. The provision should encourage local referral services and members of the private Bar to waive their customary fees for initial consultation when a recipient refers an eligible client with a fee-generating case. When recovery of damages is not the principal object of a case, a request for damages sometimes may be necessary, for tactical reasons, or because a latent counterclaim is discovered in the course of representation. Referral in such cases is rarely feasible, and requiring that it be attempted is an unnecessary administrative burden the Committee decided not to impose.

AWARDS OF FEES OR COSTS

In recent years statutes have begun to include provisions for the award of attorneys' fees to successful plaintiffs, and § 1609.5 encourages legal services programs to take advantage of this trend. Such cases are subject to the safeguards in § 1609.4 applicable to all fee-generating cases, but if referral is not possible, a recipient may take the case and may accept an award of attorneys' fees. The proceeds must be remitted to the recipient, used solely for purposes authorized by the Act, and reported to the Corporation.

Recipients are encouraged to take advantage of statutory provisions for attorneys' fees. Many courts have held that the fact that an attorney did not charge a fee to the client does not disqualify the attorney from receiving a fee under such statutes. See generally: *Tafte v. Department of Social and Health Services*, 85 Wash. 2d 161 (1975) and cases cited therein; *Hoitt v. Vitek*, 495 F.2d 219 (1st Cir. 1974); *Müller v. Amusement Enterprises, Inc.*, 426 F.2d 534 (5th Cir. 1970); Comment, "Award of Attorney's Fees to Legal Aid Officers," 87 Harv. L.R. 411 (1973).<sup>1</sup> Awards to recipients will increase their resources, and may encourage private attorneys to undertake similar cases on behalf of eligible clients. A recipient's tax status will not be affected by its acceptance, and use for program purposes, of fees awarded in cases undertaken for eligible clients.

The disclaimers in § 1609.6 (a) and (b) clarify the intention of the original draft. Section 1609.6(c) is new. It was added in response to suggestions that

<sup>1</sup> To the extent that the basis for the award in federal cases is the "private attorney general" theory they have been rendered obsolete by the decision in *Alyeska Pipeline Service Company v. The Wilderness Society*, 421 U.S. 240 (1975); but *Alyeska* did not undermine the principle that legal services programs are entitled to equal treatment with private attorneys when there is statutory authorization for an award of fees.

such a provision would encourage desirable cooperation between recipients and the private Bar. A private lawyer may be reluctant to undertake a low-fee case in a possibly novel area of the law without the assurance of assistance from a recipient. By permitting a recipient to share its expertise with the private Bar, the Corporation can, without expending its own resources, increase the number of lawyers available to serve the poor. In such cases it seems appropriate to allow the recipient to share in any award of attorneys' fees that may be made.

Sec.

- 1609.1 Purpose.
- 1609.2 Definitions.
- 1609.3 Prohibition.
- 1609.4 Authorized representation in a fee-generating case.
- 1609.5 Acceptance of fees.
- 1609.6 Acceptance of reimbursement.
- 1609.7 Application.

AUTHORITY: Sec. 1007(b) (1), (42 U.S.C. 2996f(b) (1)).

§ 1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

§ 1609.2 Definition.

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

§ 1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

§ 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when (a) The recipient has determined that free referral is not possible because:

- (1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or
- (2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or
- (3) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee; or

(4) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief; or inclusion of a coun-

terclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

#### § 1609.5 Acceptance of fees.

(a) A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if

(1) The requirements of § 1609.4 are met, and

(2) Funds received are not used for purposes prohibited by the Act, and are accounted for in the manner directed by the Corporation.

(b) If a legal fee is awarded or approved by a court or administrative body, it shall be remitted promptly to the recipient.

#### § 1609.6 Acceptance of reimbursement.

When a case or matter subject to this Part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(a) The requirements of § 1609.4 are met, and

(b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

#### § 1609.7 Application.

Nothing in this part shall prevent a recipient from

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

(b) Accepting a fee in a case that was initiated prior to adoption of this part; or

(c) Acting as co-counsel with a private attorney when appropriate, and accepting part of any fee that may result from a shared case.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,  
President,  
Legal Services Corporation.

[FR Doc. 76-26499 Filed 9-9-76; 8:45 am]

### PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(1) of the Act restricts the use of Corporation funds in criminal proceedings.

A proposed regulation was published on June 11, 1976 (41 FR 23728-9), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

#### DEFINITION

An initial policy question was whether to leave the scope of the prohibition against criminal representation to the varying definition of "criminal" in state and federal law, or to adopt a uniform definition. Consistent with the Corporation's policy seeking uniformity in application of the Act and its regulations, a uniform definition has been adopted.

Many minor infractions, such as housing, sanitation and traffic law violations, that are punishable by no more than a fine, are basically civil in nature. They are treated as civil in some states and in the Model Penal Code, and the ABA recommends their removal from criminal codes. "ABA Report, New Perspectives on Crime" iv (1972). Because the Corporation believes such offenses are basically civil in nature, and because the imposition of a fine may be extremely burdensome for the clients of legal services programs, the regulation permits representation of defendants in such cases.

The definition in the original draft has been amended to exclude cases prosecuted by private citizens to vindicate claims that are civil in nature, even though criminal sanctions or procedures may be provided by some states. Examples are child support and alimony cases. The change is consistent with the Conference Report, which states that the conferees understood "criminal proceedings" to refer to actions brought by governmental units.

The definition may leave a gap between cases where legal services lawyers can provide representation, and those where the Sixth Amendment right to counsel in criminal prosecution applies, because the Supreme Court has suggested that the Sixth Amendment is inapplicable when imprisonment is unlikely, although authorized. "Argersinger v. Hamlin," 407 U.S. 25 (1975). Recognizing that gap, the Corporation still believes that legal services lawyers should not participate in cases where an alternative jail sentence is authorized, even though they are arguably civil in nature. The Corporation's resources are too limited to accept the substantially expanded quasi-criminal caseload that might result if such representation were permitted.

If no more than a fine can result from conviction, the Part does not prohibit representation. But whether representation actually should occur is a question for a recipient to decide on the basis of its own priorities and resources, and the availability of other legal assistance in the community.

The prohibition of this part does not apply until adversary judicial criminal proceedings have been initiated by for-

mal complaint, indictment, or information. Choice of this point was suggested by the Supreme Court's decision in "Kirby v. Illinois," 406 U.S. 682 (1972), where the Court explained that "The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified \* \* \*. It is this point, therefore, that marks the commencement of [a] 'criminal prosecution' \* \* \*." 406 U.S. 689.

#### AUTHORIZED REPRESENTATION

The legislative history makes it clear that certain limited exceptions to the general prohibition against criminal representation were intended.

In geographic areas where there is no Public Defender, and there are relatively few lawyers available, a legal services lawyer may be required by a court to accept appointment to represent an indigent defendant. If appointment is made pursuant to a statute or a court rule or practice of general applicability to all attorneys in the jurisdiction, § 1613.4(a) permits a legal services lawyer to fulfill an attorney's responsibility as an officer of the court, as long as criminal representation is not inconsistent with the primary responsibility of the legal services program to provide assistance to eligible clients in civil matters.

Occasionally a noncriminal matter undertaken on behalf of a juvenile evolves into a criminal proceeding (as for example, when a juvenile court waives jurisdiction). Section 1613.4(b) permits continued representation of the juvenile in the criminal proceeding, if required by professional responsibility.

Section 1613.4(c) was added to permit representation, if required by professional responsibility, in a case in which a criminal charge directly arises out of a civil matter in which a client has received or is receiving legal assistance from a recipient.

This Part does not prohibit legal assistance with respect to any matters that are not part of a criminal prosecution, such as probation revocation after sentence has been imposed, "Mempa v. Rhay," 389 U.S. 128 (1967), parole revocation, "Morrissey v. Brewer," 408 U.S. 471 (1972), or relief from illegal conditions of confinement.

#### Sec.

- 1613.1 Purpose.
- 1613.2 Definition.
- 1613.3 Prohibition.
- 1613.4 Authorized Representation.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

#### § 1613.1 Purpose.

This part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the Bar.

§ 1613.2 Definition.

"Criminal proceeding" means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law, and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a "criminal proceeding".

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires continued representation of a juvenile pursuant to § 1614.6; or

(c) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

*Effective date.* This part becomes effective on October 12, 1976.

THOMAS EHRLICH,  
President,

Legal Services Corporation.

[FR Doc.76-26500 Filed 9-9-76; 8:45 am]

PART 1614—LEGAL ASSISTANCE TO JUVENILES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(4) of the Act restricts the use of Corporation funds in the representation of juveniles.

A proposed regulation was published on June 11, 1976 (41 FR 23729), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

PURPOSE

The legislative history of the Act shows that Congress intended to prohibit legal services programs from providing legal assistance to a juvenile when doing so would create or exacerbate conflict between parent and child. At the same time, assistance is authorized when

family relationships have broken down or essential rights of a juvenile are at stake. This part is designed to meet these dual concerns.

REPRESENTATION AT THE REQUEST OF A PARENT, GUARDIAN, OR COURT

Section 1614.4 follows the Act in permitting legal assistance at the request of one of the juvenile's parents or guardians, or a court of competent jurisdiction. Requests made by agents or officials such as probation officers, youth workers and counselors, through whom a court normally acts, are considered requests of a court.

When a legal services program is asked to provide assistance to a juvenile who is tried as an adult in a criminal proceeding, the limitations of Part 1613 apply. The Act permits legal assistance to juveniles in noncriminal proceedings, but if a case is one in which a juvenile has a right to appointed counsel, Corporation funds should not be used to relieve governmental entities of their financial responsibilities. The original draft attempted to meet that concern in § 1614.3(c). However, many comments were received objecting that the provision went beyond the Act by unduly restricting representation of juveniles in cases in which there is a legal right to appointed counsel. It was pointed out that there are many situations when adults, as well as juveniles, may have a legal right to counsel compensated by the state (e.g., mental commitment proceedings), and there is no indication that Congress intended there to be greater restrictions on the representation of juveniles than adults in such cases. (The legislative history of the section indicates that the chief concern of Congress was to prevent legal services programs from providing representation injurious to the integrity of a family—a concern that is irrelevant in the types of cases at issue here.) Further, many comments stated that the right to appointed counsel in noncriminal cases is scarcely implemented, if at all, in many states. To the extent that the legal right to appointed counsel is a reality within a jurisdiction, the provisions of Part 1609, requiring referral of fee-generating cases, should be adequate to prevent legal services programs from competing with the private Bar, whether the potential client is a juvenile or an adult.

Because of the critical comments received, § 1614.3(c) was deleted and § 1614.7 added in its place. The new provision allows a recipient to adopt a policy consistent with its own resources and priorities, and the realities of practice within the jurisdiction. If a state provides adequate representation for juveniles, it may be assumed that a recipient will refrain from undertaking such cases.

REPRESENTATION WITHOUT THE REQUEST OF A PARENT, GUARDIAN, OR COURT

When the normal relationship between parent and child no longer exists, or the interests of parent and child conflict, the Act permits legal assistance to a juve-

nile without a request from a parent, guardian, or court. Sections 1614.5 (a) and (b) carry out the intent of the Act by providing that assistance may be given in cases of child neglect, as well as child abuse; and in proceedings involving guardianship, as well as custody. Section 1614.5(c) tracks section 1007(b)(4)(C) of the Act in permitting legal assistance to a juvenile in cases involving the initiation, continuation, or conditions of institutionalization.

Consistent with the balance struck by the Act between preserving parent-child relationships and protecting the legal rights of juveniles, section 1007(b)(4)(D) of the Act permits legal assistance to secure or prevent the loss of legal benefits or services, except when judicial action is commenced against a juvenile's parent or guardian. "Guardian", in this context, has been construed to mean "non-institutional guardian", because doing otherwise would shield institutional guardians from their legal responsibilities. This interpretation is supported by the legislative history of the provision. "Congressional Record," S. 12934, July 18, 1974.

If, after commencement of a case, a parent or guardian joins the action as a defendant or respondent, the Part permits legal representation of a juvenile to continue. Withdrawal at that point would violate Disciplinary Rule 2-110 of the ABA Code of Professional Responsibility; and the Corporation could not require it without violating section 1006(a)(3) of the Act, that prohibits interference with an attorney's fulfillment of professional responsibilities. Here, too, the regulation is supported by legislative history.

CONTINUITY OF REPRESENTATION

Proceedings initiated in a juvenile court are sometimes transferred to an adult court where criminal proceedings ensue. If a legal services lawyer has represented a juvenile prior to transfer, Disciplinary Rule 2-110 of the ABA Code of Professional Responsibility prohibits withdrawal until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client. Therefore, while requiring an attorney to make a good faith effort to be relieved from representation in the criminal proceeding, § 1614.6 permits continued representation unless the attorney is relieved by the court.

Sec.

- 1614.1 Purpose.
- 1614.2 Definitions.
- 1614.3 Policy.
- 1614.4 Request of a parent, guardian, or court.
- 1614.5 Representation without request of a parent, guardian, or court.
- 1614.6 Continuity of representation.
- 1614.7 Limitation policy.

AUTHORITY: Sec. 1007(b)(4) (42 U.S.C. 2996f(b)(4)).

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal as-

sistance when it is necessary to protect essential rights of a juvenile.

#### § 1614.2 Definitions.

As used in this part,

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

#### § 1614.3 Policy.

Corporation funds may be used to provide legal assistance to a juvenile when authorized by this part.

#### § 1614.4 Request of a parent, guardian, or court.

(a) Legal assistance may be provided to a juvenile

(1) When the written request of a parent or guardian of the juvenile is received; or

(2) At the request of an official or agent of a court of competent jurisdiction; but

(b) Legal assistance shall not be provided to a juvenile who is tried as an adult in a criminal proceeding, as defined in § 1613.2, unless required as part of an attorney's professional responsibilities, pursuant to § 1613.4, or § 1614.6.

#### § 1614.5 Representation without request of a parent, guardian, or court.

Legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in

(a) Cases, proceedings, or matters

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for treatment, services, supervision or control, including but not limited to proceedings formally designed for persons in need of supervision (PINS) under state law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; or

(b) When no judicial action is commenced against the parent or non-institutional guardian of the juvenile, legal assistance may be provided

(1) To secure or prevent the loss of benefits or services, or

(2) To prevent the imposition of services against the will of the juvenile.

#### § 1614.6 Continuity of representation.

If a criminal proceeding, as defined in § 1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceeding, but may continue to provide representation unless relieved by the court.

#### § 1614.7 Limitation policy.

A recipient shall adopt policies designed to insure that Corporation funds are not used to relieve a governmental entity of its legal responsibility to provide compensated counsel to represent juveniles in particular categories of cases, matters, or proceedings.

*Effective date:* This part becomes effective on October 12, 1976.

THOMAS EHRLICH,  
President,

Legal Services Corporation.

[FR Doc.76-26501 Filed 9-9-76;8:45 am]

### PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(1) of the Act restricts the use of Corporation funds in certain civil actions challenging criminal convictions.

A proposed regulation was published on June 11, 1976 (41 FR 23730), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

This part implements the provision of Section 1007(b)(1) of the Act that prohibits legal assistance in certain civil actions brought to challenge criminal convictions. The prohibition includes writs of habeas corpus, and other writs such as coram nobis that, in some jurisdictions, perform the same function of collaterally attacking the validity of a criminal conviction.

Some comments objected that the proposed regulation went far beyond the Act by adding, in subsection 1615.2(a), "a public officer who has custody of a convicted person" to the statutory list of proscribed defendants. That formulation was used because merely tracking the statutory language would not have carried out the intent of Congress, but that purpose does not require inclusion of others besides prison wardens, such as the directors of state mental institutions in which both criminally convicted and civilly committed individuals are confined. Special circumstances and legal issues arise when convicted persons are confined in institutions other than prisons, and the statutory purpose can be satisfied without prohibiting legal assistance in such cases. Therefore, the original phrase has been replaced by a narrower one, "custodian of an institution for persons convicted of crimes."

The final phrase "by a court officer or law enforcement official" was added to § 1615.2(b) in response to criticisms that, as originally drafted, the section was un-

clear. Because the prohibition against representation in collateral attacks on convictions is *in pari materia* with the one against representation in criminal proceedings, the limited exception permitting criminal representation in certain instances has been carried over to this part.

Consistent with the statutory language and its legislative history, this Part does not prohibit cases seeking relief from illegal conditions of confinement, or any other actions that do not have the objective of overturning a criminal conviction.

Sec.

1615.1 Purpose.

1615.2 Prohibition.

1615.3 Application of this part.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1))

#### § 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

#### § 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

#### § 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

*Effective date:* This part becomes effective on October 12, 1976.

THOMAS EHRLICH,  
President,

Legal Services Corporation.

[FR Doc.76-26502 Filed 9-9-76;8:45 am]

### PART 1616—ATTORNEY HIRING

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support

for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a) (8) of the Act provides that the Corporation shall ensure that recipients solicit recommendations of the local Bar in filling staff attorney positions, giving preference to qualified local residents, and section 1006(b) (6) requires the Corporation to provide, to the extent feasible, in areas where a language other than English is the principal language of significant numbers of eligible clients, that such language is used in the provision of legal assistance to those clients.

A proposed regulation was published on June 11, 1976 (41 FR 23730-1), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

Section 1007(a) (8) of the Act requires a recipient to solicit recommendations from the local Bar before filling staff attorney positions, and to give preference to qualified local applicants. This part draws upon Part 1607, Governing Bodies, by requiring a recipient to seek recommendations from other appropriate groups as well as from the local Bar. And because these requirements serve the laudable purpose of promoting a cooperative relationship between a recipient and the local Bar and community, they have been applied to all attorney positions, not just "staff attorneys", as that term is defined in the Act. Local applicants need be given preference only when they are equally qualified with non-residents.

The part requires a recipient to establish qualifications for attorneys; and the enumerated criteria include those for the attorney members of governing bodies under § 1607.3(b) of the Corporation's regulations, and for State Advisory Council members under §§ 1603.3 and 1603.4. This part also implements section 1006(b) (6) of the Act, that requires legal assistance to be provided in the principal language, other than English, used by significant numbers of eligible clients in a given area.

- Sec.
- 1616.1 Purpose.
- 1616.2 Definition.
- 1616.3 Qualifications.
- 1616.4 Recommendations.
- 1616.5 Preference to local applicants.
- 1616.6 Equal employment opportunity.
- 1616.7 Language ability.

Authority: Secs. 1007(a) (8); 1006(b) (6); 1006(b) (4); (42 U.S.C. 2996f(a) (8); 2996e(b) (6); 2996e(b) (4)).

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

"Community", as used in this part, means the geographical area most closely corresponding to the area served by a recipient.

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

- (a) Academic training and performance;
- (b) The nature and extent of prior legal experience;
- (c) Knowledge and understanding of the legal problems and needs of the poor;
- (d) Prior working experience in the client community, or in other programs to aid the poor;
- (e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to speak that language; and
- (f) Cultural similarity with the client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney position, a recipient shall notify the organized Bar in the community of the existence of a vacancy, and of the qualifications established for it, and seek recommendations for attorneys who meet the qualifications established for the position.

(b) A recipient shall similarly notify and seek recommendations from other organizations, deemed appropriate by the recipient, that have knowledge of the legal needs of persons in the community unable to afford legal assistance.

§ 1616.5 Preference to local applicants.

When equally qualified applicants are under consideration for an attorney position, a recipient shall give preference to an applicant residing in the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employment qualifications, procedures, and policies that meet the requirements of applicable laws prohibiting discrimination in employment, and shall take affirmative action to insure equal employment opportunity.

§ 1616.7 Language ability.

In areas where a significant number of clients speak a language other than English as their principal language, a recipient shall adopt employment policies that insure that legal assistance will be provided in the language spoken by such clients.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,  
President,  
Legal Services Corporation.

[FR Doc.76-26503 Filed 9-9-76; 8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 20—MIGRATORY BIRD HUNTING

Clarification of the Record-keeping Requirement for Migratory Bird Preservation Facilities

On July 29, 1976, the Director, U.S. Fish and Wildlife Service, published notice (41 FR 31535) that regulations redefining the term "commercial preservation facility" and clarifying the tagging requirements for migratory birds in custody at such preservation facilities had been amended (effective date: August 30, 1976). As the result of these amendments, § 20.82 of Part 10, Title 50, Code of Federal Regulations, reads as follows:

§ 20.82 Records required.

No migratory bird preservation facility shall:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained which can identify each bird in the custody of the facility to the name of the person from whom the bird was obtained, and showing (1) the number of each species; (2) the location where taken; (3) the date such birds were received; (4) the name and address of the person from whom such birds were received; (5) the date such birds were disposed of; and (6) the name and address of the person to whom such birds were delivered, or

(b) Destroy any records required to be maintained under this section for a period of 1 year following the last entry on the record.

(c) Record keeping as required by this section will not be necessary at hunting clubs which do not fully process migratory birds by removal of both the head and wings.

On closer examination, it now appears that the wording of § 20.82 does not make it explicit that the required records must be maintained for each bird in the custody of the facility and for each bird received by the facility. It was the clear intention that § 20.82 as a whole, and particularly subsections (a) (3), (a) (4), and (b), apply to all birds received by or in the custody of any migratory bird preservation facility. The purpose of the amendment here announced is to make this intention explicit in the language of the regulation by adding to § 20.82(a) the words "received by or" following the words "each bird" and preceding the words "in the custody of".

This rewording of § 20.82 does not involve any substantive change whatever in the regulation. Therefore, since it is considered desirable to effect this rewording in time for the forthcoming hunting season, the Director finds that "good cause" exists within the meaning of 5 U.S.C. § 553(d) (3) (the Administrative Procedure Act) to implement § 20.82 as clarified immediately upon publication.

This rulemaking is issued under the authority contained in the Migratory Bird Treaty Act (16 U.S.C. § 704).

Dated: September 2, 1976.

GEORGE W. MILLAS,  
Acting Director,  
Fish and Wildlife Service.

Accordingly, 50 CFR Part 20 is amended by revising § 20.82 to read as follows:

**§ 20.82 Records required.**

(a) No migratory bird preservation facility shall:

(1) Receive or have in custody any migratory game bird unless accurate records are maintained which can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show (i) the number of each species; (ii) the location where taken; (iii) the date such birds were received; (iv) the name and address of the person from whom such birds were received; (v) the date such birds were disposed of; and (vi) the name and address of the person to whom such birds were delivered, or

(2) Destroy any records required to be maintained under this section for a period of 1 year following the last entry on the record.

(b) Record keeping as required by this section will not be necessary at hunting clubs which do not fully process migratory birds by removal of both the head and wings.

[FR Doc.76-26405 Filed 9-9-76;8:45 am]

**PART 32—HUNTING****Bombay Hook National Wildlife Refuge, Delaware**

The following special regulation is issued and is effective during the period September 11, 1976 through October 31, 1976.

**§ 32.32 Special regulations; big game; for individual wildlife refuge areas.****DELAWARE****BOMBAY HOOK NATIONAL WILDLIFE REFUGE**

Public archery hunting of deer on Bombay Hook National Wildlife Refuge, Delaware, is permitted only on the Deer Hunting Area and South Upland Hunting Areas. These open deer hunting areas are delineated on maps available at refuge headquarters, Smyrna, Delaware, 19977, and from the Regional Director, U.S. Fish and Wildlife Service, John W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109. Hunting shall be in accordance with all applicable State regulations covering archery hunting of deer subject to the following special conditions:

(1) Hunting by bow and arrow on the Deer Hunting Area is permitted on the opening day and on Fridays and Saturdays only thereafter from September 11 through October 2.

(2) The number of hunters admitted to the Deer Hunting Area at any one time will be restricted to 80.

(3) Permits are required for the Deer Hunting Area and will be issued on a first-come, first-served basis one hour before shooting time.

(4) Hunters using the Deer Hunting Area and the South Upland Hunting Area must show proof of completion of an archery qualification test. This test will consist of placing three out of five arrows in the 9 x 14 inch chest area

of a standard size deer target at 25 yards. Hunters qualified in 1973 must requalify. The qualification is valid for three years only.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 31, 1976.

WILLIAM C. ASHE,  
*Acting Regional Director,*  
*U.S. Fish and Wildlife Service.*

SEPTEMBER 1, 1976.

[FR Doc.76-26444 Filed 9-9-76;8:45 am]

**PART 32—HUNTING****Pathfinder National Wildlife Refuge, Wyoming**

The following special regulation is issued and is effective on September 10, 1976.

**§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.****WYOMING****PATHFINDER NATIONAL WILDLIFE REFUGE**

Public hunting of ducks, geese, coots, and mergansers on the Pathfinder National Wildlife Refuge, Wyo., is permitted within 1976 waterfowl open season dates established by Wyoming Game and Fish Commission, but only on areas of Pathfinder Refuge known as Goose Bay, DeWeese Creek, and Sage Creek-Platte Units. This open area, comprising 3,760 acres, is delineated on maps available at refuge headquarters in Walden, Colorado and from the office of the Area Manager, U.S. Fish and Wildlife Service, 2215 Federal Building, Salt Lake City, Utah 84111. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, coots, and mergansers subject to the following special condition:

(1) Blinds—The construction of permanent blinds or pits is not permitted. Portable blinds may be used but not left on the refuge.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through open season dates established on these species by Wyoming Game and Fish Commission.

V. CARROL DONNER,  
*Refuge Manager, Pathfinder*  
*National Wildlife Refuge.*

SEPTEMBER 1, 1976.

[FR Doc.76-26443 Filed 9-9-76;8:45 am]

**PART 32—HUNTING****Prime Hook National Wildlife Refuge, Delaware**

The following special regulation is issued and is effective during the period September 11, 1976 through January 15, 1977.

**§ 32.32 Special regulations; big game, for individual wildlife refuge areas.****DELAWARE****PRIME HOOK NATIONAL WILDLIFE REFUGE**

Public archery hunting of deer on Prime Hook National Wildlife Refuge, Delaware, is permitted only on the North Hunting Area. This open deer hunting area, comprising approximately 2,320 acres, is delineated on a map available at the refuge headquarters, Milton, Delaware 19968, and from the Regional Director, U.S. Fish and Wildlife Service, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following conditions:

(1) Archery hunters must show proof of completion of an archery qualification test. This test will consist of placing three out of five arrows in the 9 x 14 inch chest area of a standard size deer target at twenty-five yards. Hunters qualified in 1973 must requalify. The qualification is valid for three years only.

(2) Seasonal permits are required for the North Hunting Area and will be issued at the refuge office Mondays through Fridays between 7:30 AM and 4:00 PM. Permits may also be requested by mail.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 15, 1977.

WILLIAM C. ASHE,  
*Acting Regional Director,*  
*U.S. Fish and Wildlife Service.*

SEPTEMBER 1, 1976.

[FR Doc.76-26445 Filed 9-9-76;8:45 am]

**PART 32—HUNTING****Shiawassee National Wildlife Refuge, Michigan**

The following special regulation is issued and is effective on September 10, 1976.

**§ 32.32 Special regulations; big game, for individual wildlife refuge areas.****MICHIGAN****SHIAWASSEE NATIONAL WILDLIFE REFUGE**

Hunting of deer with bow and arrow is permitted on the entire refuge area from 6 a.m. to 7 p.m. EST each day from December 1, 1976 through December 31, 1976, only.

Hunting shall be in accordance with all State regulations covering the hunting of deer, subject to the following conditions:

(1) All bow and arrow hunters must possess a valid Federal permit. These permits must be carried by the hunter whenever on refuge lands.

(2) Applications for Federal permits must be received at the refuge office on or before October 31, 1976.

(3) All hunters must exhibit their hunting license, Federal permit, deer tag,