

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 a.m. on December 4, to 6 p.m. on December 11, 2003, in § 165.514, temporarily suspend paragraph (c)(2) and add a new paragraph (c)(3).

§ 165.514 Safety Zone: Atlantic Intracoastal Waterway and connecting waters, vicinity of Marine Corps Base Camp Lejeune, North Carolina.

* * * * *

(c) * * *

(3) The Safety Zone in paragraph (a) of this section will be enforced from 8 a.m. to 12 p.m. and 2 p.m. to 6 p.m. each day on December 4, 5, 10 & 11, 2003.

* * * * *

Dated: November 21, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 03–29926 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–15-P

LEGAL SERVICES CORPORATION

45 CFR Part 1604

Outside Practice of Law

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation amends its regulation relating to the outside practice of law by full-time legal services attorneys. The rule is substantively restructured and revised to clarify the scope of the restrictions on outside practice. The final rule also amends several definitions and allows for the separate treatment of court appointments.

DATES: This final rule is effective February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., 3rd Floor, Washington, DC 20007–3522; (202) 295–1624 (phone); (202) 337–6519 (fax); *mcondray@lsc.gov* (email).

SUPPLEMENTARY INFORMATION: On January 17, 1995, the Legal Services Corporation (LSC or the Corporation) published for public comment proposed revisions to 45 CFR part 1604, LSC’s regulation on the outside practice of law. 60 FR 3367. Although LSC received public comment on the proposed revisions, no final action was ever taken on the rule. Many of the issues outstanding in 1995 remain important today and LSC has been interested in adopting final revisions to Part 1604 for some time. Because it had been more than seven years since the publication of the 1995 Notice of Proposed Rulemaking (NPRM), LSC reissued the NPRM for comment rather than issuing a final rule. The NPRM, published on September 11, 2002 (67 FR 57550), specifically invited comment on the impact of the restriction on claiming and accepting attorneys’ fees, other restrictions stemming from the 1996 appropriations act, program integrity requirements, and timekeeping requirements on the proposals contained therein and other issues related to the regulation of the outside practice of law by LSC recipient attorneys which may have developed since the publication of the original NPRM in 1995.

LSC received five comments on the NPRM. After reviewing the comments, LSC drafted a Final Rule for the consideration of the Board of Directors and its Operations and Regulations Committee. Upon the recommendation of the Operations and Regulations

Committee, the Board of Directors adopted this Final Rule at its meeting of November 22, 2003.

Section-by-Section Analysis

Section 1604.1 Purpose

The NPRM, as a whole, reflected a proposed change in approach from emphasizing the limitations on recipients' full-time attorneys regarding the outside practice of law to focusing on the situations in which outside practice may be approved and on recipients' rights and responsibilities in regulating the outside practice of law by their full-time attorneys. LSC proposed to revise the language of this section to reflect this proposed change in approach. Specifically, LSC proposed to amend the existing section 1604.1 to authorize a recipient to adopt written policies to permit its program attorneys to engage in pro bono legal assistance and to comply with their obligations as members of the Bar and officers of the court where those demands do not interfere with the attorneys' overriding responsibility to serve the program's clients. LSC further proposed to clarify that this part should not be construed to permit recipients to unduly restrict legal services attorneys from engaging in those activities. The use of the word "unduly" was intended to acknowledge that there may be some restrictions imposed by the LSC Act, LSC appropriations or other legislation and/or LSC regulations, or by recipients that are necessary to comply with applicable law or accomplish the overriding goals of the LSC Act.

Two of the comments LSC received supported the proposed changes as written. One commenter from the field appeared not to oppose the specific language proposed, but stated a firm belief that outside practice should generally not be permitted. The Office of Inspector General opposed the proposed changes, believing that the focus of the rule should remain on the statutory prohibition on the outside practice of law. In particular, the OIG argued that the last sentence of the proposed section implied that LSC's policy favors permitting the outside practice of law and should, therefore, be deleted as inconsistent with the Act.

Weighing the comments, LSC believes that the general change in approach reflected in the proposed language remains appropriate, but agrees with the OIG that the regulation should not imply that LSC favors the outside practice of law. While one comment from the field noted that encouraging their employees to engage in pro bono activities was helpful in attracting pro

bono practice among the private bar, another program was of the opinion that their program attorneys and program resources were already strained, and that encouraging program attorneys to engage in additional legal work outside the office was not in the program's or clients' best interest. LSC respects both of these approaches and believes that the regulation should set forth the parameters in which the outside practice of law is permissible under the LSC Act and leave it to the discretion of programs to determine how the outside practice of law by their full-time attorneys comports with their needs regarding providing service to their clients.

Accordingly, LSC is revising the purpose section to state that it is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys and to make clear that recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Section 1604.2 Definitions

Section 1604.2(a) "Full-time Attorney"

LSC proposed to delete the definition of "attorney," because it is inconsistent with the definition of "attorney" in Part 1600 of the Corporation's regulations, Definitions. Instead, LSC proposed to substitute a definition which incorporates the definition of "attorney" in Part 1600, such that "full-time attorney" would be defined as an attorney who is a full-time employee of a recipient.

LSC received no objections to this definition, although the OIG stated that the preamble should make clear that LSC intends that the term "full-time" should be defined by the program for the purpose of the outside practice of law as the program defines "full-time" generally; that is as the term is used for other purposes, such as employee benefits. LSC agrees. LSC believes that the statement in the NPRM "LSC did not propose a separate definition for the term "full-time," preferring to leave the decision as to what constitutes "full-time" to the recipient's own personnel and outside practice policies and to any appropriate statutory definitions found elsewhere" was intended to convey that meaning. However, to avoid any

confusion, LSC believes it is appropriate to clarify that LSC does indeed intend that whatever definition of "full-time" the program applies for the purpose of its outside practice of law policies be the same as it uses for other purposes, such as employee benefits. LSC, accordingly, adopts the definition as proposed.

Section 1604.2(b) "Outside Practice of Law"

LSC proposed to amend this definition to explain what outside practice is, rather than what it is not. The regulation is intended, and currently applies only, to the outside practice of law by recipients' employees and not to other outside activities by recipients' employees that do not constitute the outside practice of law. LSC further proposed to substitute the words "receiving that" for "entitled to receive" to make clear that an attorney could represent a client in an outside practice case who is eligible for representation from the recipient even if the client is also receiving legal assistance from the recipient, as long as the recipient is representing the client on a different matter.

In the NPRM, LSC noted that the proposed definition was Judge Advocate General (JAG) Corps attorneys. Although LSC chose not to include language on this issue in the proposed rule, the NPRM noted LSC's intent to continue the policy established in prior General Counsel opinions, which have consistently found that an attorney is not engaged in the outside practice of law while serving as a JAG Corps reserve officer and solicited comments as to whether the rule should include language expressly stating this policy.

LSC received two comments supporting including a specific reference to JAG Corps attorneys in the rule and one comment which stated that the commenter had no objection to such a reference. None of the commenters had any other objections to the proposed changes. LSC believes that adding a reference to JAG Corps practice and the other proposed amendments will clarify the rule and aid in the comprehension and usability of the regulation. Accordingly, LSC is adopting the definition as proposed, except for the addition of language which specifies that the outside practice of law does not include the performance of duties as a JAG Corps attorney in the United States armed forces reserves.

Section 1604.2(c) "Court Appointment"

LSC proposed to add a definition for the term "court appointment." The proposed definition, "an appointment

in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice," is based on the language relating to court appointments currently found in sections 1604.4 and 1604.5 of the regulation, rather than the following language in § 1006(d)(6) of the Act:

Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

The proposed definition on appointments is broader than the statutory one, which applies only to uncompensated appointments; but LSC believes it is appropriate because it is more protective of program resources.

Two of the field commenters supported the definition as proposed. The OIG suggested that the phrase "under a statute or court rule or practice" should be changed to "statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made." The OIG noted that the language suggested follows the statutory language more closely and make it clear that it refers to statutes, rules or practices of general applicability and applies to administrative agencies in addition to courts. LSC believes that the change suggested by the OIG is appropriate without changing the intent of the original language proposed in the NPRM. Accordingly, LSC is adopting a revised definition of court appointment as an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

Section 1604.3 General Policy

LSC proposed to expand and amend this section to require recipients to adopt written policies relating to the outside practice of law, rather than permitting programs to determine on an ad hoc basis, whether outside practice is to be permitted in a particular instance (as is the case under the existing rule). LSC intended that such policies would give the recipient's executive director substantial discretion in making outside practice of law determinations to ensure that recipients can adopt policies that balance the demands of the profession, the attorney's desire to do outside work, and the needs of the community served by the program. To this end, LSC proposed that the required policies

would be permitted to permit the outside practice of law by full-time attorneys only to the extent permitted by Part 1604, but would be permitted to contain additional limitations not imposed by Part 1604.

LSC received one comment supporting this section as proposed and two comments recommending conflicting changes. One commenter recommended deleting the language expressly authorizing programs to adopt more stringent limitations out of a concern that such language would imply that LSC was encouraging programs to adopt such limitations. The other commenter, however, opposed the proposed revision as implying that LSC was encouraging the outside practice of law.

LSC does not believe that paragraphs (a) and (b), as proposed, imply a policy preference on the part of LSC either in favor of or against the outside practice of law. LSC recognizes that there are demands of the profession occasionally imposed upon all attorneys and that some attorneys desire to do outside work, while also noting that recipient programs have scant resources and that the needs of the community served by programs require a significant commitment of time and effort by full-time program attorneys. LSC believes that paragraphs (a) and (b) represent an acknowledgement and balancing of these concerns. Indeed, LSC believes that the provisions in the LSC Act concerning the outside practice of law, which provide the basis for this regulation, recognize and dictate such a balance. However, LSC does believe that the language as proposed can be improved by adding an explicit reference to the LSC Act to ensure that the statutory basis for the parameters of permissible and impermissible outside practice of law are clearly understood.

The restrictions of this part, as currently applicable and as proposed, apply only to full-time attorneys. Although LSC did not propose to address the outside practice of law by part-time attorneys, the NPRM expressly proposed to provide that recipients' policies may include restrictions on outside practice by part-time attorneys.

One commenter from the field specifically urged LSC to eliminate the reference to part-time employees from the rule as unnecessary and, again, implying that LSC was encouraging programs to adopt more stringent policies. The OIG, on the other hand, recommended that part-time attorneys be specifically covered by this Part because of the increased incidence of part-time employment and the implications on program integrity

requirements (45 CFR Part 1610). One other commenter supported proposed paragraph (c) as written.

While LSC disagrees that the proposed paragraph (c) implied a policy preference for stricter outside practice of law policies, LSC does agree that the rule should not reference part-time attorneys. The statutory mandate applies only to full-time attorneys; LSC, therefore, believes that the regulation should address itself only to full-time attorneys. Recipients would have the discretion to include part-time employees in its policies even without such express language in the regulation. LSC disagrees with the OIG that program integrity concerns require including part-time attorneys in the ambit of 1604. Part-time attorneys are not limited by the LSC Act or applicable appropriations laws in what they can do on their own time and with their own resources. As such, LSC does not consider it appropriate to require regulation of the outside activities of these attorneys. To the extent that there could be program integrity concerns, LSC believes that the program integrity and timekeeping rules provide all the protection necessary to ensure that the programs remain in compliance with the program integrity requirements.

Accordingly, LSC is adopting paragraphs (a) and (b) as written, with the addition of explicit reference to the LSC Act, but declines to adopt proposed paragraph (c).

Section 1604.4 Permissible Outside Practice

LSC proposed to combine and revise the provisions currently in sections 1604.4, Compensated Outside Practice, and 1604.5, Uncompensated Outside Practice, into one section retitled Permissible Outside Practice. Except as noted below, all of the comments generally supported this section as proposed and LSC adopts it as proposed, with some modifications.

Under the current structure of the regulation, the general rule on the outside practice of law is stated in the negative; that is, the outside practice of law is prohibited except as provided. LSC proposed, instead, to state the rule in the affirmative, providing guidance on the terms under which the outside practice of law may be approved. LSC is retaining this structure, but modifying the language proposed to refer to a recipient's policies to underscore the requirement that recipient will have to adopt policies relating to the outside practice of law and that the regulation provides guidance on what the policies must require and may permit.

The revision also refers to a full-time attorney's responsibilities to clients, rather than simply "full-time responsibilities." LSC intends an executive director (or that person's designee) to make a case-by-case determination as to whether involvement in a specific case or matter would be consistent with a full-time attorney's responsibilities to the program's clients. A full-time attorney's responsibilities to program clients should be determined by reference to the program's definition of "full-time" (such as used for the determination of employee benefits), not by reference to a specific attorney's working habits. Thus, an attorney in the habit of working substantial amounts of overtime on program activities should not be penalized for deciding to allot some of that attorney's own time to an outside practice case rather than to program activities. In addition, an attorney should be permitted to take reasonable amounts of leave to engage in permitted outside practice.

LSC also includes language intended to address a concern that, if a program attorney handled outside practice cases that were controversial or dealt with areas prohibited to the recipient (e.g., abortion litigation), the employing recipient would be seen as handling the cases and viewed as using outside practice as a way to get around applicable restrictions. The language, which is similar to language in the regulation on prohibited political activities, would require the attorney to make it clear that this was not a program case, and to do whatever was necessary to ensure that it not be perceived as such. In practical terms, the restriction might require the attorney to use a home address or post office box for correspondence, or a home telephone number or direct dial number that would not go through the recipient's switchboard or voice mail greeting, or other similar processes to ensure that the recipient was not identified as the sponsor of the representation. The restriction on identification would not apply to court appointments or to cases which are undertaken to fulfill a mandatory pro bono obligation, which are treated separately in the regulation.

Paragraph (c) sets forth the specific situations under which recipients' policies may permit the outside practice of law: a newly employed attorney closing cases from a previous law practice; when the attorney is acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; when the attorney is acting on behalf of a religious, community, or charitable group; or

when the attorney is participating in a mandatory pro bono program or a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

With respect to newly employed attorneys, paragraph (c)(1) is intended to make explicit what has always been implicit under the current Part 1604, i.e., that work for a client from a previous practice should not be done on program time.

The revised rule will expressly permit an attorney to represent another member of the recipient's staff without having to prove that the individual is a close friend. LSC is also adding language to make it clear that the attorney may represent him or herself. LSC received one comment urging LSC to require recipients' policies to permit an attorney to represent him or herself. LSC sees no justification for treating this situation different than other potential outside practice situations in terms of the program's discretion to permit or restrict such outside practice. LSC can imagine a situation in which a recipient's director would have no problem permitting a full-time employee to represent him or herself. At the same time, LSC can imagine a situation in which the recipient's executive director is concerned that the attorney's activities representing him or herself could be so time consuming as to interfere with the attorney's responsibilities to the programs clients. In such a situation, the program needs the discretion to disallow that outside practice. Accordingly, LSC declines to require recipients' policies to permit an attorney to represent him or herself.

LSC is amending the current provision permitting representation of religious, community or charitable groups, to permit the representation of an individual client who has been referred to the attorney by such a group through a formal *pro bono* or referral program that does regular referrals. For example, under the revised rule it would be permissible for an attorney to represent a client who has been referred by the ACLU, NAACP or Catholic Charities. Prior General Counsel opinions have permitted outside practice both on behalf of organizations as well as on behalf of individuals referred by those organizations and LSC believes that it is appropriate to incorporate these interpretations into the rule.

LSC received one comment specifically addressing this provision. Although the commenter did not object to the proposed revision, the commenter

noted that they did not view this category as essential and requested that the preamble make clear that program policies could restrict such practice. As with all of the provisions in this section, recipients' written policies are permitted to allow for the approval of outside practice through a referral program, but need not do so. This is a matter committed to the discretion of the program.

LSC proposed to add a paragraph, (c)(5), to make it clear that legal services attorneys should be permitted to act in the same way as other attorneys with respect to *pro bono* work that is undertaken to meet professional obligations, whether the obligation is aspirational, as under state rules that are modeled on Rule 6.1 of the American Bar Association's ("ABA") Model Rules of Professional Conduct, or mandatory, as is now the case in a few local jurisdictions across the country. LSC received one comment from a program noting that they did not view this category as essential and requesting that the preamble make clear that program policies could restrict such practice. The OIG suggested that this section apply only to "mandatory" *pro bono* and that the phrase "and practices" should be deleted as too vague.

LSC believes that the reference to other than mandatory pro bono would be redundant in light of paragraphs (3) and (4) which already address voluntary *pro bono* activities. Moreover, LSC believes that a separate paragraph referencing mandatory pro bono is not required as mandatory pro bono is covered under section 1604.7, Court Appointments. Accordingly, LSC is not adopting proposed paragraph (5). As with all of the provisions in this section, recipients' written policies are permitted to allow for the approval of outside practice as set forth herein, but need not do so, and where permitting it, may address circumstances and limitations thereon. This is a matter committed to the discretion of the program.

Section 1604.5 Compensation

The 1995 NPRM contained a new proposed provision on compensation, providing, among other things, that a recipient would be allowed to permit an attorney to accept attorneys' fees for certain cases, as long as the fees would be remitted to the recipient. While this proposed provision was clearly permissible at the time it was proposed, LSC has determined that it is no longer consistent with the current statutory and regulatory restrictions on the claiming, collection and retention of attorney's fees. Accordingly, LSC is not

adopting proposed paragraphs (b) and (c).

LSC is, instead, adopting language stating that except as provided in paragraph (b) of this section and section 1604.7(a) (relating to compensation provided to an attorney pursuant to court appointment and remitted to the recipient), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law. The revised paragraph (b) would require that recipients' written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section. Although the statute prohibits all compensated outside practice, the exception in proposed paragraph (a) for work on cases held over from a previous private practice is justified under the general principle that neither LSC nor the recipient can interfere with an attorney's professional responsibilities to a client. Since the representation was undertaken before the lawyer became a legal services attorney, fairness dictates that the attorney should be permitted to take fees for completion of the work. This exception is carried over from the current rule.

Section 1604.6 Use of Recipient Resources

LSC proposed to add a new section to the rule governing the use of recipient resources in the course of permitted outside practice activities. Specifically, LSC proposed to permit recipients' written policies to permit a recipient to allow its attorneys to use only a *de minimis* amount of program resources, including time, in cases when newly employed attorneys are closing old cases, and, for other permitted outside practice situations, to allow its attorneys to use a limited amount of program resources, including time. As with other aspects of this rule, LSC proposed to authorize recipients to adopt written policies more restrictive so as to permit the recipient to determine whether its attorneys could use recipient resources for a specific case to the extent allowed by this rule. These proposals were based on longstanding LSC policy and were intended to codify the accepted practice.

The NPRM solicited comments on the appropriateness of using recipient resources for any outside practice, and whether or not the distinction between "*de minimis*" and "limited" use of resources makes sense and is workable. In particular, LSC invited comment on

the impact of the 1996 restrictions, LSC's program integrity rules at 45 CFR part 1610 and LSC's timekeeping rules at 45 CFR part 1635 on the proposals set forth therein.

Four of the five comments LSC received address this issue. Two of the comments from the field supported the NPRM as proposed. These comments noted that the proposed language prohibiting the use of recipient resources (LSC and non-LSC) for activities for which the use of such funds is prohibited would ensure that no there were no violations of the program integrity standards and was consistent with the requirements of the timekeeping rules. One field commenter stated their opposition to any use of recipient resources for outside practice activities, given the scarcity of program resources available for program purposes. It was unclear from the comment, however, whether this commenter believed that LSC should prohibit the use of all program resources, or if it would be sufficient to permit programs the authority to prohibit the use of program resources. In contrast, the OIG argues that the rule should only permit recipients' written policies to permit the *de minimis* use of recipient in all circumstances. Any other use, the OIG contends risks running afoul not only of the appropriations act restrictions, but also the allowable costs requirements of part 1630. The OIG argues that outside practice activities should be subject to requirements of 1635 and other limitations applicable to any other personal activities.

LSC agrees that use of recipient resources to support restricted activities is prohibited by law. LSC also agrees, however, with the field recipients that the specific limitation on the use of resources for prohibited activities that was included in the proposed rule would prevent recipients from adopting written policies which would permit prohibited uses in connection with outside practice of law activities. LSC has amended the proposed language slightly to make this point even more explicit. With respect to non-restricted activities, LSC acknowledges that if a program permitted a significant enough amount of their LSC funded resources to be used in connection with outside practice activities, the program could run into a 1630 disallowed costs problem. However, LSC notes that the standards proposed reflect the longstanding practice and LSC has not, in fact, found this to present significant 1630 problems. Accordingly, LSC adopts section 1604.6 as proposed except as noted above.

Under the *de minimis* standard, an attorney could make a brief phone call or use the fax machine during working hours, but would have to take leave for court appearances. Under the "limited" standard, in addition to whatever an attorney could do under the *de minimis* standard, the attorney could, for example, make a brief court appearance during normal working hours without taking leave. An attorney could also be permitted to use a program computer or typewriter to prepare pleadings or other documents, within reason. However, if the attorney participated in a long trial or extended negotiation, he or she would normally be required to take leave to do so. If a recipient has a procedure to identify copying, postage and similar costs, and the attorney reimbursed the recipient, the use of those resources would also be permissible under either standard. This position is consistent with the longstanding LSC policy.

Section 1604.7 Court Appointments

This proposed section would treat court appointments and mandatory pro bono representation separately from outside practice, because there are substantially different considerations for court appointments and mandatory *pro bono* than there are for *pro bono* or other outside cases that an attorney undertakes on a strictly voluntary basis.

Proposed paragraph (a)(1) simply restated a general rule that applies to court appointments as well as to outside practice under the current part 1604 regarding the permissibility of a full-time attorney accepting a court appointment to provide representation. Two of the comments supported the language as proposed. The OIG, however, suggested that the language of this paragraph be revised to read "Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters" to bring this provision into harmony with 45 CFR part 1613.4(a), relating to appointments in criminal proceedings. LSC considers the OIG's suggestion to be well taken and not inconsistent with the intent of the proposed language. Accordingly, LSC is revising paragraph (a)(1) in this final rule.

LSC received no objections to proposed paragraphs (a)(2) or (3) and adopts them as proposed. Paragraph (a)(2) is based on section 1006(d)(6) of the LSC Act. It is intended to protect recipients from efforts that have been made by some judges to appoint legal services attorneys to handle court appointments in lieu of private attorneys, and/or to refuse to provide

compensation for appointed cases handled by legal services attorneys, when private attorneys appointed to similar cases would have been paid. Paragraph (a)(3) is also a requirement carried over from the current Part 1604. LSC notes that, in the case of court appointments, recipients are permitted to retain attorneys' fees made to a recipient or employee of a recipient notwithstanding the general attorneys' fees ban because such fees are excluded from the definition of attorneys' fees in 45 CFR section 1642.2(b)(1).

LSC proposed to add a new paragraph (d) providing that, if an attorney is mandated to engage in pro bono representation by applicable state or local court rules or practices or by rules of professional responsibility, such representation shall be treated in the same manner as court appointments for the purposes of paragraphs (a)(1), (a)(3), (b) and (c) of this section. While LSC recognizes that the ABA Model Rules do not currently mandate pro bono services for any attorney, LSC also recognizes that mandatory pro bono has been considered in a number of states and is a reality in certain local jurisdictions. It is the intent of LSC that legal services attorneys be permitted to undertake outside representation to fulfill any mandatory professional obligations to provide pro bono assistance to which they are now or may be subject in the future. Two comments concurred in paragraph (d) as proposed, while the OIG recommends making it clear that attorneys may not receive compensation for mandatory pro bono activities and adding a requirement that mandatory pro bono activities must be in cases or matters that are not prohibited because of the use of LSC resources permitted by the rule. LSC believes that the rule as proposed would not permit an attorney performing mandatory pro bono service to receive compensation, but has no objection to making this point clearer in this preamble or the regulatory text. In addition, LSC agrees with the OIG regarding limitation on mandatory pro bono activities to cases or matters not otherwise prohibited and clarifies the rule on this point.

Finally, this section allows a full-time attorney to use program resources to undertake representation required by court appointment or mandatory pro bono, and allows the attorney to identify the recipient as his or her employer when engaged in such representation. LSC received no objections to these provisions (paragraphs (b) and (c)) and adopts them as proposed.

LSC received one other comment on this section, suggesting that the reference in this section to the

program's executive director should include the executive director's designee. LSC agrees that this language is consistent both with its usage elsewhere in this rule and with other rules under consideration for adoption by LSC.

List of Subjects in 45 CFR Part 1604

Legal services.

■ For the reasons set forth in the preamble, LSC revises 45 CFR part 1604 to read as follows:

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

- 1604.1 Purpose.
- 1604.2 Definitions.
- 1604.3 General policy.
- 1604.4 Permissible outside practice.
- 1604.5 Compensation.
- 1604.6 Use of recipient resources.
- 1604.7 Court appointments.

Authority: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

§ 1604.1 Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing

in the court or before the administrative agency where the appointment is made.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4 Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and § 1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney

to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7 Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise

prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

Victor M. Fortuno,

Vice President for Legal Affairs and General Counsel.

[FR Doc. 03-29874 Filed 12-1-03; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3640, MM Docket No. 00-233, RM-9996]

Digital Television Broadcast Service; Fort Walton Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Television Fit-For-Life, Inc., substitutes DTV channel 50 for DTV channel 25 at Fort Walton Beach. See 65 FR 75221, December 1, 2000. DTV channel 50 can be allotted to Fort Walton Beach, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 30-24-12 N. and 86-59-34 W. with a power of 1000, HAAT of 221 meters and with a DTV service population of 567 thousand. With this action, this proceeding is terminated.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-233, adopted November 13, 2003, and released November 19, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 25 and adding DTV channel 50 at Fort Walton Beach.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03-30011 Filed 12-1-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3651; MB Docket No. 03-161; RM-10708]

Radio Broadcasting Services; Tallapoosa, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 255A at Tallapoosa, Georgia, in response to a petition filed by SSR Communications, Inc. See 68 FR 43703 (July 24, 2003). Channel 255A can be allotted to Tallapoosa, Georgia, with a site restriction 10.3 kilometers (6.4 miles) south of the community at coordinates 33-39-20 and 85-15-27. With this action, this proceeding is terminated. A filing window for channel 255A at Tallapoosa will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03-161, November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street SW., Room