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Hadassa Santini-Colberg
Compliance Officer
Puerto Rico Legal Services
1859 Ave. Ponce de Leon
Pda. 26 Santurce
Puerto Rico, 00908-9134

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**RE: Inquiry Regarding Centralized Telephone Intake,
External Opinion No. EX2002-1006**

Dear Ms. Santini-Colberg:

I am writing in response to your request for an advisory opinion on 45 C.F.R. 1637, LSC’s regulation governing representation of prisoners. You indicated that your office is in the process of preparing protocols for its centralized intake and delivery system, and you would like to know whether it can provide advice and counsel and/or brief services through the intake system to a person incarcerated in a prison.

Regulation 1637 implements a restriction in the Legal Services Corporation’s (“LSC”) FY 1996 appropriations act. Section 504(a)(15) of the appropriations act states that “[n]one of the funds appropriated in this Act to [LSC] may be used to provide financial assistance to any person or entity . . . that participates in any *litigation* on behalf of a person incarcerated in a Federal, State or local prison.”¹ [Emphasis added.] The regulation promulgated pursuant to this restriction provides that “[a] recipient may not participate in any *civil litigation* on behalf of a person who is incarcerated in a Federal, State or local prison . . . nor may a recipient participate on behalf of such an incarcerated person in any *administrative proceeding challenging the conditions of incarceration*.”² [Emphasis added.]

‘Counsel and advice’ is described in the 1999 edition of LSC’s *CSR Handbook* as “the provision of advice to an eligible client in a case, e.g. the review of relevant information and the counseling of a client on the action(s) to take to address a legal problem.”³ ‘Brief Services’ is described in the same document as “action taken at or within a few days or weeks of intake on behalf of an eligible client, e.g.

¹ Public Law 104-134, 110 Stat. 1321 (1996).
² 45 C.F.R. § 1637.3.
³ LSC, *CSR Handbook, 1999 Edition – Revised*, page 12.

the preparing of a short letter, the making of a telephone call, or the preparation of a routine legal document such as a simple will.”⁴

The kinds of activities that qualify as ‘counsel and advice’ and ‘brief services’ do not rise to the level of, or include, litigation or participation in an administrative proceeding challenging the conditions of incarceration, the activities prohibited by Regulation 1637. Accordingly, your office is not prohibited from providing counsel and advice and/or brief services through an intake system to a person incarcerated in a prison.⁵

As you noted in your letter of inquiry, this question was addressed in 1997 by then LSC president Martha Bergmark. In *Basic Elements of Effective Centralized Intake and Delivery Systems*, issued by LSC in March 1997, Ms. Bergmark provided the following information regarding assistance to prisoners.

8. *May a program provide telephone assistance to a person incarcerated in a prison?*

Yes. The new restriction applies to participation in litigation on behalf of prisoners, and administrative proceedings challenging the conditions of incarceration, not to the provision of limited counsel and advice or brief services assistance. Section 1637.3.

Although ‘counsel and advice’ and ‘brief services’ to prisoners are not explicitly prohibited by the LSC Act or regulations, your program should, as always, consider whether this service is an efficient use of your program’s time and resources, and in compliance with your program’s established priorities.

I hope that this information adequately answers your question. If I may be of further assistance, please feel free to contact me at (202)336-8871.

Sincerely,

Dawn M. Browning
Assistant General Counsel

Victor M. Fortuno
General Counsel

⁴ LSC, CSR Handbook, 1999 Edition – Revised, page 12.

⁵ This answer remains true whether the service is being provided through a centralized intake system or an intake system administered through a branch office.