




OFFICE OF LEGAL AFFAIRS

EXTERNAL OPINION

EX-2006-1001

To: Andy Harrington, Executive Director
Alaska Legal Services Corporation

From: Victor M. Fortuno 
Vice President & General Counsel

Date: January 6, 2006

Subject: Financial Eligibility for Eligible Client Board Members

You have asked the Office of Legal Affairs (OLA) to reconsider External Opinion 2001-1011. We had stated that eligible client members of a recipient's board must meet the LSC financial eligibility requirements at the time of appointment. You would like to have as an eligible client board member an individual who is over income for LSC services, but who is eligible for services from your program from other funding sources. Having reviewed your thoughtful points and the background of this requirement, we feel that EX 2001-1011 is correct. We understand that the individual whom you would like to have on your board is a respected elder with very strong qualifications for your board. LSC does not prohibit you from having him on your board or otherwise making use of his wisdom and experience. He does not qualify as an eligible client board member though.

The LSC Act requires that each LSC recipient have a governing body "at least one-third of which consists of persons who are, when selected, eligible clients" 42 USC §2996f(c). That requirement is reiterated in Part 1607 of the LSC regulations which states that "[a]t least one-third of the members of a recipient's governing body shall be eligible clients when appointed." 45 CFR §1607.3(c). An eligible client member "means a board member who is financially eligible to receive legal assistance under the Act

and part 1611 of this chapter at the time of appointment to each term of office” 45 CFR §1607.2(c). Part 1611 sets out the financial eligibility limits for LSC funded legal assistance.

In your letter you explain the circumstances that lead you to make this request and your considered arguments for allowing an over-income individual to serve as an eligible client board member. The LSC Board had considered this question when Part 1607 was last revised in 1994. At that time the Board explicitly decided not to permit over-income individuals to meet the eligible client board member requirement under Part 1607. The preamble to the rule summarizes that decision.

Some comments suggested that the definition should be expanded to include individuals who are eligible for non-LSC-funded [services] but [who are] not [eligible for] LSC-funded services provided by the recipient. . . . Several comments argued that it is more important that client representatives be effective advocates for clients than that they be financially eligible for LSC-funded services. Two comments suggested substantially different and more expansive definitions of eligibility for client board membership. After consideration of these proposals, the Board decided not to expand the definition because it wished to insure that the focus of the legal services program remains on the indigent population. The Board believes that eligible client members are supposed to bring to the recipient a perspective of the community's needs, and that can best be done by someone who is financially eligible for the recipient's LSC-funded services.

59 FR 65249, 65250 (1994) (Preamble to Final Rule).

The Board further emphasized this point in describing how each eligible client board member must be eligible “at the time of their appointment to each term of office.”

Thus, a client member who is financially eligible for services when first appointed to a recipient's board may not be reappointed to a second or subsequent term if, at the time of reappointment, the client board member is no longer financially eligible for LSC-funded services.

Id. at 65249. In doing so, the Board recognized that there might be eligible client board members who, by virtue of their own financial success, would disqualify themselves from re-appointment due to the LSC financial eligibility requirements.

We hope that this requirement does not prevent you from including individuals such as this one in guiding your program in some other capacity. Please feel free to contact us if you have any further questions.