



LEGAL SERVICES CORPORATION

750 1st St., NE, 11th Fl., Washington, D.C. 20002-4250

(202) 336-8800

Fax (202) 336-8959

John McKay
President

Writer's Direct Telephone
(202) 336-7264

January 27, 1998

Nan Heald
Executive Director
Pine Tree Legal Assistance
88 Federal Street
Portland, ME 04112-0547

Recipient No. 120000

Dear Nan:

I am writing in response to your letter of October 6, 1997 seeking LSC approval of potential arrangements between Pine Tree Legal Assistance, Maine Equal Justice Project, and Maine Equal Justice Partners.

At the outset, let me say that the Corporation appreciates the efforts Pine Tree has made and is making to meet the legal needs of Maine's low-income citizens. We also appreciate your involvement in planning efforts to improve services as well as your desire to assure Pine Tree remains in strict compliance with regulations governing restricted activity.

As you have explained, the statewide legal services planning committee, containing many court and bar leaders, and chaired by the Honorable Judge Frank M. Coffin of the United States Court of Appeals, has been exploring ways to better meet the needs of low-income Maine residents in light of limited resources and Congressional restrictions on LSC programs. In this regard, the committee has indicated an interest in potential working relationships between Pine Tree, Maine Equal Justice Project, and Maine Equal Justice Partners.

Maine Equal Justice Partners is a 501(c)(3) organization created to handle litigation and provide client education for low-income people. Maine Equal Justice Project is a 501(c)(4) organization created to provide legislative and administrative advocacy for low-income people. There are no overlapping board members between Pine Tree and Maine Equal Justice Project or

L0059

BOARD OF DIRECTORS - Douglas S. Eakeley, Chairman, Roseland, NJ

Hulett H. Askew
Atlanta, GA

LaVeada M. Battle
Birmingham, AL

John T. Broderick, Jr.
Manchester, NH

John N. Erlenborn
Issue, MD

Maria L. Mercado
Galveston, TX

F. Wm. McCalpin
St. Louis, MO

Nancy H. Rogers
Columbus, OH

Thomas F. Smegal, Jr.
San Francisco, CA

Ernestine P. Watlington
Harrisburg, PA

Edna Fairbanks-Williams
Fairhaven, VT

Maine Equal Justice Partners, and Pine Tree is a completely separate legal entity from both.¹ Both Maine Equal Justice Project and Maine Equal Justice Partners are funded with state IOLTA funds and currently employ their own staffs.² Pine Tree does not share any staff, office space or administrative costs or services with, nor subsidize the activities of either organization.

The only current relationship between Pine Tree and either organization is a \$6,000 contract between Pine Tree and Maine Equal Justice Partners for client education services. Pine Tree utilizes non-LSC funds for this contract.

The statewide planning committee has inquired of Pine Tree, and you of us, whether, upon these facts, it is permissible for:

1. one to three attorneys to work part-time for Pine Tree and part-time for Maine Equal Justice Partners; or
2. one to two Pine Tree attorneys to work for Maine Equal Justice Partners while they are on one-year unpaid leaves from Pine Tree.

Under either option, your letter states, there would continue to be no sharing of resources, equipment, space or other overhead between Pine Tree and Maine Equal Justice Partners. The staff attorneys would be physically outside Pine Tree offices whenever working for Maine Equal Justice Partners and would represent themselves as Maine Equal Justice Partners on any work performed for that entity. The exact part-time arrangements, e.g., number of hours per week, have not been determined.

Part-time work and one-year unpaid leaves of absence are provided for in the current Pine Tree union contract. Pine Tree currently employs 14 attorneys. Three attorneys currently work part-time, but, unlike the one to three part-time positions contained in your option 1 discussed above, these part-time positions have nothing to do with the work of any organizations engaged in restricted activity.

¹It is not clear whether Maine Equal Justice Partners and Maine Equal Justice Project are legally separate from each other. However, for purposes of this inquiry, it does not matter as long as Pine Tree is separate from both.

²Your letter states that Maine Equal Justice Project and Maine Equal Justice Partners presently employ a total of three staff (two attorneys and one other employee). All three work part-time for the two Equal Justice programs. None works for Pine Tree.

Since Maine Equal Justice Partners is an organization which engages in restricted activities as defined in 45 CFR 1610.2, the proposed arrangements must be measured against the program integrity requirements of 45 CFR 1610.8³ Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC-funded entity shall engage in restricted activity. Under this regulation, an LSC recipient cannot itself engage in such activities, transfer LSC funds to another organization which engages in restricted activity,⁴ or use recipient resources to subsidize the restricted activity of another organization.

Recipients may transfer *non*-LSC funds to another organization which engages in restricted activity if, and only if, the other organization is a legally separate entity and the LSC recipient maintains objective integrity and independence from it. Even where there is no transfer of funds, the LSC recipient must maintain objective integrity and independence from any organization which engages in restricted activity.

To meet the objective integrity and independence test, a recipient must be organized so it is *physically and financially separate* from the other organization. Mere bookkeeping separation is insufficient. Factors relevant to this determination include:

- a. The existence of separate personnel;
- b. The existence of separate accounting and timekeeping records;
- c. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities;
- d. The extent to which signs and other forms of identification which distinguish the recipient from the other organization are present.

³ According to your letter, Maine Equal Justice Partners was created to handle advocacy which can no longer be handled by Pine Tree. We assume this means advocacy proscribed by 45 CFR 1610.2 which implements the prohibitions upon LSC recipients enacted by Congress in 1996.

⁴ An LSC recipient may transfer LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities *for the sole purpose* of funding the recipient's private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, regardless of whether such associations, programs, attorneys, law firms or other entities otherwise engage in restricted activity using their other funds. Of course, the PAI activities supported by the recipient's funds and counted towards the recipient's PAI activity must not include any restricted activity.

The presence or absence of any one or more factors is not determinative. Each situation must be viewed on a case-by-case, totality of the circumstances basis.

Applying these rules to the facts presented, neither option would contravene 45 CFR 1610 *so long as* Pine Tree maintains certain safeguards identified below.

Transfers. In neither proposal will there be any transfer of Pine Tree funds to an organization which engages in restricted activity. The current contract with Maine Equal Justice Partners for client education services involves non-LSC funds and is not a "transfer" for the purpose of 45 CFR part 1610. Of course, Pine Tree must assure it receives fair value for its money so that this contract does not amount to a subsidy of restricted activity.

Legal Separation. Pine Tree and Maine Equal Justice Partners have no overlapping Board members and are legally separate entities. We understand from your letter that the organizations will continue to remain legally separate.

Subsidies. The part-time proposal will not involve a subsidy of the restricted activities of any organization, *so long as* Pine Tree can demonstrate that it is not paying more than its appropriate share of any part-time employee's compensation. Pine Tree will meet this requirement if, as suggested in your letter, Pine Tree continues to pay the part-time attorneys the part-time salaries and benefits called for by its union contract. Likewise, in the case of the leave of absence option, Pine Tree must demonstrate that the terms and conditions of the leave are consistent with Pine Tree's union contract. The fact that Pine Tree's policies allow attorneys to return to their jobs at the end of their authorized leaves, standing alone, does not constitute a subsidy of another organization.

Please note that under either option, it is especially important for part-time Pine Tree attorneys to maintain accurate timekeeping records of their Pine Tree activity consistent with LSC's timekeeping regulation and Pine Tree's payroll records. This recordkeeping is essential to demonstrate that Pine Tree is not subsidizing restricted activity.

Physical and Financial Separation.

Separation from restricted activities. Under both proposals, Pine Tree will not share any office space or equipment with Maine Equal Justice Partners. You also state that Pine Tree attorneys who also work for Maine Equal Justice Partners will be physically outside Pine Tree offices whenever working for Maine Equal Justice Partners. We take this to mean that Pine Tree attorneys will not receive or make phone calls or conduct other business relating to Maine Equal Justice Partners while on Pine Tree premises. Assuming this to be the case, there will be

complete physical separation between Pine Tree and any restricted activities.

Separate Records. Pine Tree is a separate legal entity and, we assume, will maintain its own accounting and timekeeping records separate from any other organization.

Signs and other forms of identification. Your letter states that attorneys working for both Pine Tree and Maine Equal Justice Partners will represent themselves as Maine Equal Justice Partners on any work performed for that entity. To assure this is the case, we assume the two organizations will utilize separate business cards, separate stationery and other, separate forms of identification.

Separate personnel. Since there will be no sharing of staff under the leave of absence proposal, no analysis of the separate personnel element will be necessary. For this reason, the leave of absence proposal is preferable from LSC's perspective. Under the part-time proposal, some of the same personnel will work for both Pine Tree and Maine Equal Justice Partners. There is no *per se* bar against this arrangement. Generally, however, the greater the number or proportion of overlapping staff, the less independent the organizations, and the more likely the public will be confused about their separate identities. Consequently we place some significance upon the fact that Maine Equal Justice Partners employs staff besides those also employed by Pine Tree. It is also significant that the number of Pine Tree staff who will also work for Equal Justice Partners (one to three), while not insignificant, is not large.⁵ Whatever the number, it will be essential that:

- a. Pine Tree attorneys do not perform any restricted activity while on duty for Pine Tree; and
- b. Pine Tree attorneys do not identify Pine Tree with restricted activity.

In addition, as mentioned above, it will be especially important for part-time Pine Tree attorneys to maintain accurate timekeeping records of their Pine Tree activity.

Totality of the circumstances. Under the facts as presented, the only interconnection between Pine Tree and Maine Equal Justice Partners, aside from an arms length contract for permissible services, is that the two organization employ some of the same staff. Pine Tree does not share any office space or administrative costs or services with, nor subsidize the activities of

⁵We assume that the three part-time attorneys currently on your staff do not and have no plan to work for any organizations engaged in restricted activity in the future, thus no "separate personnel" analysis in the context of 45 CFR 1610 is necessary related to them.

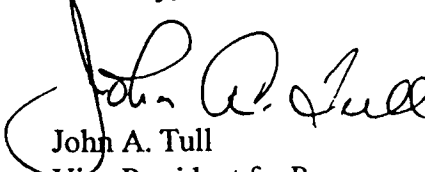
Nan Heald
Page 6
January 27, 1998

Maine Equal Justice Partners. Nor will Pine Tree be transferring any funds to Maine Equal Justice Partners. Taken as a whole, and assuming adoption of the safeguards mentioned above, neither potential arrangement will compromise Pine Tree's integrity and independence from organizations which engage in restricted activity. While the leave of absence option provides a more definitive separation between Pine Tree and Maine Equal Justice Partners, it is up to Pine Tree to decide which, if any option, it chooses to exercise. We only caution you to make sure Pine Tree maintain the safeguards identified herein.

We also note that both proposals have the effect of reducing Pine Tree expenses -- by granting unpaid leave of absences or reducing full-time staff to part-time status. While these reductions may not raise any fund balance problems under 45 CFR 1628, we were happy to learn from you that Pine Tree intends to use any resulting unexpended LSC funds for the provision of unrestricted services to eligible clients, either by hiring or contracting for additional case handling staff, augmenting client education or pro se activities, or similar efforts.

Please let me know if you have any questions, and thank you again for your efforts to serve Maine's low-income citizens.

Sincerely,



John A. Tull
Vice President for Programs

COPY

120000

PINE TREE LEGAL ASSISTANCE, INC.

http://www.ptla.org

88 Federal Street

P.O. Box 547

Portland, ME 04112-0547

(207)-774-4753 TDD 828-2308 FAX 828-2300

LEGAL SERVICES CORP

37 OCT 8 3 50

MAIL & COPY CENTER

October 6, 1997

John Tull, Director
Office of Program Operations
Legal Services Corporation
750 1st St. NE 11th Floor
Washington, D.C. 20002-4250

Nan Heald
Executive Director

Elinor Miller
Assistant Director

Dear John:

As you know, each State has been developing its own planned response to meeting the legal needs of low-income individuals as a result of the changes in LSC funding and services. In Maine, this effort is chaired by Judge Frank M. Coffin of the U.S. Court of Appeals and his committee includes many court and bar leaders in our State.

One of the areas addressed by the Committee is the extent of need for advocacy which can no longer be handled by Pine Tree. In Maine, that work is primarily the focus of the Maine Equal Justice Partners, a new nonprofit corporation, and its network of private attorneys. The issue of resource allocation for this work has arisen recently, prompting this letter to you.

I am writing in anticipation of a probable request that Pine Tree staff reduce to part-time in order to take on some work for the Maine Equal Justice Partners when not working at or for Pine Tree. I seek prospective approval for such an arrangement: there has been no action taken to date on this possibility, and there is general agreement that the Legal Services Corporation should review and approve the possibility before any formal actions were taken to implement it in Maine.

As you know, Pine Tree has been a statewide provider of legal services for 30 years, and an LSC recipient throughout that period. In 1995, the Maine Equal Justice Project was created with IOLTA funding in order to handle legislative and administrative advocacy for low-income people; it is currently structured as a 501(c)(4) nonprofit with a second organization, the Maine Equal Justice Partners, structured as a 501(c)(3) nonprofit to handle litigation and client education.

Two former Pine Tree employees, whose positions were eliminated in 1995 in anticipation of the funding

Augusta Office
39 Green Street
P.O. Box 2429
Augusta, ME 04338-2429
622-4731
Fax: 623-7774

Bangor Office
Coc Building
61 Main Street
Bangor, ME 04401-6374
8241
Fax: 942-8323

Portland Office
88 Federal Street
P. O. Box 547
Portland, ME 04112-0547
774-8211
Fax: 828-2300

Presque Isle Office
373 Main Street
Presque Isle, ME 04769
764-4349
Fax: 764-2544

Farmworker and
Native American Units
Coc Building
61 Main Street
Bangor, ME 04401-6374
942-0673
Fax: 942-8323

Outreach Numbers
Lewiston
784-1558

Machias
8656

10056

John Tull
October 6, 1997
Page 2

cutbacks, now split their time between MEJProject and MEJPartners. (At the time of their departure, Pine Tree contracted with them to complete work on several pending matters; this contract has long since been completed.) A third employee of MEJP/MEJP has no ties to Pine Tree. There are no overlapping Board members between MEJP/MEJP and Pine Tree and the two organizations share no space or administrative costs or services. The only present financial relationship between the organizations is a small contract (\$6,000) from Pine Tree with MEJPartners for some client education work. To date, the draft reports of the OIG audit of Pine Tree in December of 1996 have not identified any cause for concern in the relationship between Pine Tree and MEJP/MEJP.

Pine Tree currently has a staff of 33, with 12.6 full-time equivalent attorneys working in four offices around the State, including an office at 39 Green Street in Augusta. MEJP/MEJP has a staff of 3 attorneys, all working in one office at 65 State Street in Augusta.

(1) One proposal is that 1 - 3 staff attorneys at Pine Tree would reduce their time from full-time to part-time status. Our internal program policies do not regulate their time spent away from Pine Tree, so long as Pine Tree resources are only used for Pine Tree work. These staff attorneys would work for MEJPartners when not working at Pine Tree, but there would be no sharing of resources, equipment, or other overhead between the two organizations. The staff attorneys would physically be outside Pine Tree offices whenever working for MEJPartners and would represent themselves as MEJPartners staff on any work done for that entity. When working for MEJPartners, they would be handling litigation which could not be done at Pine Tree because of the LSC restrictions.

Under our union contracts, Pine Tree staff attorneys are allowed to work on an 80%, 60% or "job-sharing 50/50" basis as part-time employees. They receive a pro rata share of salary and leave benefits as part-time employees. Over the years, we have had a number of staff attorneys who have worked for our organization as part-time employees and we have three such positions at the program now. I don't know what percentage of time would be involved in this proposed part-time arrangement, but would appreciate knowing if this is viewed as a significant factor by the Corporation.

(2) The second, alternative proposal would involve 1 - 2 staff attorneys taking an unpaid leave of absence for up to one year, in order to work for MEJPartners. Again, our union contracts authorize the granting of such leaves for up to one year. No salary or benefits are paid to the employees during their leave, but a job is held for them at Pine Tree in the event that they wish to return to the program at the end of their leave of absence.

L0057

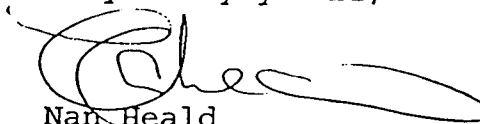
John Tull
October 6, 1997
Page 3

Because of the OIG audit, I am sensitive to the concerns of the Corporation regarding these issues. I would request a written approval for these options, if you determine that the two scenarios outlined above are not violative of any LSC restrictions at the present time.

I have tried to anticipate the questions you might have regarding the relationship between Pine Tree and MEJPartners. To the extent I have not, please let me know any other information which would help you make a determination in this case.

Judge Coffin's group is meeting on November 13, but there will be preliminary meetings on these issues in October and it would be helpful to have your determination as quickly as possible.

Very truly yours,



Nan Heald
Executive Director

L0058