



LEGAL SERVICES CORPORATION

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Maria Tenoya, Executive Director
Oregon Legal Services, Native American Program
917 S.W. Oak Street
Portland, Oregon 97205

Transmitted via facsimile: 503-294-1429

Dear Ms. Tenoya:

You have requested an opinion regarding whether Oregon Legal Service's Native American program, which is applying for a Native American grant from the Legal Services Corporation ("LSC" or "Corporation"), would qualify to apply for a waiver for the appointment of two attorney members that reside and practice law in a neighboring State and are not licensed to practice in the pending grant's service area. Apparently, there are few attorneys in the service area that have an expertise in Native American law. The attorneys would be appointed by an appropriate bar association located within the grant service area, as required by 45 CFR Part 1607.

Part 1607 requires that each recipient have a governing body that meets the rule's composition and appointment requirements. A waiver may be sought when a recipient shows that it cannot comply with these requirements because of the nature of the population, legal community or area served. §1607.6(b)(1). However, waivers may only be sought for requirements in the rule that are not otherwise mandated by law. §1607.6(b). "Attorney member" is defined in Part 1607 as "a board member who is an attorney admitted to practice in a State within the recipient's service area." 45 CFR §1607.2(a). It is this definition that establishes the requirement that all attorney board members be admitted to practice in the State where the service area is located, thus making a waiver necessary.

A waiver may be sought in this situation because there is no absolute statutory requirement that all attorney board members have local bar membership. Although the LSC Act requires that 60% of a board's attorneys be members of the bar in the State in which legal assistance is provided, it also goes on to authorize the Corporation to grant waivers from board

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membership requirements when the program is unable to comply because of the nature of the population they serve. §1007(c).¹ In addition, the statutory requirement regarding program boards in the Corporation's appropriations act only requires that the appointing bar association represent the majority of the attorneys in the service area. Section 503 of Public Law 104-134. It does not require that the appointed attorneys be members of the service area's State bar or even reside or work in the service area. *Id.*

Of course, the ability to request a waiver does not guarantee that the LSC President will grant the waiver. It is the burden of the applicant to show that the circumstances warrant a waiver.²

I hope this adequately responds to your inquiry. Please let me know if I can provide any additional assistance in this matter.

Sincerely,



Suzanne B. Glasow

Senior Assistant General Counsel

¹ 42 U.S.C. §2996f(c).

² Consistent with Federal law applicable to Native Americans, the LSC Act reflects a Congressional intent to give special treatment to Native American grants. *See* §§1007(b)(2), (c) & (h), and 1010(c).