

family relationships have broken down or essential rights of a juvenile are at stake. This part is designed to meet these dual concerns.

REPRESENTATION AT THE REQUEST OF A PARENT, GUARDIAN, OR COURT

Section 1614.4 follows the Act in permitting legal assistance at the request of one of the juvenile's parents or guardians, or a court of competent jurisdiction. Requests made by agents or officials such as probation officers, youth workers and counselors, through whom a court normally acts, are considered requests of a court.

When a legal services program is asked to provide assistance to a juvenile who is tried as an adult in a criminal proceeding, the limitations of Part 1613 apply. The Act permits legal assistance to juveniles in noncriminal proceedings, but if a case is one in which a juvenile has a right to appointed counsel, Corporation funds should not be used to relieve governmental entities of their financial responsibilities. The original draft attempted to meet that concern in § 1614.3(c). However, many comments were received objecting that the provision went beyond the Act by unduly restricting representation of juveniles in cases in which there is a legal right to appointed counsel. It was pointed out that there are many situations when adults, as well as juveniles, may have a legal right to counsel compensated by the state (e.g., mental commitment proceedings), and there is no indication that Congress intended there to be greater restrictions on the representation of juveniles than adults in such cases. (The legislative history of the section indicates that the chief concern of Congress was to prevent legal services programs from providing representation injurious to the integrity of a family—a concern that is irrelevant in the types of cases at issue here.) Further, many comments stated that the right to appointed counsel in noncriminal cases is scarcely implemented, if at all, in many states. To the extent that the legal right to appointed counsel is a reality within a jurisdiction, the provisions of Part 1609, requiring referral of fee-generating cases, should be adequate to prevent legal services programs from competing with the private Bar, whether the potential client is a juvenile or an adult.

Because of the critical comments received, § 1614.3(c) was deleted and § 1614.7 added in its place. The new provision allows a recipient to adopt a policy consistent with its own resources and priorities, and the realities of practice within the jurisdiction. If a state provides adequate representation for juveniles, it may be assumed that a recipient will refrain from undertaking such cases.

REPRESENTATION WITHOUT THE REQUEST OF A PARENT, GUARDIAN, OR COURT

When the normal relationship between parent and child no longer exists, or the interests of parent and child conflict, the Act permits legal assistance to a juve-

nile without a request from a parent, guardian, or court. Sections 1614.5 (a) and (b) carry out the intent of the Act by providing that assistance may be given in cases of child neglect, as well as child abuse; and in proceedings involving guardianship, as well as custody. Section 1614.5(c) tracks section 1007(b)(4)(C) of the Act in permitting legal assistance to a juvenile in cases involving the initiation, continuation, or conditions of institutionalization.

Consistent with the balance struck by the Act between preserving parent-child relationships and protecting the legal rights of juveniles, section 1007(b)(4)(D) of the Act permits legal assistance to secure or prevent the loss of legal benefits or services, except when judicial action is commenced against a juvenile's parent or guardian. "Guardian", in this context, has been construed to mean "non-institutional guardian", because doing otherwise would shield institutional guardians from their legal responsibilities. This interpretation is supported by the legislative history of the provision. "Congressional Record," S. 12934, July 18, 1974.

If, after commencement of a case, a parent or guardian joins the action as a defendant or respondent, the Part permits legal representation of a juvenile to continue. Withdrawal at that point would violate Disciplinary Rule 2-110 of the ABA Code of Professional Responsibility; and the Corporation could not require it without violating section 1006(a)(3) of the Act, that prohibits interference with an attorney's fulfillment of professional responsibilities. Here, too, the regulation is supported by legislative history.

CONTINUITY OF REPRESENTATION

Proceedings initiated in a juvenile court are sometimes transferred to an adult court where criminal proceedings ensue. If a legal services lawyer has represented a juvenile prior to transfer, Disciplinary Rule 2-110 of the ABA Code of Professional Responsibility prohibits withdrawal until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client. Therefore, while requiring an attorney to make a good faith effort to be relieved from representation in the criminal proceeding, § 1614.6 permits continued representation unless the attorney is relieved by the court.

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AUTHORITY: Sec. 1007(b)(4) (42 U.S.C. 2906f(b)(4)).

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal as-

PART 1614—LEGAL ASSISTANCE TO JUVENILES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2995-2996 ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(4) of the Act restricts the use of Corporation funds in the representation of juveniles.

A proposed regulation was published on June 11, 1976 (41 FR 23729), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

PURPOSE

The legislative history of the Act shows that Congress intended to prohibit legal services programs from providing legal assistance to a juvenile when doing so would create or exacerbate conflict between parent and child. At the time, assistance is authorized when

assistance when it is necessary to protect essential rights of a juvenile.

§ 1614.2 Definitions.

As used in this part,

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

§ 1614.3 Policy.

Corporation funds may be used to provide legal assistance to a juvenile when authorized by this part.

§ 1614.4 Request of a parent, guardian, or court.

(a) Legal assistance may be provided to a juvenile

(1) When the written request of a parent or guardian of the juvenile is received; or

(2) At the request of an official or agent of a court of competent jurisdiction; but

(b) Legal assistance shall not be provided to a juvenile who is tried as an adult in a criminal proceeding, as defined in § 1613.2, unless required as part of an attorney's professional responsibilities, pursuant to § 1613.4, or § 1614.6.

§ 1614.5 Representation without request of a parent, guardian, or court.

Legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in

(a) Cases, proceedings, or matters

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for treatment, services, supervision or control, including but not limited to proceedings formally designed for persons in need of supervision (PINS) under state law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; or

(b) When no judicial action is commenced against the parent or non-institutional guardian of the juvenile, legal assistance may be provided

(1) To secure or prevent the loss of benefits or services; or

(2) To prevent the imposition of services against the will of the juvenile.

§ 1614.6 Continuity of representation.

If a criminal proceeding, as defined in § 1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceeding, but may continue to provide representation unless relieved by the court.

§ 1614.7 Limitation policy.

A recipient shall adopt policies designed to insure that Corporation funds are not used to relieve a governmental entity of its legal responsibility to provide compensated counsel to represent juveniles in particular categories of cases, matters, or proceedings.

Effective date: This part becomes effective on October 12, 1976.

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Legal Services Corporation.

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