

Securities and Exchange Commission
Washington, D.C. 20549
Office of the Chairman

MEMORANDUM

July 15, 1968

To: All Staff Attorneys
From: The Chairman [signed "M F Cohen"]
Re: Voluntary Legal Services to the Poor

The Commission has recently amended its Conduct Regulation to permit its employees to participate in voluntary programs to provide free legal services to the poor. This action by the Commission is part of a government wide effort sponsored by the Federal Bar Association to encourage attorneys in Federal service to contribute some of their time and special talents to the national effort to improving the lot of the poor. The Commission supports this effort and encourages you to participate to the extent you see fit.

Your duties and status as Federal Government attorneys do, of course, impose limitations on your rendering of free legal advice to the indigent. There are, however, significant activities, particularly relating to civil matters, in which legal advice can be given in a manner consistent with official responsibilities. An attorney employed by the Federal Government may not, under the conflict-of-interest provisions in 18 U.S.C. 205, give advice or assistance on matters involving claims against the United States or any agency thereof (including the District of Columbia government); nor may he participate in matters or proceedings in which the United States or any agency is otherwise a party or has a direct and substantial interest. Further, as a Commission attorney you should avoid all cases which relate directly or indirectly to securities matters or other matters related to the official responsibilities of the Commission or which are dependent on non-public information. The areas that these limitations leave untouched are extensive. Illustrative of areas unaffected are most landlord-tenant relations, private debts and contracts, domestic relations, employment problems, probate matters, and relief and other benefit claims against state and local agencies (other than the District of Columbia).

Thus, you may work on the staff of non-profit organizations providing such services, including local legal aid societies and community action projects under the War on Poverty program (like Washington's Neighborhood Legal Services Project). In this connection, you may engage in research (either in individual cases or on general projects), give advice, prepare documents, negotiate with other attorneys – provided, of course, you are a member of the bar of the jurisdiction in which you wish to engage in these activities or otherwise are acting within the rules of that bar. ^{1/} Although you may also work on the staff of voluntary defenders' organizations assisting in the representation of persons accused of state crimes, such work is permissible only if carefully arranged to avoid court appearances during business hours.

Of course, volunteer activities must be undertaken only during off-duty hours, such as evening and weekends. Should it occasionally become necessary to make a court appearance or take some other action that may be accomplished only during the business day, annual or compensatory leave or leave without pay may be taken as appropriate. The attorney may not receive compensation for his legal services.

Any attorney desiring to volunteer his services in such a program should submit a written request in accordance with Rule 2D of the Conduct Regulation to his Division Director, Office Head, or Regional Administrator describing generally the nature of the program, the sponsoring group and the extent of participation contemplated. Specific requests for each case assigned are not required. The request, together with the recommendation of such supervisory official, will be submitted to the Director of Personnel for his approval. Supervisors are asked to look upon such requests sympathetically. It is the individual responsibility of any Commission attorney who participates in such a program of voluntary aid to the poor to take the utmost care to insure that such activities do not (a) in any manner interfere with the proper and effective performance of his duties (b) create or appear to create any conflict of interest, or (c) reflect adversely upon the Commission.

Whether and to what extent you as a Commission attorney will wish to engage in legal assistance programs for the poor is for you alone to decide. The purpose of this memorandum is to make clear that under the amended Conduct Regulation of the Commission there are opportunities in this regard for Commission attorneys if the required approval is obtained. You are encouraged to take advantage of them as you see fit. If you are interested send a postcard with your name and address to Legal Assistant Project, Federal Bar Association, 1815 H Street, N.W., Washington, D.C. 20006.

Rule 2C of the Regulation Regarding Conduct of Members and Employees and Former Members and Employees of the Commission was amended to read as follows: 2/

“No employee shall appear in court or on a brief in a representative capacity (with or without compensation) or otherwise accept or perform legal, accounting, engineering or similar professional work, unless specifically authorized to do so by the Commission. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition. As a matter of general policy, outside or private professional work or practice by the staff is discouraged and only in unusual cases or circumstances will it be authorized. However, the Commission encourages its employees, in off-duty hours and consistent with official responsibilities, to participate, without compensation, in programs to provide legal assistance and representation to indigents. Such participation may include limited appearances in court and on briefs when required in connection with such programs. However, such participation may not involve any activities which are prohibited by law, the Executive Order, Civil Service Commission regulation or these rules.8/”

1/ The attached Opinion of the Federal Bar Association Committee on Ethics, entitled “Volunteering Legal Assistance to the Board,” discusses the propriety of attorneys in Federal service participating in such programs.

2/ Underlining indicates language added by amendment.

8/ [Footnote No. 8 is unchanged.]

FEDERAL BAR NEWS, May 1967

FBA Committee on Ethics
Opinion 67-1

VOLUNTEERING LEGAL ASSISTANCE TO THE POOR

In recent years, a social renaissance has revived society's recognition of the necessity for bettering the lot of our Nation's poor and injected new energy into efforts to improve the quality of life in this affluent land's "pockets of poverty." Not least among these efforts have been programs designed to bring professional legal services within the reach of every citizen regardless of his ability to pay for them. In recognition of the legal profession's responsibility in this regard, the Federal Bar Association, at its last national convention adopted a resolution endorsing programs for legal assistance to the poor and encouraging Federal Bar members to participate in them, within the constraints of professional propriety. The Committee on Ethics and Standards of Professional Conduct, therefore, offers the following guidance to Association members who wish to volunteer their services in such legal assistance programs.

There is no impropriety involved in the fact that the volunteer's professional legal services will be provided to the indigent through an organization. While Canon 35 of the ABA Canons of Professional Ethics requires an attorney to avoid relations with intermediary organizations which might tend to control or direct the performance of his duties to his client or intervene in the attorney-client relationship, charitable societies rendering aid to the indigent are not considered such intermediaries, although such societies may be required to comply with certain statutory criteria in some states. This Committee believes that the various programs proffering legal aid to the poor fall within this exception.

Federally employed attorneys serving as volunteer legal counselors should, of course, avoid any action which would tend to lessen public confidence in the integrity and loyalty of the Federally employed attorney to his client, the United States Government. A Federally employed attorney should not, therefore, render any legal advice or assistance to an indigent client in any matter which involves, or would appear to involve, a conflicting interest of the Federal Government.

The ethical principles in this situation are the same as those which governed this Committee's reasoning in Opinion 65-1 concerning the defense by attorneys of indigents accused of crimes (*Federal Bar News*, May 1965). The Committee found no insuperable obstacle to the representation of accused indigents by the accepted principles of professional conduct, as long as certain essential prerequisites are met. We said there that principles of professional ethics required an attorney's utmost loyalty to his client and the

constant protection of the confidentiality of information he receives from his client. We recognized, however, that the size and diverse functions of the Government made compromise of confidential information unlikely and that, under the applicable canon, a client is always free to consent to the representation of other parties by his attorney. The opinion emphasized, however, the necessity for affirmative consent from the client (the Government), "in such a way that the public confidence in the integrity of Federal attorneys" would not be undermined. The same considerations, reasoning and results apply here. It is recommended that attorneys who wish to volunteer their services to the poor seek, through their supervisors, the affirmative consent of senior management officials of the Department by which these attorneys are employed. Where doubt exists as to the propriety of volunteering such services, an attorney may rely on the advisory ruling of his supervisors in accordance with the provisions of Canon 10 of the Federal Bar Association's Canons of Professional Ethics. 1/

Opinion 65-1 also adverted, without further discussion, to the existence of Federal conflicts of interest statutes which prohibit legal representation by United States Government attorneys against the interests of the United States. At just what point these statutes might be transgressed were a Government attorney to render legal advice and counsel to an indigent person is, perhaps, open to discussion. Regardless of what fine lines may be drawn for the purpose of determining whether a criminal statute has been violated, professional ethics require that even the appearance of serving conflicting interests be avoided. In the absence of such affirmative consent from the Government, the Committee has concluded that Government attorneys participating as volunteers in programs of legal assistance to the poor should refrain from advising any indigent in any manner which involves a possible conflict with Federal interests.

On the criminal side, under the precepts established by Opinion 65-1, there is no ethical objection generally to a Federally employed attorney providing assistance and representation to indigents accused of crime under state law, but no such assistance and representation should be provided to those accused of crime under Federal law, and as further stated in Opinion 65-1, no assistance rendered in any circumstance by an attorney employed by the Department of Justice. On the civil side, the Committee is advised that the bulk of requests for legal services to the poor involve domestic relations, landlord-tenant, consumer credit and public welfare cases. The first three subjects appear to be free of any possible conflict and do not present a problem for Federal attorneys. In cases of public welfare administered by town, county or state governments there may be no objection to a Federal attorney advising an indigent with respect to his welfare rights. The individual attorney should, however, evaluate whether any relationship between the Federal Government and the local welfare agency requires his abstention. In the District of Columbia, however, Federal attorneys should avoid advising in public welfare cases inasmuch as the District Government is sometimes treated by law as part of the Federal Government and is, in any event, indistinguishable from it in the minds of a large part of the public.

One other precept of professional conduct should be considered. where a Federal attorney who wishes to volunteer his services is not admitted to the local bar, there is the

problem that his rendering of legal services to the poor will constitute unauthorized practice within the jurisdiction. That is, of course, the province of the local bar but this Committee believes that local bar associations will welcome aid in fulfilling this responsibility of the profession and will cooperate by making appropriate amendments in their local rules of practice. While the organization conducting the legal assistance program ought, logically, make the necessary arrangements, each attorney-volunteer should satisfy himself that this rendering of services has been properly sanctioned.

1/ Canon 10 reads” Advisory Rulings. A Government attorney has the obligation to satisfy his own conscience regarding the propriety of his actions, but where a doubtful problem arises he may rely on the advice of his superiors (or a member of an independent commission may rely on the advice of his associates) after full disclosure of all the facts. An attorney outside the Government may rely on the advice of the responsible officials of the interested department or agency of the Government.”