Restrictions bar use of Legal Services Corporation (LSC) funds to represent clients with respect to: “criminal proceedings” in which a client has been charged with an offense punishable by “death, imprisonment, or a jail sentence”; actions collaterally attacking a criminal conviction such as habeas corpus proceedings; and the representation of prisoners and incarcerated pre-trial detainees in civil litigation. These LSC rules leave open opportunities for LSC-funded attorneys to represent clients in proceedings involving criminal justice debt.

The preamble to 45 C.F.R. § 1613 states the “criminal proceedings” rule “does not prohibit legal assistance with respect to any matters that are not part of a criminal prosecution such as probation revocation after a sentence has been imposed . . . [or] parole revocation.” Attorneys must still determine whether representation in specific instances would violate the limitations on representation of pre-trial detainees and other incarcerated persons.

The preamble also emphasizes that, because infractions “punishable by no more than a fine” are “basically civil in nature,” and “because the imposition of a fine may be extremely burdensome for the clients of legal services programs, the regulation permits representation of defendants in such cases.” Furthermore, the rules do not preclude use of LSC funding to represent clients in civil proceedings related to criminal justice debt or in proceedings in which the underlying conviction or culpability is not at issue and the client is not in jail or prison.

In contrast, LSC-funded attorneys likely cannot provide representation when a client is being prosecuted for an independent charge of criminal contempt or other criminal violation due to nonpayment or failure to appear, if incarceration may be ordered. The regulations should generally permit representation in proceedings:

1. Seeking remission or modification of criminal justice debt or payment plans;
2. Defending against probation or parole revocation;
3. Defending against collection actions for criminal justice debt, including garnishment and license suspension hearings; and
4. Defending against civil contempt—although an individualized analysis will often be necessary to determine whether a given contempt matter is civil or criminal.

The National Legal Aid & Defender Association makes available to members a detailed analysis and guidance on LSC-funding restrictions as applied to various criminal justice debt proceedings.

Footnotes


60 [120] 45 C.F.R. § 1615.

61 [121] 45 C.F.R. § 1637.


65 [125] See Robin C. Murphy, Nat’l Legal Aid & Defender Ass’n Guidance for LSC Programs Re: Criminal Justice Debt Collection (July 2016).
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