

1978 WL 34970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 29, 1978

\*1 Ms. Ellen Hines Smith  
Executive Director  
Piedmont Legal Services, Inc.  
180 Library Street, Suite 200  
Spartanburg, South Carolina 29301

Dear Ms. Smith:

In response to your letter of June 15, it is the opinion of this office that attorneys employed by Piedmont Legal Services, Inc. should be regarded as private attorneys by courts in appointment cases. Thus, Piedmont Legal Services' attorneys should conform to whatever appointment method is 'applied generally to attorneys practicing in the Court where the appointment is made.' 42 U.S.C. Section 2996e(d), as amended, Pub. L. No. 95-222, Section 1006(d)(6), (December 29, 1977). The amendment cited does not limit the participation of legal services corporations to indigent cases in courts which have a particular system, method or practice of appointment. Rather, the amendment only requires that there be a generally applied practice. Since the Spartanburg Family Court does have a general practice of appointing attorneys in indigent cases, Piedmont Legal Services' attorneys may be called upon to serve.

Piedmont Legal Services' attorneys, like most private attorneys, have priorities. The American Bar Association's Committee on Ethics and Professional Responsibility has approved such use of priorities in legal services offices. See Formal Opinion No. 334 (1974), Informal Opinion No. 1359 (1976). But neither the above cited opinions nor the United States House of Representatives' committee report on the 1977 amendment to the Legal Services Corporation Act (Pub. L. No. 95-222, supra) suggest that legal services attorneys should be exempt from appointment to the indigent caseload. This office is in harmony with Congressional intent behind the amendment in the view that 'a legal service lawyer has no greater legal or ethical obligation to accept appointment without fee than any other lawyer.' House Comm. on the Judiciary, Legal Services Corporation Amendment Acts of 1977 Report, H. Report No. 96-310. 95th Cong., 1st Sess., p. 9. Similarly, a United States Senate committee noted that one of its purposes in recommending amendment of the Act was to insure 'that a court cannot discriminate against legal services attorneys in the appointment of cases. This amendment will not exempt legal services attorneys from taking some cases on a pro bono basis or otherwise, as required by the local bar or court.' Senate Comm. on Human Resources, Legal Services Corporation Act Amendments of 1977 Report, S. Report No. 95-172, 95th Cong., 1st Sess., p. 11.

To summarize, this office maintains that an attorney employed by the Piedmont Legal Services, Inc. can properly be appointed by the Spartanburg Family Court to share in the indigent caseload in keeping with that court's practice of appointing attorneys. But such an attorney should not be appointed to more indigent cases than a private attorney practicing before that court.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely yours,

\*2 Joseph R. Barker  
Assistant Attorney General

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