

RULES AND REGULATIONS

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

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. 2996-2996i ("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)(1) of the Act restricts the use of Corporation funds in certain civil actions challenging criminal convictions.

A proposed regulation was published on June 11, 1976 (41 FR 23730), 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.

This part implements the provision of Section 1007(b)(1) of the Act that prohibits legal assistance in certain civil actions brought to challenge criminal convictions. The prohibition includes writs of habeas corpus, and other writs such as *coram nobis* that, in some jurisdictions, perform the same function of collaterally attacking the validity of a criminal conviction.

Some comments objected that the proposed regulation went far beyond the Act by adding, in subsection 1615.2(a), "a public officer who has custody of a convicted person" to the statutory list of proscribed defendants. That formulation was used because merely tracking the statutory language would not have carried out the intent of Congress, but that purpose does not require inclusion of others besides prison wardens, such as the directors of state mental institutions in which both criminally convicted and civilly committed individuals are confined. Special circumstances and legal issues arise when convicted persons are confined in institutions other than prisons, and the statutory purpose, can be satisfied without prohibiting legal assistance in such cases. Therefore, the original phrase has been replaced by a narrower one, "custodian of an institution for persons convicted of crimes."

The final phrase "by a court officer or law enforcement official" was added to § 1615.2(b) in response to criticisms that, as originally drafted, the section was un-

clear. Because the prohibition against representation in collateral attacks on convictions is *in pari materia* with the one against representation in criminal proceedings, the limited exception permitting criminal representation in certain instances has been carried over to this part.

Consistent with the statutory language and its legislative history, this Part does not prohibit cases seeking relief from illegal conditions of confinement, or any other actions that do not have the objective of overturning a criminal conviction.

Sec.
1615.1 Purpose.
1615.2 Prohibition.
1615.3 Application of this part.

Authority: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1))

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

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

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