

POLICY ON OUTSIDE PRACTICE OF LAW BY EMPLOYEES OF MLAC FUNDED PROGRAMS

A. Purpose: This policy is adopted to implement the provisions of §9, ch. 221A, M.G.L., which reads, in relevant part, as follows:

In the distribution of such assistance the corporation shall insure ... that attorneys employed full time in legal assistance activities supported in major part¹ by the corporation refrain from any compensated outside practice of law, and any uncompensated outside practice of law except as authorized in guidelines promulgated by the corporation.

Under this policy, an MLAC-funded program (program) is authorized, but not required, to permit attorneys to engage in the compensated outside practice of law and in pro bono legal assistance activities and to comply with the reasonable demands made upon them as members of the bar and as officers of the court.

B. General policy:

A program may adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the MLAC act, this policy and applicable rules of professional responsibility. Such policies may impose additional restrictions as necessary to meet the program's responsibilities to clients.

C. Definitions:

1. Full-time attorney - an attorney who is employed full time, as defined by the program employing that attorney, in legal assistance activities supported in major part by MLAC.

2. Outside practice of law - the provision of legal assistance to a client who is not receiving that legal assistance from the program employing the attorney rendering assistance. Consulting, teaching or training is not the provision of legal assistance.

3. Court appointment - an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

¹ For purposes of this policy "supported in major part" means either (a) that the program employing an attorney subject to this policy has received for the last three years, including the current year, an average of 30% or more of the program's annual income directly or by subgrant from MLAC or, (b) that 50% or more of the funds supporting the individual attorney's salary comes from MLAC funds.

D. Permissible outside practice:

A program's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

1. The director of the program or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the program's clients;
2. The attorney does not identify the case or matter as one that is funded by MLAC or is within the scope of the attorney's employment by the program; and,
3. The attorney is:
 - (a.) newly employed and has a professional responsibility to close cases from a previous law practice and does so on the attorney's own time as expeditiously as possible; or,
 - (b.) acting on behalf of him or herself, a close friend, family member or another member of the program's staff or,
 - (c.) acting on behalf of or aiding religious, community, civic or charitable groups; or,
 - (d.) participating in the voluntary pro bono or legal referral program affiliated with or sponsored by a Bar Association, other legal organization or a religious, community, civic or charitable group.
4. A program's policies may only permit a full-time attorney to seek and receive personal compensation for work performed pursuant to the provisions of D(3)(a).
5. An attorney engaged in the permissible compensated outside practice of law may not use more than a *de minimus* amount of the program's resources for such compensated outside practice; however, an attorney engaged in the uncompensated practice of law may use a limited amount of the program's resources for such permissible, uncompensated outside practice if necessary to carry out the attorney's professional responsibilities so long as the program's resources, whether funded with MLAC or other source, are not used for any activities for which the use of such funds is prohibited.

E. Court appointments:

1. A program's policies may permit a full-time attorney to accept a court appointment and do the work on program time if the Executive Director of the program or the Executive Director's designee determines that:
 - a. Such an appointment is consistent with the program's primary responsibility to provide

legal assistance to eligible clients in civil matters;

b. The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

c. The attorney agrees to remit to the program any compensation received.

2. A full-time attorney may use program resources to undertake representation pursuant to a court appointment.

3. A full-time attorney may identify the program as his or her employer when engaged in representation pursuant to a court appointment.

4. If, under the applicable Massachusetts or local court rules or practices or rules of professional responsibility, a program attorney is mandated to provide pro bono legal assistance in addition to the attorney's work on behalf of the program's clients, such legal assistance shall be treated in the same manner as court appointments under paragraphs 1, 2 and 3 of this section.

Adopted by the Massachusetts Legal Assistance Corporation Board of Directors on the 24 day of February 2011.