

MEMORANDUM

July 7, 1995

To: T. Jeremy Gunn
cc: David G. Marwell

From: Dennis J. Quinn

Subject: Your Response to My Legal Opinion on Pro Bono Work

Thank you for your memo of July 30 seeking clarification on my opinion concerning your relationship with National PEARL. You raised some appropriate points, which I will attempt to address.

I think your interpretation of 5 C.F.R. § 2636.305(a)(2) and how it applies to your relationship with National PEARL, is quite valid. In fact, that is the position I originally took during my first two phone calls with the Office of Government Ethics (OGE). For example, I pointed out that it was my understanding that the organization did not represent “clients” per se, and therefore was not actually providing fiduciary services. As I have already written, they agreed with that. Cheryl pointed out, however, that any regulation prohibiting behavior is taken very seriously by OGE, and in her experience is interpreted conservatively. She then had discussions with Steve McClearly focusing on the brief description of National PEARL provided in your memo of February 16, 1995, as well as the information you provided to me orally.

When she called back she told me that both were of the opinion that the regulation was applicable. They focused on the fact that the organization litigates. We then had a lengthy discussion concerning clients, members, other groups, beneficiaries of litigation, etc., and how these terms may fit into the definition of “fiduciary relationship.” It was then that Cheryl (perhaps quoting Steve) stated that the definition is “interpreted broadly (or words to that effect).” She also said (again, she may have been quoting Steve) that the regulation had been applied to other organizations that are similar to National PEARL. I did not ask her to provide examples of these interpretations. I got the impression she was referring to interpretations made on a day-to-day basis in their office, rather than formal written opinions. I also got the impression that this was not a new issue for them.

As a lawyer, I certainly could have argued further with their analysis of the situation and disagreed with their conclusion. But as an ethics advisor, seeking the advice of the Office of Government Ethics, I was inclined to agree with them. They are the experts. Their office drafted the regulation, they interpret it every day, they issue the final rulings. Their advice to me since I became the DAEO

has been to interpret the statutes and regulations in a conservative manner, so as to best protect the Board members, staff and the agency itself. That is what I have done in every ethical situation presented to me since I took this position. If I err, it will be on the side of caution.

I will gladly prepare a request for an Informal Advisory Letter from OGE. If you can write a short description of the activities of National PEARL, I will include it in my request. I asked Cheryl about this last week. She said depending on which member of the General Counsel's Office received the assignment to prepare the Advisory Letter, we could receive a different response than the one she gave us. So we have nothing to lose.