

Defending Criminal Activity and Drug-Related Evictions

HYPOTHETICAL CLIENT SCENARIOS

1. TINA

Tina moved to Knoxville about 6 months ago. She has lived in a HUD-assisted (project-based voucher unit) apartment by herself. Tina met Arthur about a month and a half ago through some friends. They got to know each other and started dating/hanging out on and off. She would usually meet him off the property, but he had been to visit her apartment twice.

One morning, Tina received a notice from her landlord that her lease was going to be terminated for "criminal activity," specifically, allowing guest Arthur, a convicted felon, onto the property while he is on the property's no-trespass list. Tina did not know about the conviction, and asked Arthur about it, who said it was true.

Tina stopped seeing Arthur, and asked to speak with her landlord about resolving the matter. The landlord said there was nothing they could do; it was management policy, and she was going to be evicted.

2. BILL

Bill has been renting a private, unsubsidized apartment for about 8 months. He has a girlfriend, Allie, that also lives in the complex. Allie recently told Bill that she had a disagreement with her neighbor, Janice. Bill was walking by Janice with Allie and Janice yelled at Allie, threatening to "beat her down." Bill told Janice to stop, and then Janice's husband, Joe, yelled, "you don't have to beat them, I will." Joe then started walking aggressively toward Bill.

Bill is 130 lbs with a spinal condition, and Joe is 210 lbs and 15 years younger than Bill. Bill pulled his pocket knife out, opened the blade, and told Joe, "Don't touch me, or I'll cut you." Joe stopped, didn't say anything, and went back inside.

A few days later, Bill, Allie, Janice, and Joe all got 3-Day notices for eviction, and were served with detainer warrants.

3. JERRI

Jerri has lived in subsidized housing (RAD PBRA) for 4 yrs. She is disabled and does not drive. Jerri relies on friends and neighbors to give her rides because rideshare services and taxis are too expensive, and the bus rides are too long with inconsistent schedules. Jerri is in recovery for drug use, and has not used in over a year.

Kyle and Patti called Jerri one day to ask if she wanted to ride with them to the store. Jerri has known Kyle and Patti for about 3 months, and knows that they usually smoke marijuana and sometimes do other drugs. However, Jerri needed groceries, so she accepted the ride.

Kyle and Patti picked Jerri up at the front door of her building. About 100 yards from the driveway of the building, on the street, the car was stopped by the police. Kyle was driving, and Patti and Jerri were passengers. The officer stated that he pulled them over for a broken passenger side mirror. After talking to Kyle for a minute, the officer said he detected marijuana, and asked the passengers to get out. Kyle and Patti were searched, and a small bag with white powdery residue was found in Patti's pocket. They police searched the car, and found a small bag of a leafy green substance.

Jerri, Kyle, and Patti were all charged with possession of drugs. About 2 weeks later, Jerri received a notice of lease termination according to the property's "One Strike Rule." Jerri requested an informal hearing, but was denied the opportunity to because her provider does not allow informal hearings for "One Strike" evictions. The charges against Jerri her were dismissed shortly after she received the notice of termination, but the landlord refuses to halt the eviction process.

LSC RESTRICTIONS ON REPRESENTATION IN EVICTION PROCEEDINGS: Code of Federal Regulations, Chapter 45

§ 1633.1 Purpose.

This part is designed to ensure that in certain public housing eviction proceedings recipients refrain from defending persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

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- (a) Controlled substance has the meaning given that term in section 102 of the Controlled Substances Act ([21 U.S.C. 802](#));
- (b) Public housing project and public housing agency have the meanings given those terms in section 3 of the United States Housing Act of 1937 ([42 U.S.C. 1437a](#));
- (c) Charged with means that a person is subject to a pending criminal proceeding instituted by a governmental entity with authority to initiate such proceeding against that person for engaging in illegal drug activity.

§ 1633.3 Prohibition.

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

- (a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and
- (b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

§ 1610.4 Prohibitions on the use of non- LSC funds.

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- (a) Non-LSC funds. Non-LSC funds may not be used by recipients for restricted activities as described in this section, subject to the exceptions in §§ 1610.5 and 1610.6 of this part.
- (b) Extended restrictions. The extended restrictions apply to the following uses of non-LSC funds:
- (1) Private funds—any use of private funds;
 - (2) Public funds—any use of public funds; and
 - (3) Tribal funds—any unauthorized use of tribal funds.
- (c) Standard restrictions. The standard restrictions apply to the following uses of non-LSC funds:
- (1) Private funds—any use of private funds;
 - (2) Public funds—any unauthorized use of public funds; and
 - (3) Tribal funds—any unauthorized use of tribal funds.
- (d) Limited restrictions. The limited restrictions do not apply to the use of non-LSC funds.
- (e) Other restrictions. The other restrictions apply to non-LSC funds as provided in the referenced regulations. This part neither expands nor limits those requirements.
- (f) Inapplicability to part 1611— financial eligibility. This part does not expand, limit, or otherwise apply to the financial eligibility rules of 45 CFR part 1611.
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LSC RESTRICTIONS ON REPRESENTATION OF INCARCERATED INDIVIDUALS: Code of Federal Regulations, Chapter 45

§ 1637.1 Purpose.

This part is intended to ensure that recipients do not participate in any civil litigation on behalf of persons incarcerated in Federal, State or local prisons.

§ 1637.2 Definitions.

(a) Incarcerated means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.

(b) Federal, State or local prison means any penal facility maintained under governmental authority.

§ 1637.3 Prohibition.

A recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may a recipient participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

§ 1637.4 Change in circumstances.

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

§ 1637.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.