

November 12, 1999

Linda Perle
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Center for Law and Social Policy
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Washington, D.C. 20036

Dear Linda:

This is a response to your October 21, 1999 letter requesting an Office of the General Counsel interpretation of the Legal Services Corporation's (LSC or Corporation) regulation on attorneys' fees, 45 C.F.R. Part 1642. According to your letter, a recipient attorney participated as co-counsel with an attorney from a non-LSC program in a fee-generating case (hereinafter "the case" or "the underlying case"). The non-LSC program's attorney preserved his rights to claim attorneys' fees and the court has ordered that attorneys' fees be paid.¹ The recipient did not claim, or collect and retain any attorneys' fees for its representation in the case. The client, records in the underlying case so that a claim for fees may be made on behalf of the client. have asked whether the recipient may provide its time records to the private attorney.

Based on the circumstances you described, the recipient may provide its time records to the client's attorney. Part 1642, the Corporation's regulation on attorneys' fees, prohibits a recipient or an employee of a recipient from claiming, or collecting and retaining attorneys' fees in any case undertaken on behalf of a client of the recipient.³ Providing time records to the client's new attorney in the situation you described is permissible because this action does not constitute an effort by the recipient to claim, or collect and retain attorneys' fees. It is the new private attorney, acting on behalf of the client, who is making the claim for attorneys' fees. To claim attorneys' fees is defined in Part 1642 as "includ[ing] a request for attorneys' fees in any pleading. The recipient is not filing a pleading with the court requesting attorneys' fees or

¹ It is permissible for an attorney from a non-LSC funded program to seek and retain attorneys' fees in a case where a recipient attorney is co-counsel, as long as the attorney receives no compensation from the recipient. *See* Program Letter 97-1 (August 7, 1997).

² In many jurisdictions attorneys' fees may be awarded to plaintiffs, rather than the attorneys in a case. *See e.g., Gilbrook v. City of Westminster*, 177 F.3d 839, 872-874 (9th Cir. 1999).

³ Section 1642.3 provides that:

Except as permitted by Section 1642.4, no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient.

assisting the new private counsel as co-counsel in preparing the action. Rather, the recipient is simply providing relevant information on the underlying case to the former client's new attorney.

You have asked for a clarification on the statement in Program Letter 97-1 providing that a recipient may not claim attorneys' fees, whether the claim is made for the recipient or on behalf of the client. This statement does not apply to the circumstances you described. According to your letter, it is the new attorney, not the recipient, who is making the claim for fees for the client.

In summary, the recipient may provide the client's new attorney with the requested time records because, based on the facts you provided, this action does not constitute claiming or collecting and retaining attorneys' fees.

I hope this adequately responds to your inquiry. Please let me know if you need any additional information.

Sincerely,

Suzanne B. Glasow
Senior Assistant General Counsel