

July 30, 2001

**Sent via facsimile at (606) 546-5117,**  
**with hard copy to follow in U.S. mail**

John Rosenberg, Executive Director &  
Larry York, Directing Attorney  
Appalachian Research &  
Defense Fund of Kentucky  
120 North Front Avenue  
Prestonsburg , Kentucky 41653

Dear Messrs. Rosenberg & York:

I am writing in response to your recent inquiry regarding the propriety of  
your program releasing informa

attorney-client privilege,” suggesting that Congress has determined that the confidences of legal services clients are entitled to the same protection as those of private lawyers’ clients. The Legal Services Corporation Act As Amended 1977 1009(d), 42 U.S.C. 2996 (1977). Our opinion on this issue is unchanged by the fact that the relevant case was handled by a private attorney, as the screening information was collected pursuant to the requirements of LSC’s Regulation on Private Attorney Involvement, codified at 45 C.F.R. 1614.

Notwithstanding our opinion on this issue, we recognize that the confines of attorney-client privilege are routinely defined by state law, and we will defer to the appropriate state authorities in their interpretation of Kentucky rules of professional conduct on the bounds of attorney-client privilege.

In the event that your file has been subpoenaed for the purpose of challenging the client’s financial eligibility for free legal services, it should be noted that multiple courts have held that the issue of a legal services client’s eligibility is not a proper matter for judicial determination, as the agency administering the services has sole authority over eligibility determinations. *See DeMichele v. Waltham Division of the District Court Department*, 629 N.E.2d 982 (1994)(holding that determination of whether LSC recipient was misapplying funds by representing a civil litigant who was allegedly not indigent was not for judge in underlying litigation, but instead for organization administering services); *Outlaw v. Douglas*, 378 So.2d 892 (1979)(holding that petitioner’s eligibility to receive free legal services is an administrative decision to be made by the agency rendering services, consistent with established guidelines, and is not within the purview of the trial court.) *See also, Florida ex rel. T.J.M. v. Carlton*, No. 75-245 (Fla. Dist. Ct. App.,

