



March 20, 2001

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Michelle DeBord, Esq.
Executive Director
MidPenn Legal Services, Inc.
3540 North Progress Avenue, Suite 102
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RE: Assignment of Unsolicited Attorney's Fees by Judge

Dear Ms. DeBord:

I am writing in response to your February 20, 2001 inquiry to John Eidleman, of Legal Services Corporation's ("LSC") Office of Program Performance, regarding the recent assignment of unsolicited attorneys' fees to your program by a judge in Pennsylvania. You indicated that, in a case in which your program previously obtained an Order of Protection for a client, the judge ordered the defendant to pay your client's attorneys' fees after finding that the defendant violated the Order. Notwithstanding your representation to the judge that your program cannot accept such fees, the judge persisted in ordering them.

Your representation to the court that your program cannot accept attorneys' fees, regardless of whether your program "claimed" or otherwise requested them, is correct. In Public Law 103-134, which appropriated funds to LSC for fiscal year 1996, the United States Congress prohibited the claiming or the collection and retention of attorneys' fees by LSC recipients. This restriction has been retained in each of LSC's appropriations act since 1996. This Congressionally mandated prohibition is implemented on LSC's recipients by 45 C.F.R. Part 1642, a copy of which is attached hereto. Section 1642.3 provides that, with two exceptions (neither of which applies here), "no recipient or employee of a recipient may claim, or collect and retain attorney's fees in any case undertaken on behalf of a client of the recipient."

After the implementation of the attorneys' fees restriction, LSC provided guidance to programs on the implementation of this regulation through a program letter. Program Letter 97-1, a copy of which is attached hereto, anticipated and addressed the precise issue you have presented in the following excerpt.

3. Does the Attorneys' Fees Restriction Extend to Cases where Courts Award Attorneys' Fees where None Had Been Claimed?

Yes. The attorneys' fees restriction applies to the independent acts of "claiming" *or* "collecting and retaining" fees. Thus, even if a recipient has not claimed fees, it may not collect and retain them if they are awarded to compensate the attorney of the prevailing party. Henceforth, the recipient should inform the court that it is not permitted to accept the fee award. It is then the court's decision as to the disposition of the fee.

It would thus be a clear violation of 45 C.F.R. Part 1642, and its underlying statutory proscription, for your program to accept the fees ordered by the judge. Such a violation of the regulation could jeopardize future funding of your organization by LSC. Although the judge in this matter might be disappointed by his or her inability to award fees to your program in this case, he or she should recognize that the potential loss of services to the community's indigent population by your program would be a much greater misfortune.

In ascertaining how to address this situation, it is also worth noting that a previous Office of Legal Affairs' (formerly "Office of General Counsel") opinion held that it is a violation of the attorneys' fees restriction for a program to cash an attorneys' fees check and donate the funds to a charity. A copy of this opinion is attached hereto for your information.

As noted in the portion of Program Letter 97-1 excerpted above, "[i]t is . . . the court's decision as to the disposition of the fee." You might recommend that the judge order the fees which would have been

paid to your program to be paid by the defendant directly to some other worthwhile charity. A donation to the local battered women's shelter (or another organization that promotes the elimination of domestic violence) might be an appropriate alternative in this circumstance.

I hope that this information satisfies your inquiry. If you have questions or need additional guidance, please feel free to contact me at (202)336-8871.

Sincerely,

Dawn M. Browning
Assistant General Counsel

Victor M. Fortuno
General Counsel