



March 9, 2010

Mattie Cohan, Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
3333 K Street, N.W., 3rd Floor
Washington, DC 20007-3522

Re: Interim Final Rule 45 CFR Parts 1609, 1610, and 1642

Dear Ms. Cohan:

Legal Services NYC applauds the Legal Services Corporation for issuing the Interim Final Rule, dealing with 45 CFR Parts 1609, 1610 and 1642, which was published in the *Federal Register* on February 11, 2010 (75 FR 6816). This rule eliminates Part 1642, the restriction on collecting statutory attorneys' fees, and makes conforming changes to Parts 1609 and 1610.

Eliminating Part 1642 expresses the clear intent of Congress in removing the attorneys' fees restriction in the Consolidated Appropriations Act of 2010, signed into law by President Obama on December 16, 2009. By eliminating the attorneys' fees restriction, LSC restores an important strategic tool that enables grantees to obtain more favorable settlements in litigation protecting the rights of low-income clients. Lifting the restriction also allows fee-shifting statutes to fulfill their legislative purpose, which is to punish those who have violated the rights of persons protected under such statutes, in this case the most vulnerable members of American society. Finally, in a period in which LSC-funded programs face cutbacks in funding from state and local government and private sources due to the effects of the economic downturn, the ability to collect otherwise legally available attorneys' fees may add a new funding stream that better enables us to maintain necessary client services. Finally, as eloquently expressed by LSC in its analysis of the Interim Rule in the *Federal Register*, the repeal of the ban on collecting statute-based attorneys' fees removes a "...restriction [that] results in clients of grantees being treated differently and less advantageously than all other private litigants, which LSC believes is unwarranted and fundamentally at odds with the Corporation's Equal Justice mission."

We also agree that it is appropriate to move to Part 1609 the provisions of Part 1642 that deal with accounting for and use of attorneys' fees and also with acceptance of reimbursement from a client.

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These provisions were originally part of Part 1609 before Congress imposed the attorneys' fees restriction, and they are now appropriately moved back into that rule. The first provision deals with how grantees should treat attorneys' fees in cases that were supported with LSC funds once the fees are awarded. The second does not deal at all with attorneys' fees, but with reimbursement from a client of out-of-pocket expenses incurred in connection with a case and with a client's payment of court costs.

We also agree that it is appropriate to make conforming changes in Parts 1609 and 1610 to remove the references in those rules to Part 1642 and the attorneys' fee restriction that no longer exists.

Finally, we applaud LSC for exercising its discretion not to take enforcement actions against recipients who make claims for attorneys' fees either for newly-filed litigation or for pending actions during the period between the repeal of the statutory prohibition on collecting attorneys' fees on December 16, 2009, and the effective date of the Interim Final Rule, which is March 15, 2010.

To conclude, Legal Services NYC commends LSC on publishing this Interim Final Rule and making it more possible for LSC grantees to provide equal access to justice for low-income litigants.

Sincerely,



Andrew Scherer
Executive Director and President