

**LEGAL SERVICES CORPORATION****45 CFR Part 1609****Fee-Generating Cases****AGENCY:** Legal Services Corporation.**ACTION:** Final rule.

**SUMMARY:** This final rule makes a number of changes in Part 1609 as it was previously published. Specifically, it requires that an actual, specific effort be made to refer each fee-generating case; that any fees collected by a program be recorded in the same fund to which the related expenses have been charged and the same accounting period in which the fees are actually received; and that fee-sharing with private counsel follow the standards set forth in Section 1609.5. The revisions in this Part have been made to ensure that inappropriate cases are not accepted, and that fees received are properly accounted for.

**EFFECTIVE DATE:** June 8, 1984.

**FOR FURTHER INFORMATION CONTACT:** Richard N. Bagenstos, Assistant General Counsel, (202) 272-4010.

**SUPPLEMENTARY INFORMATION:** The Legal Services Corporation published a proposed rule revising Part 1609 of its regulations governing the proper handling of fee-generating cases on January 9, 1984 (49 FR 1067). Interested parties were given 30 days, until February 8, 1984, to submit comments on the revisions proposed. Thirty-two (32) comments were received and given full consideration. Of those comments, all referred to § 1609.4(a)(3), § 1609.5, or § 1609.8.

*Section 1609.4(a)(3).* The proposed rule deleted then-current Section 1609.4(a)(3), which permitted a program to accept a fee-generating case if "the case is the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee."

Thirty of the comments opposed deletion of this section, arguing essentially that attempted referral should not be required when a program knows from past experience that it would be futile because the case is of a type which the private bar will not accept. The Corporation views the attempt as essential, however, in the cultivation of a positive relationship with the private bar.

*Section 1609.6—Accounting for Attorney's Fees.* This new section requires that the revenue from any fees awarded a program shall be recorded in the same fund to which the related expenses have been charged, and shall be recorded during the accounting period in which the money from the fee award is received by the recipient. A

total of twelve comments were received concerning this section. Some opposed the requirement of recording revenues in the same fund to which the related expenses were charged on the grounds that the requirement posed practical difficulties where there were several sources of such funds. The Corporation is of the opinion that the gains in accountability far overshadow any difficulties involved.

The final language in this section, however, is changed in two ways in response to comments. The word "should" is deleted twice in the section and replaced with the word "shall" to clarify that the accounting requirement is mandatory.

The second change clarifies that attorneys fees received by a program are not to be recorded until the money therefrom is actually received, emphasizing that the cash basis of accounting is the applicable standard.

*Section 1609.8—Applicability.* This section refined the provisions on fee-sharing with private counsel to set a specific standard by clarifying that the standard governing fee-generating cases is applicable to fee-sharing as well. The previous language only designated "when appropriate" as a standard. Some comments expressed concern that the new language would limit the types of situations in which a recipient could consider co-counseling, or in which private bar members would be willing to accept complex fee cases involving indigent clients. However, the new language merely makes explicit when it is appropriate to act as co-counsel, by applying a specific reference in place of the general language.

**List of Subjects in 45 CFR Part 1609**

Legal services.

For the reasons set out in the preamble, 45 CFR Part 1609 is revised to read as follows:

**PART 1609—FEE-GENERATING CASES**

- Sec.  
1609.1 Purpose.  
1609.2 Definition.  
1609.3 Prohibition.  
1609.4 Authorized Representation in a Fee-Generating Case.  
1609.5 Acceptance of Fees.  
1609.6 Accounting for Attorneys' Fees.  
1609.7 Acceptance of Reimbursement.  
1609.8 Applicability.

Authority: Sec. 1007(b)(1) Legal Services Act of 1974, as amended (42 U.S.C. 2996f(b)(1)).

**§ 1609.1 Purpose.**

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

**§ 1609.2 Definition.**

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

**§ 1609.3 Prohibition.**

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

**§ 1609.4 Authorized representation in a fee-generating case.**

Other adequate representation is deemed to be unavailable when:

(a) The recipient has determined that free referral is not possible because:

- (1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or
- (2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or
- (3) Emergency circumstances compel immediate action before referral can be made, but the client is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(d) An eligible client is seeking benefits under subchapter II of the Social Security Act, 42 U.S.C. 401, *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or subchapter XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled.

**§ 1609.5 Acceptance of fees.**

A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if:

- (a) The requirements of 1609.4 are met, and
- (b) Funds received are not used for purposes prohibited by the Act, these regulations, or other law applicable to the expenditure of funds appropriated in the year the fee is received, and are accounted for in the manner directed by the Corporation.

**§ 1609.6 Accounting for attorneys' fees.**

Fees awarded to a recipient represent compensation to the recipient for resources expended in litigating a particular matter. The revenue from such fees shall be recorded in the same fund to which the related expenses have been charged. The revenue shall be recorded during the accounting period in which the money from the fee award is received by the recipient.

**§ 1609.7 Acceptance of reimbursement.**

When a case or matter subject to this part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

- (a) The requirements of § 1609.4 are met, and
- (b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

**§ 1609.8 Applicability**

Nothing in this part shall prevent a recipient from:

- (a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or
- (b) Accepting a fee in a case that was initiated prior to adoption of this part;
- (c) Acting as co-counsel with a private attorney when the case meets the standards set forth in § 1609.5, and accepting part of any fees that may result from a shared case.

Dated: May 3, 1984.

Alan R. Swendiman,  
General Counsel.

[FR Doc. 84-12079 Filed 5-9-84; 9:46 am]  
BILLING CODE 6820-30-25