



May 7, 2002

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Hattiesburg, Mississippi 39403-1728

***RE: Request for Guidance on PAI/Attorneys' Fees Issue,***  
***External Opinion No. EX-2002-1004***

Dear Mr. Buchanan:

I am writing in response to your request for guidance on a PAI/Attorneys' Fee issue, addressed to Legal Services Corporation ("LSC") Program Counsel Willie Abrams and dated March 6, 2002. You indicated to Mr. Abrams that in 1997, East Mississippi Legal Services ("EMLS") referred a child support case to a private attorney under its Private Attorney Involvement ("PAI") program. On January 1, 2000, EMLS merged into your program, and your program assumed responsibility for all of EMLS' cases, including its PAI cases. In late 2001, your program wrote to the above-referenced attorney requesting the status of the case and a bill. By letter dated February 28, 2002, the attorney advised your office that in September 2001, the Chancery Court of Lauderdale County issued its opinion in the case, in which it granted the lawyer \$3,000 in attorneys' fees. Upon receipt of this information, you immediately advised the attorney that 45 CFR Part 1642 prohibited his acceptance of attorneys' fees by virtue of his participation in the PAI program of an LSC grantee under a contract arrangement, and that he should not collect the fees if he had not already done so. The attorney advised you that he had already collected the fees.

Neither EMLS, nor your program, has compensated the attorney for his work on the case, and neither program has counted the case on its PAI reports to LSC.

***Issue Presented***

How should the program proceed at this point, given the improper collection of attorneys' fees by a private attorney under contract for services in a PAI program?

### Summary Findings

The program should ensure that it does not compensate the attorney for his work on the relevant case, and the program should ensure that the relevant case is not counted as a PAI case on a PAI report to LSC. Additionally, the program should amend its PAI ‘Contract for Services,’ if necessary, to state clearly that no private attorney receiving compensation from the recipient to handle a case for an eligible client shall claim, or collect and retain attorneys’ fees.

### Analysis

LSC’s regulation on attorneys’ fees, Part 1642, generally provides that “. . . 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.” 45 C.F.R. § 1642.3. Section 1642.4(b) of the regulation goes on to say that “. . . the prohibition . . . shall apply to any case undertaken by a private attorney on behalf of an eligible client *when the attorney receives compensation from a recipient to provide legal assistance to such client under the recipient’s private attorney involvement (PAI) program, contract or other financial arrangement.*” [Emphasis added.] 45 C.F.R. § 1642.4(b).

The section-by-section analysis of part 1642.4 also states that “private attorneys who are paid by LSC recipients to handle cases for eligible clients as part of a recipient’s PAI program, under a contract or judicare arrangement, may not seek attorneys’ fees in those cases.” 45 C.F.R. 1642.

Once a private attorney and a recipient enter into a contract for the attorney to handle a case for an eligible client, both parties are legally bound by the terms of the contract. Typically, and pursuant to LSC regulations, such a contract provides for the attorney to be compensated at a certain rate by the recipient in lieu of collecting attorneys’ fees.<sup>1</sup> If an attorney enters into a contract to receive compensation from a recipient (in lieu of claiming attorneys’ fees) for handling an eligible case, and the attorney thereafter claims, or accepts and retains attorneys’ fees, the attorney violates the contract and potentially causes the recipient to violate LSC regulations.

In the case at hand, there has not been a strict violation of the regulation, because the attorney has not received compensation from either your program or EMLS. Additionally, neither your program, nor EMLS reported the case in a PAI report to LSC. To protect against a violation of the regulations, you should ensure that the attorney does not receive compensation from your program for this case at

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<sup>1</sup> In the case at hand, it appears that the attorney entered into EMLS’s standard ‘Contract for Services,’ which provided for compensation at the rate of \$30 per hour, up to a maximum of \$420 per case. The contract also provided for the attorney to notify the recipient of receipt of attorneys’ fees within five days and to dispose of the fees as directly by EMLS.

any time in the future, and that the case is not reported on any future PAI report to LSC.<sup>2</sup>

To guard against future mistakes such as the one at hand, your program should ensure that its standard ‘Contract for Services’ for PAI cases explicitly states that attorneys participating in the program shall not claim or collect and retain attorneys’ fees. The ‘Contract for Services’ routinely executed by EMLS for PAI cases was not as explicit as it could (or should) have been in this regard. Section One, paragraph 8 of the EMLS contract stated that “[private attorney] agrees that if an award of attorney fees is made to him for providing legal assistance under this Contract, he will report the award to EMLS within five (5) days and will dispose of it as directed by EMLS.” In light of regulation 1642 and the clarity of its application to attorneys participating in a recipient’s PAI program under a contract or judicare arrangement, EMLS’ contract should have explicitly stated that attorneys participating in the program shall not claim, or collect and retain attorneys’ fees.

I hope that this information adequately addresses your inquiry. If you have any questions regarding this information, please feel free to contact me directly at (202)336-8871.

Sincerely,

Dawn M. Browning  
Assistant General Counsel

Victor M. Fortuno  
General Counsel

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<sup>2</sup> In the course of preparing this opinion, the Office of Legal Affairs discovered an ambiguity in a previously-issued PAI opinion, which it now wishes to clarify. In an opinion to Brendan Gill of Bexar County Legal Aid dated June 21, 1999, Suzanne Glasow addressed questions regarding co-counseling with private attorneys who may ask for attorneys’ fees. In that opinion, she stated that a private attorney handling a *pro bono* case through a recipient PAI program, for which the attorney is not being compensated by the recipient, may claim attorneys’ fees. This is true only for cases that a recipient does not treat as PAI cases for purposes of Part 1614. A section-by-section analysis of Part 1642 makes clear that the attorneys’ fees prohibition does not include private attorneys who receive no compensation from a recipient to handle a case. Nevertheless, recipients cannot count as PAI cases under Part 1614 any cases referred to private attorneys in which attorneys’ fees are claimed.