



July 11, 2006

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External Opinion #2006-1004

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Dear Ramon:

Danilo Cardona, Director of LSC's Office of Compliance and Enforcement ("OCE"), forwarded to me your letter of May 15th, 2006, in which you request reconsideration of Office of Legal Affairs ("OLA") External Opinion ("EX") 2003-1010. Upon review of your letter, EX-2003-1010 and EX-2003-1014, I find no basis upon which to rescind or amend EX-2003-1010. My analysis is set forth below.

As I understand it, OCE recently completed a draft CSR/CMS report to Bay Area Legal Aid ("BALA") in which OCE found a violation of the attorneys' fees restriction in 45 CFR Part 1642 because BALA collected and retained attorneys' fees. The case was a housing case in which the lease had an attorneys' fees provision that provided for the landlord to be entitled to attorneys' fees in the event that the landlord prevailed in litigation with the tenant over the lease. California law provides that such clauses must be read reciprocally -- such that, if the tenant prevails, the tenant will be entitled to seek attorneys' fees. EX-2003-1010 makes clear that, because the attorneys' fees restriction applies to attorneys' fees available under state law, a recipient may not claim, collect or retain attorneys' fees resulting from a state law providing for the reading into contracts of reciprocal attorneys' fees provisions.

As I understand the argument you make in your letter to Mr. Cardona, it is that the conclusion of EX-2003-1010 is incorrect in light of EX-2003-1014 (which concludes that a recipient may

claim, collect, and/or retain attorneys' fees when such fees are available pursuant to a private contractual arrangement permitting the awarding of such fees). You argue that EX-2003-1014 concludes that, as the purpose of the attorneys' fees restriction is to alleviate the unfairness of forcing a litigant to "pay twice" for legal services attorneys (first as a tax payer and then as a litigant), a party to a contract who chooses to subject him/herself to a purely contractual, reciprocal attorneys' fees provision is not experiencing the unfairness the restriction seeks to alleviate. As I understand your argument, even in the case of a reciprocal fees statute, because the landlord is not required to have any attorneys' fees provisions in the lease, subjecting the landlord to the risk of attorneys' fees (when, presumably, the landlord should be aware of the existence of the reciprocity statute) is not unfair. Further, you argue that the purpose of the fees restriction is to avoid unfairness generally and that forcing recipients to forego attorneys' fees in such circumstances is unfair.

These arguments do not take into account the plain and unambiguous language of the attorneys' fees restriction, which applies to all attorneys' fees available pursuant to common law or Federal or State law. The line of reasoning set forth in the purely contractual fees case (EX-2003-1014) was provided as a way of explaining the rationale for the distinction made in the legislation between fees available pursuant to statute (which are clearly included in the prohibition) and fees available pursuant to a private contractual arrangement (which are not). In the case of reciprocity statutes, it is clear that the attorneys' fees are "pursuant" to those statutes, and clearly included in the plain language of the restriction. Thus the reasoning of EX-2003-1014 does not alter the impact of the unambiguous language of the restriction.

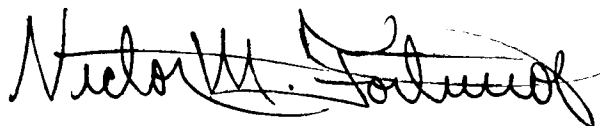
Moreover, Congress' concern about "unfairness" addresses only the unfairness to taxpayer/litigants in actions against persons represented by grantees. As such, the fact that it may be "unfair" that recipients are unable to claim, collect or retain fees to which they would otherwise be clearly entitled under law cannot overcome the clear statutory language that recipients are not permitted to claim, collect or retain attorneys' fees available pursuant to common, Federal or State laws.

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In conclusion, EX-2003-1014 does not provide a basis for withdrawing or revising EX-2003-1010, and the reasoning and conclusion of EX-2003-1010 remain valid and stand.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victor M. Fortuno". The signature is written in a cursive style with a large, sweeping flourish at the end.

Victor M. Fortuno
Vice President and General Counsel