



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2003-1010

**To:** Toby J. Rothschild  
General Counsel  
Legal Aid Foundation of Los Angeles  
1102 Crenshaw Boulevard  
Los Angeles, CA 90019-3111

**Date:** July 9, 2003

**Subject:** Permissibility of Attorneys' Fees Claims Pursuant to State Contract  
Reciprocity Statutes

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You requested an Opinion from this Office regarding the permissibility of seeking attorneys' fees when a state law provides for interpreting contracts with a one-way attorneys' fees provision as containing a reciprocal attorneys' fees provision.

***Brief Answer***

A recipient may not, under 45 CFR Part 1642 and LSC's appropriations law, claim, or collect and retain attorneys' fees resulting from a state law providing for the reading into contracts of reciprocal attorneys' fees provisions.

***Background***

As we understand the facts, a staff attorney in your office successfully represented a tenant-defendant in an eviction case. Although the rental agreement between the tenant and the landlord itself only provided that the tenant would pay the owner's attorneys' fees in the event the owner should initiate litigation to enforce the lease, Section 1717 of the California Civil Code provides that any contractual attorney's fees provision is reciprocal, so that the client in this case, as the prevailing party, was entitled to such fees from the owner. Pursuant to this rental agreement, as construed by the state statute, the LAFLA staff attorney requested and was awarded attorney's fees in the case. The owner subsequently appealed the award of attorney's fees.

Under these circumstances you asked whether the request for attorneys' fees had been permissible. You also asked what action LAFLA should take if the claim for attorneys' fees was made in error and whether the California court would have the authority to enforce Part 1642 by denying an award of fees.

### *Analysis*

Section 504(a)(13) of the FY 1996 Appropriations Act provides that none of the funds appropriated in the Act may be used to provide financial assistance to an entity “that claims (or whose employee claims), or collects and retains, attorneys’ fees pursuant to any Federal or State law permitting or requiring the awarding of such fees.” This restriction has been carried forward in each subsequent appropriations measure and is incorporated by reference in the current appropriations act. Pub. L. 108-7. LSC has implemented the statutory attorneys’ fee restriction in 45 C.F.R. Part 1642. Specifically, §1642.3 provides that, generally “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.”<sup>1</sup> The regulation defines attorneys’ fees “an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees....” 45 C.F.R. § 1642.2.

In your case, the only reason the client (tenant-defendant) was entitled to attorneys’ fees was because of the action of section 1717 of the California Civil Code which required the lease’s attorneys’ fees provision to be read in a reciprocal manner. Although the claim for attorneys’ fees was putatively made under the contractual provision of the lease, the claim to the fees was, in fact, only viable pursuant to the State law. Thus, the award was made pursuant to a State law permitting the awarding of attorneys’ fees. As the attorneys’ fees fell within the definition “attorneys’ fees” in §1642.2, the claim for the fees was made in violation of §1642.3.

Turning to your question about what actions would be appropriate in the event that your staff attorney’s actions violated 45 C.F.R. Part 1642, since the original request for attorney’s fees was improper it appears to us that the most appropriate action would be for the staff attorney to withdraw his request for such fees, or to not contest the appeal, as appropriate under California procedure. In any event, please note that collecting and retaining the fees would also violate §1642.3. LAFLA, accordingly, may not accept any attorneys’ fees in this case, even if the award is upheld.

You further inquired whether Part 1642 is privately enforceable by the California courts in a civil action. We understand your question to have been posed contemplating a situation in which LSC determined that LAFLA had permissibly claimed the fees but the Court decided otherwise. However, as that is not the case, the question appears to us to be moot. However, we can say that it is the position of LSC that courts may not make independent interpretive rulings about our regulations and that if a court adopted an interpretation of one of our regulations that was in conflict with our own interpretations, the Corporation would most likely assert its superior authority in this area.

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<sup>1</sup> The regulation permits two specified exceptions to the general prohibition. Neither exception is pertinent to this situation. 45 CFR §1642.4

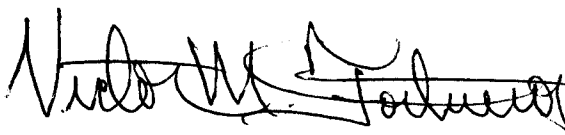
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Very truly yours,



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