

External Opinion
File #99-06

Brendan Gill, Executive Director
Bexar County Legal Aid
434 S. Main Avenue, Suite 300
San Antonio, TX 78204

June 21, 1999

Dear Mr. Gill:

This is a response to your June 10, 1999 request for guidance to Cynthia Schneider, Office of Program Operations, regarding the Corporation's attorneys' fees regulation, 45 CFR Part 1642. She forwarded the matter to the Office of the General Counsel for our review and analysis. We provide the following opinion in response to your request.

You stated that it is your understanding that Part 1642 would permit your program's staff attorney to work on a case along side a private *pro bono* attorney who is seeking attorneys' fees, as long as your staff attorney does not claim, collect or retain fees. You also sought an opinion on whether Part 1642 would permit another private attorney to work on the case as a *judicare* attorney under your private attorney involvement program (PAI), as long as the attorney does not seek or retain attorneys' fees.

The regulatory restriction on attorneys' fees is found at 45 CFR Part 1642. Section 1642.3 provides that:

Except as permitted by §1642.4, no recipient or employee of a recipient may claim¹, or collect and retain attorneys' fees² in any

¹ To "claim" attorneys' fees means to "include a request for attorneys' fees in any pleading." §1642.2(d). The term "to seek" in this opinion is intended to have the same meaning as "to claim." The term "to retain" in this opinion is intended to include both the activity of collecting fees and that of retaining fees. Section 1642.3 states that a recipient may not "claim, or collect and retain attorneys' fees." [Emphasis added] According to Program Letter 97-1:

[t]he attorneys' fees restriction applies to the independent acts of "claiming" or "collecting and retaining" fees. Thus even if a recipient has not claimed fees, it

case undertaken on behalf of a client of the recipient.

According to 1642.4(b), this restriction applies:

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, judicare program, contract, or other financial arrangement.

(emphasis added).

Based on these provisions, your initial statement is correct. Because the private *pro bono* attorney under your PAI program is not compensated by the recipient, your staff attorney, who is not seeking any fees, may work on the case with the *pro bono* attorney, even if the *pro bono* attorney seeks or retains attorneys' fees for working on the case. However, please note that attorneys who are co-counseling with a legal services program on a *pro bono* basis may seek and recover fees *only for the portion of the work done by them*" Program Letter 97-1 (emphasis added).³

With respect to your question on judicare attorneys, your staff attorney may work with a private attorney who is working on the case as a judicare attorney under your PAI program as long as the judicare attorney does not seek or retain attorneys' fees. As clearly stated in 1642.4(b), the attorneys' fee restriction applies to any attorney receiving compensation from the recipient. By definition, judicare attorneys are compensated by recipients at a reduced fee rate. *See also* Program Letter 97-1 ("Under 1642.4(b), a private attorney who receives compensation from an LSC recipient to represent an eligible client in a case is subject to the attorneys' fee restriction").

may not collect and retain them if they are awarded to compensate the attorney for the prevailing party.

² "Attorneys' fees" are defined in detail in 1642.2(a) and 1642.2(b).

³ Please note that for purposes of audit and review, pleadings for attorneys' fees should clearly distinguish which counselor(s) are claiming fees.

I hope that this adequately responds to your inquiry. Please let me know if I can provide any additional assistance in this matter.

Sincerely,

Suzanne B. Glasow

Senior Assistant General Counsel