



**LEGAL SERVICES CORPORATION**

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October 7, 1994

VIA TELEFACSIMILE (815) 965-1081

Joseph A. Dailing, Executive Director  
Prairie State Legal Services, Inc.  
975 North Main Street  
Rockford, IL 61103-7064

Dear Mr. Dailing:

This is in response to your request for an opinion regarding the propriety of a subrecipient of Prairie State Legal Services, Inc. ("PSLS") charging an administrative fee for legal services to eligible clients.

As I understand it, PSLS subgrants a portion of its Legal Services Corporation ("LSC") funding to Lake County Bar Association of Waukegan ("LCBAW") for the purpose of providing a pro bono program to indigents in PSLS's service area. This subgrant is used to meet part of PSLS' Private Attorney Involvement ("PAI") expenditure required by 45 C.F.R. Part 1614, LSC's regulation governing PAI. LCBAW has proposed to PSLS that LCBAW be permitted to charge clients seeking assistance in divorce actions an administrative fee of \$50 - \$75. This fee would allow LCBAW to expand its program and increase its revenue. In addition, LCBAW hopes that the fee will discourage individuals from beginning divorce actions with volunteer attorneys only to later abandon the action. Although you note that you do not believe that charging a fee is explicitly prohibited, you wish to have a determination from this office on the issue.

The question of charging otherwise eligible clients a fee for legal assistance is not specifically addressed in the LSC Act, 42 U.S.C. §§2996 et seq. The Statement of Findings and Declaration of Purpose of the LSC Act provides only that

(1) there is a need to provide equal access to the system of justice in our Nation for

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individuals who seek redress of grievances;  
(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program.

42 U.S.C. §2996. An eligible client is defined by the LSC Act and regulations as "any person financially unable to afford legal assistance," 42 U.S.C. §2996a(3) and 45 C.F.R. Part 1600, but these provisions do not explicitly require that the services provided be free. Consequently, review of the Act's legislative history is appropriate to determine Congress' intent on this issue.

In this regard, the preamble of both the Senate and House Reports which formed the basis for the LSC Act more clearly indicate that the legal assistance is to be provided free of charge. In describing the background and purpose of the legislation, both reports contain the following language:

Congress has many times declared its findings in passage of legal services legislation, and the President of the United States has affirmed, that it is in the Nation's interest to encourage and promote the use of our institutions for the orderly redress of grievances and as a means of securing worthwhile reform, and that the program of providing free legal assistance to those unable to afford such counsel should receive continued support.

S. Rep. No. 495, 93d Cong., 1st Sess. 6 (1973); H. Rep. No. 247, 93d Cong., 1st Sess. 3 (1973) (emphasis added).<sup>1</sup> The House Report contains a more definitive statement of congressional intent. In discussing eligibility standards of clients who seek legal assistance, the House Report specifically states:

[r]egulations promulgated by the corporation

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<sup>1</sup> It also appears that charging clients a fee may not be presumed to be permissible simply because such activities are not explicitly prohibited by the LSC Act. It is a well-established principle of statutory construction that silence on an issue should not necessarily be construed as consent. Sutherland Stat Const. §§ 45.02, 45.06 (5th Ed). This tenet is drawn from the belief that Congress legislates through action rather than inaction.

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will assure that the poorest of the poor receive a priority in the provision of legal services, and no person or group will be charged any fee for legal services provided by recipients under this bill.

H. Rep. No. 247 at 8-9 (emphasis added).<sup>2</sup>

Although LSC's PAI regulation permits the charging of nominal fees, the payment of such fees by eligible clients would not appear to contravene the purposes of the LSC Act since, by definition, the amount that can properly be charged as a "nominal" fee must be so small that, for all practical purposes, the services are free. See 45 C.F.R. § 1614.3(a). I recognize that 45 C.F.R. Part 1614, LSC's Private Attorney Involvement regulation, speaks of "fees." The fees contemplated by Part 1614 are of two varieties, fees paid by the recipient to private attorneys and fees paid by eligible clients.

The first category, fees paid by the recipient, is irrelevant to the issue addressed in this opinion. 45 C.F.R. §1614.3(e)(1)(ii). The second, fees paid by eligible clients, 45 C.F.R. §1614.3(a), is not inconsistent with the analysis of this opinion because such fees may be no more than "nominal." The fee, therefore, would have to be so slight as to make the services provided free for all practical purposes.

It appears to me unlikely that the amount of the fees being contemplated by LCBAW could reasonably be considered nominal to anyone eligible for LSC-funded legal assistance. Although the term "nominal" does not lend itself to definition with great precision, it is commonly understood as meaning trifling or insignificant. Of course, the amount of money that is insignificant varies depending upon a person's financial circumstances. However, as eligibility guidelines established by the Corporation require that, in order to

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<sup>2</sup> It is also persuasive that, in comments issued by Congressman Landgrebe on the House version of the LSC Act, he notes that the House rejected a provision offered by the Administration which

would have permitted the corporation to charge persons who met the uniform eligibility criteria to pay a minimum fee to legal services attorneys.

H. Rep. No. 247 at 28.

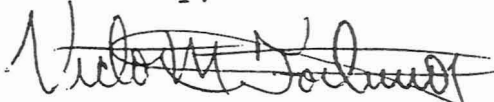
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be eligible for legal assistance, a person's income must be at or below 125% of the poverty line and they must not possess assets which exceed established ceilings, a trifling or insignificant amount to an eligible client would be very small indeed.

Although I am personally of the view that there are compelling policy reasons for allowing recipients some discretion in the area of charging a small administrative fee, as doing so would enable recipients to represent a greater number of clients, I am confined by the statutory language and, in the absence of clear statutory language, any clearly articulated legislative intent. This said, in my opinion, charging eligible clients anything more than a strictly nominal fee for legal assistance is inconsistent with the purposes and intent of the Act. It is my further opinion that LSC funds also could not properly be used to support a PAI program which charges anything more than a strictly nominal fee to eligible clients.<sup>3</sup>

I hope that this response to your inquiry is of some assistance to you. If, however, you have any remaining questions, or if we can otherwise be of assistance, please do not hesitate to call or write to me.

Sincerely,



Victor M. Fortuno  
General Counsel

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<sup>3</sup> My opinion is not altered by the fact that in this particular instance it is a subrecipient rather than a recipient that would be charging the fee. Both Part 1627, the Corporation's regulation governing subgrants, and the revised 1993 - 1994 Subgrant Agreement entered into by the LCBAW's Volunteer Lawyers Program and PSLs extend the restrictions placed on PSLs by the LSC Act and regulations to the subrecipient. Moreover, ¶20 of LCBAW's sub-grant agreement also provides that

[t]his agreement is subject to compliance with the Legal Services Corporation Act of 1974, as amended, and all relevant rules, regulations, instructions or guidelines, and assurances of the Legal Services Corporation pursuant to 45 C.F.R. Sec. 1627.3(e).