



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2001-1014

To: Ben Cole, Esq.
North Mississippi Rural Legal Services
2134 West Jackson Avenue
P.O. Box 767
Oxford, MS 38655

Date: September 21, 2001

Subject: Acceptance of Attorneys' Fees as Part of Bankruptcy-related Settlement

You requested an opinion from this office as to whether North Mississippi Rural Legal Services ("NMRLS") could accept attorneys' fees stemming from a settlement of a law suit involving a creditor of clients NMRLS represented in bankruptcy proceedings. No, the prohibition on claiming or collecting and retaining attorney's fees in any case on behalf of a client contained in 45 C.F.R. Part 1642 would apply in this case and NMRLS could not, therefore, accept the proffered fees.

Analysis

As we understand the facts in this case, NMRLS represented a number of clients who were debtors of a particular creditor, First Family Financial Services ("First Family"), in bankruptcy proceedings. The Bankruptcy trustee filed suit against First Financial alleging improper practices on First Family's part that impacted on the debtors. First Family and the Bankruptcy Trustee have since negotiated a settlement in that suit. NMRLS was not involved in either the filing of the complaint or the settlement negotiations. As part of the settlement, First Financial has agreed make payment of attorney's fees to both the Bankruptcy trustee and to the counsel for the individual debtors (NMRLS). Under these circumstances, you inquire as to whether NMRLS could accept these fees.

In the FY 1996 LSC appropriations legislation, P.L. 103-134, Congress prohibited the claiming or the collection and retention of attorneys' fees by LSC recipients. This restriction has been retained in each of LSC's subsequent appropriations acts. LSC has incorporated this Congressionally mandated prohibition into its regulations at 45 C.F.R. Part 1642. Specifically, 45 CFR §1642.3 provides:

Except as permitted by §1642.4, 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.¹

In order to receive the fees made available in the settlement, NMRLS would have to either file an application with the Court, or join in the motion application to approve the settlement which the Bankruptcy trustee filed with the Court. Under §1642.2(d) "to *claim* attorneys' fees means to include a request for attorneys' fees in any pleading." The filing of a separate application, or the joining in of the matter filed by the trustee, seeking the fees would constitute "including a request for attorneys' fees" in a "pleading," and therefore be "claiming" attorneys' fees, in contravention of the statute and regulations.

Even if the filing of a separate application or joining in the bankruptcy trustee's motion did not constitute making a claim (which we believe it would) because NMRLS was not involved in the negotiation of the settlement, acceptance of the fees would be "collect[ing] and retain[ing]" fees, contrary to the prohibition. This office has previously determined that unsolicited attorneys' fees ordered by a judge cannot be received by a recipients. See OLA External Opinion EX-2001-1007 (March 20, 2001) ("The attorneys' fees restriction applies to the independent acts of 'claiming' or 'collecting and retaining' fees.").

Considering the disposition of the funds to which NMRLS would otherwise be entitled, you might suggest to the parties that an amendment of the settlement which would direct that those funds be used to further ameliorate any debt owed by the debtors to First Family, or some similar purpose.

Very truly yours,

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs

Victor M. Fortuno
General Counsel
Office of Legal Affairs

mcondray@lsc.gov
(202) 336-8817

¹ The cross-referenced §1624.4 exception for (1) cases filed prior to April 26, 1996 does not apply to here as we understand all of these bankruptcy proceedings undertaken on behalf of the debtor clients to date from 1999.