



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2004-1006

**To:** Roberta Wright, Executive Director  
Neighborhood Legal Services Program  
701 4<sup>th</sup> St. NW  
Washington, DC 20001

**Date:** September 21, 2004

**Subject:** Duty to Ensure Continued Financial Eligibility

You asked this Office for an Opinion regarding Neighborhood Legal Services Program's (NLSP) duty to ensure the continued financial eligibility of a client and what NLSP's obligation to the client are should the client be found to be no longer eligible for LSC-funded legal assistance.

***Brief Answer***

Although there is no general duty to reassess the eligibility of a client, where, as here, if a recipient becomes aware of a change in the client's financial circumstances which may affect the client's ability to afford private counsel and, therefore, the client's continued eligibility, the program is obligated to reassess a client's eligibility. In the event that a change in circumstances renders the client ineligible for LSC-funded legal services, NLSP must withdraw from representation, consistent with NLSP's professional responsibility requirements.

***Background***

As we understand the facts, during 2002 NLSP assisted an eligible client (who is homeless and mentally ill) in a matter arising under the Fair Housing Act. Subsequently, the client became estranged from the NLSP attorney who handled that case and she has not come into the office since that time.<sup>1</sup> In addition, the NLSP attorney who originally handled the case left NLSP for private practice in November 2003. After a lengthy period of inaction, that case has been remanded by the D.C. Court of Appeals back to the Superior Court for further action. NLSP is now in a position to be once again actively representing the client.

---

<sup>1</sup> You have also reported that recently an NLSP summer associate has been locate the client at a local homeless shelter. The summer associate reports that the woman's mental condition appears to have deteriorated and he was unable to communicate with her. We understand that the associate is going to continue to try to establish communication and convince the client to come into the office.

While the case being handled by NLSP was pending, the client was involved in another matter, in which she was not represented by NLSP. In the non-NLSP case, the client was involved as third party beneficiary in an action by the government against her former landlord in connection with condemnation of the landlord's building. You have informed us that you understand the attorney for the tenant's association in that case to have asked the NLSP attorney to act as the client's guardian for the purposes of the proceeding. The NLSP attorney attempted to find relatives identified by the client, but was unable to do so. To the best of NLSP's knowledge, the client apparently had no guardian appointed for her in the non-NLSP case.

It appears that as result of a plea agreement between the government and the client's former landlord, the client was entitled to a large cash award (approximately \$90,000). You have also informed us that it is not clear whether or not the client received the disbursement or can access it, because the disbursement would have occurred after the point at which the client ceased communication with NLSP. Moreover, if the client received the money, it is not known whether the client still has any of it.

### *Analysis*

Under the Legal Services Corporation Act and the Corporation's implementing regulations, a recipient can only provide LSC-funded legal assistance to clients who are financially eligible for such service. 42 U.S.C. §2996f , 45 CFR Part 1611. If NLSP's client has, indeed, received the funds from the other case and can access them, the client may no longer be financially eligible for LSC-funded legal assistance. With the possibility that NLSP may once again be in a position to be actively representing the client, NLSP asks for an Opinion regarding NLSP's duty to ensure the continued financial eligibility of this client and what NLSP's obligation to the client are should the client be found to be no longer eligible for LSC-funded legal assistance.

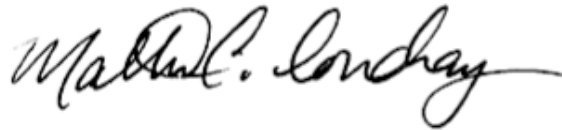
Section 1611.9 of LSC's financial eligibility regulation, Change in circumstances, provides:

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation of the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance and discontinuation is not inconsistent with the attorney's professional responsibilities.

Although §1611.9 places no general affirmative duty upon the recipient to confirm the continuing financial eligibility of a client during the period of representation, in order to effectuate this section, when a grantee learns of facts which may reasonably bring the continued financial eligibility of the client into question, the grantee must make further inquiry and reassess the client's financial eligibility. 48 Fed. Reg. at 54205 (Nov. 30, 1983) (preamble to 1983 Final Rule).

Thus, in NLSP's case, NLSP must reassess the affect the award from the non-NLSP case has on the client's ability to afford private legal assistance. As required by §1611.9, if NLSP determines that the client is no longer eligible for LSC-funded legal assistance, NLSP must discontinue providing LSC-funded legal assistance, provided that such discontinuance is not inconsistent with the attorney's professional responsibility. Factors to be considered in determining whether discontinuing providing LSC-funded legal assistance can be made consistent with professional responsibility include the client's financial resources, the willingness of a private attorney to take the case, the complexity of the case and the stage of the proceedings, and the court's willingness to approve a motion to withdraw. *See* OLA External Opinion of August 17, 1981, to Ann Luttrell, White Mountain Apache Legal Aid Office; OLA External Opinion of June 19, 1978 to Bob Racunas, Neighborhood Legal Services Association. If NLSP determines that it must discontinue providing LSC-funded legal assistance it may either seek to withdraw from the case or, consistent with §1611.3(3), continue providing legal assistance supported by funds from a source other than LSC.

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) 295-1624