

MATTIE COHAN

From: Linda Perle [lperle@clasp.org]
Sent: Thursday, March 04, 2010 12:54 PM
To: MATTIE COHAN
Cc: Don Saunders
Subject: Comment on Interim final Rule on Attorneys' Fees

Mattie Cohan, Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation,
3333 K Street, NW
Washington, DC 20007

RE: Comment on Interim Final Rule on Attorneys' Fees

Dear Mattie:

I am writing this comment on behalf of CLASP and the NLADA Civil Policy Group's Restrictions and Regulations Committee. We write in strong support of the action taken by LSC with regard to the Interim Final Rule that was published in the *Federal Register* on February 11, 2010 (75 FR 6816). We want to thank the LSC Board and staff for their prompt action in publishing the new Interim Final Rule, timely and appropriately effectuating the will of Congress as expressed by the passage of the Consolidated Appropriations Act of 2009 which included the elimination of the restriction on LSC recipients and their employees on claiming, or collecting and retaining attorneys' fees.

Congress spoke clearly when it eliminated the attorneys' fees legislative restriction from the LSC appropriation, and LSC acted appropriately in adopting the Interim Final Rule which eliminated Part 1642 of the LSC regulations. We believe that by completely eliminating Part 1642, removing the regulatory restriction with regard to attorneys' fee claims for any work for which state or federal law authorized a litigant to seek fees, LSC has adopted the appropriate policy and has effectuated the will of Congress. Both the legislative and regulatory restrictions were on the action of claiming, or collecting and retaining attorneys' fees, not on earning the underlying fees which were authorized by state or federal law. By eliminating the restriction, Congress lifted the barrier that prevented recipients and their staff members from seeking, or collecting and retaining fees. LSC's action in adopting the Interim Final Rule that eliminates Part 1642 and suspending enforcement of the current regulation until the effective date of the Interim Final Rule appropriately permits grantees and their staff members, after the December 16, 2009 enactment of the FY 2010 appropriations act, to seek fees for all the work that they have done in the past or may do in the future. We fully support those actions and urge the board to continue them unchanged in any Final Rule that is ultimately adopted by LSC.

We also agree with LSC's actions to move the provisions of Part 1642 dealing with accounting for and use of attorneys' fees and with acceptance of reimbursements for costs and expenses from clients to Part 1609. These provisions have a long history in the LSC regulations and are not related to the restriction on claiming, or collecting attorneys' fees that was imposed by the appropriations rider in 1996. We also agree with LSC's action to remove the references to Part 1642 from Parts 1609 and 1610, which are now obsolete.

In the event that LSC does decide to adopt a Final Rule, we urge the board to incorporate without change the provisions of the Interim Final Rule.

Once again, thank you for the great work that you did in developing the ROP and LSC management's recommendation. Your work and the actions of the LSC board will be of great assistance to LSC grantees. It will allow them to access a critical source of sorely needed funding and enable them to serve more low-income clients. It will also permit them use an important strategic tool to more effectively represent their clients.

Yours truly,



Linda E. Perle

Director of Legal Services

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