

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
BOARD OF DIRECTORS

OPEN SESSION

Tuesday, December 15, 2009

2:31 p.m.

Legal Services Corporation
3333 K Street, N.W.
Washington, D.C. 20007

BOARD MEMBERS PRESENT:

Frank B. Strickland, Chairman

Michael McKay, Vice Chairman

Jonann C. Chiles

Thomas A. Fuentes

Herbert S. Garten

Laurie Mikva

Thomas R. Meites

Bernice Phillips-Jackson

Sarah M. Singleton

Helaine M. Barnett, ex officio

1 STAFF AND PUBLIC PRESENT:

2 Karen M. Dozier, Executive Assistant to the President
Charles Jeffress, Chief Administrative Officer

3 Victor M. Fortunato, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary

4 Mark Freedman, Senior Assistant General Counsel, Office
of Legal Affairs

5 Mattie Cohan, Senior Assistant General Counsel, Office
of Legal Affairs

6 Katherine Ward, Executive Assistant, Office of Legal
Affairs

7 David L. Richardson, Treasurer and Comptroller, Office
of Financial and Administrative Services

8 Alice C. Dickerson, Director, Office of Human
Resources

9 John C. Meyer, Director, Office of Information
Management

10 Jeffrey E. Schanz, Inspector General

Laurie Tarantowicz, Assistant Inspector General and
11 Legal Counsel, Office of the Inspector General

Joel Gallay, Special Counsel to the Inspector General,
12 Office of the Inspector General

Ronald "Dutch" Merryman, Assistant Inspector General
13 for Audit, Office of the Inspector General

Stephen Barr, Media Relations Director, Government
14 Relations and Public Affairs Office

Sean Driscoll, Special Assistant, Government Relations
15 and Public Affairs Office

Treefa Aziz, Government Affairs Representative,

16 Government Relations and Public Affairs Office

John G. Levi, LSC Board Nominee

17 Julie A. Reiskin, LSC Board Nominee

18 Don Saunders, National Legal Aid and Defenders
Association (NLADA)

19 Robert E. Stein, Chair, Standing Committee on Legal
Aid & Indigent Defendants (SCLAID), American Bar
20 Association

Linda Perle, Center for Law & Social Policy (CLASP)

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C O N T E N T S

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P R O C E E D I N G S

(2:31 p.m.)

CHAIRMAN STRICKLAND: Let me call to order a meeting of the board of directors of the Legal Services Corporation for December 15, 2009, a call pursuant to notice published in the Federal Register. And I presume everybody has received by e-mail a copy of the agenda for the open session portion of this meeting. Or is this meeting going to be entirely in open session?

MS. SINGLETON: I think it's all open, Frank.

MS. MIKVA: This is Laurie. I think we did allow for the possibility of scheduling of a closed meeting, but I don't think we have to schedule a closed portion.

MR. FORTUNO: That's right.

CHAIRMAN STRICKLAND: Does any member of the board seek to have any portion of this meeting in closed session?

MR. McKAY: I recommend we go into closed session.

CHAIRMAN STRICKLAND: All right. I

1 would -- would you make that in the form of a motion,
2 please?

3 M O T I O N

4 MR. McKAY: I move that we go into closed
5 session.

6 CHAIRMAN STRICKLAND: All right. Is there a
7 second to that motion?

8 MR. GARTEN: Second.

9 CHAIRMAN STRICKLAND: Any discussion?

10 MS. SINGLETON: Yes. I'd like to know why.

11 MR. McKAY: Because there are personnel issues
12 that I wanted to discuss amongst ourselves before we
13 announce them publicly.

14 CHAIRMAN STRICKLAND: Okay. Any further
15 discussion?

16 (No response.)

17 CHAIRMAN STRICKLAND: Let's proceed to a vote
18 on the motion. All those in favor, please say aye.

19 (A chorus of ayes.)

20 CHAIRMAN STRICKLAND: Opposed, nay.

21 (No response.)

22 CHAIRMAN STRICKLAND: All right. The ayes

1 have it and we will need to go back through our phone
2 routine. Same call-in number, different code.

3 (The board adjourned to closed session from
4 2:36 p.m. to 2:55 p.m.)

5 CHAIRMAN STRICKLAND: All right. We'll
6 reconvene the open session of the meeting of the board
7 of directors scheduled for December 15, 2009.

8 And we have two items of business. One is I'm
9 going to make an announcement. And after that, we want
10 to get some advice from Vic and others relative to the
11 possible suspension of enforcement of the attorney's
12 fees restriction and what action we could or should
13 take relative to that during this particular meeting.
14 So that will be the second item of business.

15 But the first announcement is this. The board
16 in closed session has received a report and
17 recommendation from the board's search committee of a
18 person to serve as interim president of LSC. That
19 report was received without objection.

20 We will not take a vote on that report today.
21 We will reconvene a meeting of the board for Tuesday,
22 December 22nd at 3:30 p.m. Eastern standard time for

1 that purpose. It's our understanding, and please
2 correct me if I'm wrong, Vic, that we can recess a
3 meeting for five business days without publishing an
4 additional notice. Is that correct?

5 MR. FORTUNO: That's correct.

6 CHAIRMAN STRICKLAND: All right. We count
7 that as five business days, beginning the count with
8 tomorrow. Are we counting it correctly?

9 MR. FORTUNO: That is, starting tomorrow, you
10 have -- you could recess for up to five business days
11 without the need for a new notice. And that of course
12 assumes that there are no new items on the agenda.
13 That is for purposes of consideration of the items
14 currently on the agenda.

15 CHAIRMAN STRICKLAND: Correct. It is for the
16 purpose of receiving a report -- or consider and act on
17 a recommendation made to the board for an interim
18 president.

19 MR. FORTUNO: Then yes, absolutely.

20 CHAIRMAN STRICKLAND: That is a current agenda
21 item. So are we in order on that?

22 MR. FORTUNO: Yes, you are.

1 CHAIRMAN STRICKLAND: And that's all we'll
2 have on that today.

3 So now I'd like to move to some business that
4 has come to our attention since we published the
5 notice. And Vic, if you would walk us through how we
6 handle that in terms of being able to take up that
7 business at this time. And then we'll move on to the
8 business.

9 MR. FORTUNO: Yes. Mr. Chairman, this is, for
10 the record, Vic Fortunio, general counsel. The board is
11 of course subject to the Government in the Sunshine Act
12 and LSC's implementing regulation. And ordinarily we
13 would have to give seven days, at least seven days,
14 public notice in advance of a meeting of an item to be
15 taken up by the board.

16 In this case, there was a meeting already
17 scheduled, and there is a provision in the Sunshine Act
18 and in our implementing regulation that allows that
19 when a meeting is schedule and Corporation business
20 requires acting on less than seven days notice, and
21 that no earlier notice was practicable, that the board,
22 if it takes an on-the-record vote that no

1 earlier -- hello? Anyhow, that no earlier notice was
2 practicable and that the Corporation business requires
3 it, may go ahead and add an item to the agenda.

4 And what we propose is to bring to the board
5 today the issue which I think was alluded to a moment
6 ago about the restriction on attorney's fees, the
7 statutory restriction about to be lifted, it appears,
8 and what that means for the regulatory restriction.

9 I think that the matter can be taken up, but
10 it would require a vote on the record by the board that
11 because the Senate acted on this on Sunday and the
12 matter has just been forwarded -- that is, the bill now
13 having been approved by both houses of
14 Congress -- having been forwarded to the President for
15 his signature, and the regulation remaining in effect
16 after the President signs the law into -- the bill into
17 law, there's a question about the regulation and what
18 the effect of that is and what should be done.

19 We would like to address with the board that
20 issue, what we do about the regulation. But first, I
21 think there needs to be a vote as to the permissibility
22 of this being taken up at this time. Again, the two

1 points to factor into the vote are whether Corporation
2 business requires it and whether earlier notice was
3 practicable.

4 CHAIRMAN STRICKLAND: Does that need to be in
5 two separate motion or all in one?

6 MR. FORTUNO: No. It can be one motion.

7 CHAIRMAN STRICKLAND: Would somebody make that
8 motion?

9 M O T I O N

10 MR. MEITES: Yes. I so move.

11 CHAIRMAN STRICKLAND: Moved by Tom Meites. Is
12 there a second?

13 MR. McKAY: Second.

14 CHAIRMAN STRICKLAND: Any discussion?

15 (No response.)

16 CHAIRMAN STRICKLAND: All those in favor,
17 please say aye.

18 (A chorus of ayes.)

19 CHAIRMAN STRICKLAND: Opposed, nay.

20 (No response.)

21 CHAIRMAN STRICKLAND: The ayes have it, and
22 we're now in a position to take up the proposed agenda

1 item. Vic, are you going to lead the discussion on
2 that as well?

3 MR. FORTUNO: Yes, I will. As I think you all
4 know, the FY 2010 Consolidated Appropriations Bill that
5 covers LSC has been approved by both houses of
6 Congress. It's awaiting the President's signature.

7 It's anticipated that because our continuing
8 resolution runs through Friday, that the omnibus bill,
9 or Consolidated Appropriations Bill, will be signed by
10 the President by Friday, which then leaves a question
11 of: Since that legislation would lift the attorney's
12 fees restriction, what happens in light of the fact
13 that there remains a regulation restricting the claim,
14 collection, and retention of attorney's fees?

15 The lifting of the provision in the
16 legislation does not operate to rescind the regulation.
17 The regulation remains in force. And so some action
18 would have to be taken in order to either roll back in
19 whole or in part the regulation, and also there is a
20 requirement for how that be done; because that is by
21 regulation, it has to be undone by regulation. In
22 other words, the same level of formality employed to

1 promulgate has to be employed to modify it or rescind
2 it.

3 So while that takes place, and staff is
4 feverishly working on a rulemaking options paper that
5 can be provided to the board so that the ops and regs
6 committee can take up this matter and then settle on a
7 recommendation to make to the board, in the interim it
8 appears that the legislation will take effect so that
9 we will have the restriction removed from statute but
10 remaining in regulation.

11 So what management proposes to do is to
12 suspend enforcement of the regulation until such time
13 as the board has an opportunity to take up the issue
14 and formally act on it. The suspension of enforcement
15 would take place upon the signing of the legislation by
16 the President and becoming effective, and would run
17 only until the board takes some action to amend or
18 rescind the reg or directs otherwise.

19 Are there any questions about that so far?

20 CHAIRMAN STRICKLAND: All right. Before
21 we -- well, should we -- in order to get the matter on
22 the floor, doesn't someone need to make a motion to do

1 what you just described, Vic, that is, suspend the
2 enforcement of the attorney's fees?

3 MR. FORTUNO: Yes. Before that, however, I
4 should probably add one more point, and that is, one
5 issue that's been discussed, internally, at least, is
6 whether this suspension of enforcement of the
7 regulation would extend to actions, that is, fees that
8 are requested after the effective date of the
9 legislation, and prospectively only.

10 That is, whether, for example, on January 4th,
11 if the President has signed the bill and it's gone into
12 effect, whether on January 4th a grantee may file for
13 attorney's fees. And it's agreed and what management
14 proposes to do is to suspend enforcement as to any
15 matter where the grantee files January 1st or later,
16 and the request is for fees relating to work yet to be
17 done.

18 The distinction here is that there is a
19 question about what if a grantee, say on January 4th,
20 first business day of the year, files a petition for
21 attorney's fees in a matter that the work was done over
22 the past year or two or three?

1 Management is not prepared to speak to that
2 yet. That's an issue that the board would take up as a
3 policy matter, with some recommendation from
4 management, I would think. But it's a decision to be
5 made by the board as to whether it wants to roll back
6 the regulation in that regard.

7 And in the meantime, what management proposes
8 to do is to suspend the regulation prospectively, so to
9 speak, that is, to actions filed after January 1, where
10 what's sought is fees for work done after January 1.

11 MR. MEITES: Frank, this is Tom Meites. Can I
12 interrupt?

13 CHAIRMAN STRICKLAND: Yes, sir, Tom, go ahead.

14 MR. MEITES: Well, I'm uncomfortable with this
15 whole thing. We have an orderly process for reviewing
16 and amending our regulations. It starts with -- at ops
17 and regs. We consider the matter. We receive staff
18 reports. If we believe it should move on, we recommend
19 it to the board.

20 There are a host of issues involved in the
21 abrogation of the attorney's fees prohibition. Vic
22 alluded to one of them. What about time already spent

1 on a case? In due course, I anticipate that at the
2 January meeting staff will provide an options paper to
3 ops and regs as to what should be done, if it should be
4 done. We will consider it and either act that time or
5 call for more input from the staff and the public.

6 I absolutely positively do not believe it
7 appropriate that we in any way prejudge what should be
8 done in light of this abrogation of the prohibition.

9 If we decide on a suspension, I think it should be
10 explicitly limited to a direction from the board to
11 staff to take no action to enforce the prohibition
12 between now and when the board considers the matter.

13 Anything else than that, it seems to me, would
14 be both premature and also would be an abrogation of
15 our role to consider the widest possible range of views
16 on issues like this.

17 M O T I O N

18 MR. MEITES: So I'm prepared to move that the
19 board directs the staff not to enforce the regulation
20 until further action by the board. That's my motion.

21 MS. SINGLETON: Didn't we already have a
22 motion?

1 CHAIRMAN STRICKLAND: I think we had a motion
2 to take up -- or did we have a second motion? We had a
3 motion sort of to get into this business item. I don't
4 know that we've had an actual motion.

5 MR. FUENTES: Mr. Chairman, there is no motion
6 on the floor presently.

7 MR. MEITES: That is my motion.

8 CHAIRMAN STRICKLAND: All right. Is there a
9 second to Tom's motion?

10 MR. FUENTES: Second by Tom Fuentes.

11 CHAIRMAN STRICKLAND: All right. Let's have
12 discussion on the motion.

13 MS. SINGLETON: I want to make sure I
14 understand it. Tom, you're saying that no enforcement
15 action should be taken whatsoever regardless of when
16 the petition was filed or when the time was worked or
17 anything so that all those issues can be considered in
18 due course? Is that what your motion is saying?

19 MR. MEITES: That is correct. And as Vic
20 pointed out, our regulation still would otherwise be in
21 force. And we or our successors might decide to keep
22 the regulation in force. Isn't that a possibility?

1 Certainly it is. And I'm not prepared on a no-notice
2 deliberation to take any views whatsoever on the merits
3 of what substantive course we should take.

4 MS. SINGLETON: Okay. I'm just trying to
5 ascertain -- you're putting a blanket prohibition on
6 any enforcement of that reg. Right?

7 MR. MEITES: Right. That's correct. Pending
8 board consideration of the matter.

9 MR. FUENTES: Mr. Chairman, Tom Fuentes.

10 CHAIRMAN STRICKLAND: Go ahead, Tom.

11 MR. FUENTES: This confuses me just a little
12 bit. Is it, Tom, not your -- I thought your intent was
13 to leave the status quo.

14 MR. MEITES: That's correct, Tom. That's
15 exactly what I mean to do.

16 MR. FUENTES: Okay. But --

17 MR. MEITES: Except that -- except that the
18 staff will take no steps to enforce the present
19 regulation.

20 CHAIRMAN STRICKLAND: Well, let's talk about a
21 hypothetical. Suppose a grantee files a new case on
22 January 4th, the first business day, in which the

1 grantee seeks attorney's fees against one or more
2 defendants.

3 MR. MEITES: They do so at their own risk. If
4 the board decides to keep the regulation in force, then
5 they have violated our regulation. There is no
6 occasion in my mind to summarily abrogate a substantive
7 regulation. And as I pointed out, our successors or us
8 might decide to keep the regulation. I don't know. We
9 can all speculate about what we're going to do when
10 we're fully informed, but I don't think that's helpful.

11 MR. FUENTES: Mr. Chairman, when I seconded
12 that, I fully agreed with Tom's intent and purpose.
13 I'm just troubled by the way that it's stated.

14 MR. MEITES: If you can restate it, Tom, in a
15 more effective way, I'd appreciate it.

16 MR. FUENTES: Well, no. I think your words,
17 sir, are more elegant than mine. But it's to -- just
18 so I have clarity -- it's to leave things as they are
19 till we get at it in our normal protocols. Is that --

20 MR. MEITES: That's it, except with one
21 additional step, that the staff will take no action to
22 enforce the existing regulations. For example, let's

1 say they were investigating a grantee now for filing an
2 attorney's fee petition. They will take no further
3 steps towards pursuing that until the board --

4 CHAIRMAN STRICKLAND: Till further action by
5 the board?

6 MR. MEITES: Yes.

7 CHAIRMAN STRICKLAND: Okay.

8 MR. McKAY: And my only concern about that is
9 the hypothetical that Frank raises. Everyone's going
10 to know the decision that we would make today. And
11 that is that we are not going to enforce it, which
12 essentially results in the potential of the reverse,
13 the grantees filing petitions with an attorney's fees
14 claim.

15 MR. MEITES: Well, no. I think that a prudent
16 grantee will file no petitions till we consider this
17 matter. And why should they? Why can't they wait till
18 our January board meeting, or a sooner board meeting if
19 the board decides it is able to consider it sooner?

20 My considerable experience with attorney's
21 fees petitions is they can always wait another day.
22 Certainly defendant doesn't want them, and the courts

1 are always happy to give you more time.

2 MS. MIKVA: Tom, this is Laurie Mikva. I
3 don't have any experience. Is there any time limit
4 that eventually -- that one could run up against?

5 MR. MEITES: Well, there may be. There's the
6 one exception is there are some attorney's fees
7 statutes which treat attorney's fees as costs. And it
8 is possible that in some jurisdictions, there may be a
9 time limit where, after the conclusion of the case, you
10 have to file fee petitions as part of your bill of
11 costs. That's the only exception I'm aware of.

12 CHAIRMAN STRICKLAND: And if you don't, you've
13 waived it?

14 MR. MEITES: That's correct.

15 MS. SINGLETON: Well, even in those
16 jurisdictions you can ask for an extension (loud
17 background noise on conference call).

18 CHAIRMAN STRICKLAND: Would you say that
19 again, Sarah? I missed part of it.

20 MS. SINGLETON: Even in the jurisdictions that
21 I'm familiar with that treat attorney's fees as part of
22 a cost bill, you can file an extension to file your

1 cost bills. Now, you run the risk that some judge
2 won't give it to you, but you have that option.

3 CHAIRMAN STRICKLAND: I also think a grantee
4 who files an attorney's fees petition and tries to make
5 it retroactive to a case that was filed two years ago
6 proceeds at some risk. Maybe no greater risk than Tom
7 has already outlined, but it just doesn't seem
8 fundamentally unfair.

9 (Several people talking at once.)

10 MS. SINGLETON: Would you could -- Tom, would
11 you consider putting into your motion a statement that
12 the enforcements are suspended pending board
13 consideration of the impact of the statute without
14 project to looking at whether there should be
15 enforcement action based on conduct that takes place
16 during the suspension?

17 MR. MEITES: Yes, I agree with that. I'll
18 take that as a friendly amendment. If a grantee files
19 a fee petition during the suspension because of
20 compulsion of a deadline, then the staff is to take no
21 action, no enforcement action, because of the fact that
22 they are filing.

1 MR. GARTEN: May I ask Vic a question?

2 CHAIRMAN STRICKLAND: Yes. Go ahead.

3 MR. GARTEN: In the field of taxation in
4 regulations, most of the regulations are there (words
5 break up) after the law is passed, is there any
6 precedent with regard to our procedure here? You have
7 a law basically revoking previous provisions. And
8 wouldn't that automatically have terminated our
9 regulations?

10 MR. MEITES: Frank, this is -- Herb, this is
11 Tom. That may be. But it is --

12 MR. GARTEN: I didn't ask the question of you.
13 I asked it of Vic.

14 MR. MEITES: I'm sorry. I didn't hear you.

15 MR. FORTUNO: No, I think not. I think the
16 Corporation has some flexibility and discretion in
17 promulgating regulations that further the statutory
18 scheme and the mission of the Corporation, but are not
19 necessarily based on an actual restriction in a statute
20 or appropriations bill rider.

21 An example of that, for example, is the
22 redistricting regulation that was promulgated by the

1 Corporation back in the '80s. There was no statutory
2 basis for the restriction, but the court in that case,
3 the D.C. Circuit, determined that the Corporation had
4 the authority to regulate in that area.

5 So arguably, in this case, the Corporation
6 continues to have discretion to limit the collection of
7 attorney's fees by grantees. And it's because of that
8 principle that there is concern that while the
9 statutory provision is being lifted, in effect, by this
10 omnibus appropriation bill, that it does not serve to
11 also lift or rescind the regulation. That has to be
12 done separate and apart, and would be done and
13 accomplished by the board of directors by way of a
14 rulemaking.

15 MR. GARTEN: Thank you.

16 CHAIRMAN STRICKLAND: Okay. Any other
17 discussion on the amended motion?

18 MS. SINGLETON: Before we vote, could we hear
19 if there's any public comment on it?

20 CHAIRMAN STRICKLAND: Is there any public
21 comment?

22 MR. FUENTES: Mr. Chairman, Tom Fuentes. For

1 the record, so that we stay straight --

2 CHAIRMAN STRICKLAND: This is not the time for
3 public comment?

4 MS. SINGLETON: No, no. Hang on. An
5 amendment was offered.

6 MR. FUENTES: Sarah had offered an amendment
7 and Tom had accepted it as the mover. But I want
8 to -- I accept it as the seconder of the motion.

9 CHAIRMAN STRICKLAND: All right. Sarah, I
10 don't know that we -- it would be out of order for us
11 to hear public comment at this stage. But are you
12 asking us to waive that and hear public comment now?

13 MS. SINGLETON: Yes, because before we vote
14 it, we ought to hear if anybody out there has an
15 opinion on what we're talking about.

16 CHAIRMAN STRICKLAND: All right. I will ask
17 those on the call from the public, is there any public
18 comment at this point?

19 MS. PERLE: This is Linda Perle. Can you hear
20 me?

21 CHAIRMAN STRICKLAND: Yes.

22 MS. PERLE: Yes. I must say that I think

1 that -- maybe it's just me, but I'm really quite
2 confused in terms of what this is actually going to
3 mean for our grantees and what kind of advice we can
4 give people.

5 I mean, on one hand, the board says -- or the
6 conversation says that the board, if they adopted this
7 resolution, would be suspending enforcement. And then
8 on the other hand, I heard that if a program does in
9 fact seek attorney's fees, they do it at their peril.

10 I mean, I understand that the board could, you
11 know, in due time, when it makes its decision on what
12 to do through the formal rulemaking process, could
13 change their mind.

14 But it seems to me that if the programs are
15 told that there's going to be a suspension of
16 enforcement for the interim period, that that should be
17 what the board is saying in terms of what the staff
18 should do, that in other words, it shouldn't then go
19 back during that interim period and start enforcement
20 proceedings against a program that does what the
21 President's signature on the bill says that they should
22 be able to do.

1 Plus I have some confusion. The second area
2 of confusion is the enforcement proceedings, and then
3 the suspension of enforcement would be as of the date
4 of the signature on the bill. And then there was
5 discussion about not doing it until January 1st or
6 January 4th, being the first business day.

7 So it's not clear to me what happens between
8 the signing of the bill and January 1 in terms of
9 enforcement. That was very unclear.

10 So those are my comments.

11 CHAIRMAN STRICKLAND: Okay. Thank you. Any
12 other public comment?

13 MS. TARANTOWICZ: Yes. This is Laurie --

14 MR. SAUNDERS: This is Don Saunders. Only one
15 more issue, and I would not debate with Vic. Certainly
16 lots of research whether or not LSC should or could
17 keep the regulation in place longer term, given
18 congressional action.

19 But we would obviously very strongly object to
20 a position LSC would take which would suggest that
21 regardless of what the Congress did, you would maintain
22 1642 beyond your next meeting.

1 CHAIRMAN STRICKLAND: Okay.

2 MS. SINGLETON: Well, this is my question that
3 I don't understand. Let's say that the board looks at
4 this and decides what should happen with the regulation
5 is that attorney's fees that were earned during the
6 fiscal year 2010 can be applied for, and that
7 attorney's fees that were earned prior to fiscal year
8 2010 cannot be applied for, regardless of when the
9 application is made.

10 CHAIRMAN STRICKLAND: You probably want to use
11 calendar year on that.

12 MS. SINGLETON: No, I want to use fiscal year.
13 That's what I mean. This appropriation is for a fiscal
14 year.

15 CHAIRMAN STRICKLAND: Oh, all right. I follow
16 you.

17 MS. SINGLETON: It seems to me that it's quite
18 possible that that removing of the restriction ought to
19 apply to the fiscal year 2010. Okay.

20 But my point is, so we suspend enforcement
21 pending board application, or board consideration, of
22 what does it mean. And then we come across a person or

1 a program that has applied for fees that were earned
2 during fiscal year 2009. Does that mean that we could
3 never enforce what was then the regulation against
4 them?

5 MR. MEITES: If I could -- Frank, this is Tom.
6 Can I speak to that?

7 CHAIRMAN STRICKLAND: Yes, sir.

8 MR. MEITES: The way I understand the motion
9 now is that it's just -- the motion will accomplish
10 three things as far as enforcement. First, any ongoing
11 enforcement actions will be suspended. Second, that if
12 any grantee is under a deadline which would compel it
13 to file a petition between now and when the board acts,
14 there will be no enforcement action taken against them,
15 regardless of what we do with hours spent before or
16 after any particular date.

17 But third, all other grantees proceed at their
18 peril, which they have no need to act because there's
19 no deadline. And they can sit and wait to see what we
20 decide to do. As always, the grantee seeks to be
21 informed of new regulations, and once we have
22 regulations, they'll have the guidance they need.

1 MS. SINGLETON: Okay. So that even if the
2 grantee guessed wrong or made an application that
3 turned out to be wrong, as long as they were acting
4 under a deadline, they could not be prosecuted --

5 MR. MEITES: Right.

6 MS. SINGLETON: -- or prosecuted is the wrong
7 word, but they could not be investigated for violation
8 of this reg. Is that what you're saying this motion
9 would accomplish?

10 MR. MEITES: You've got it. What I'm
11 concerned about, Sarah, is having a loophole which
12 allows grantees to file, you know, all the fee
13 petitions they had in their drawer for the last ten
14 years. I want to limit it just to those who need to
15 file.

16 MS. PERLE: Can I ask another question? This
17 is Linda Perle again.

18 CHAIRMAN STRICKLAND: Go ahead, Linda.

19 MS. PERLE: I'm concerned -- I mean, I
20 understand from what Tom Meites has said is that the
21 intention of the board would be to take this up at the
22 January meeting. But A, I'm concerned that it -- you

1 know, it might not get resolved at that meeting, and
2 then there's some significant period of time until the
3 next meeting; and B, that even if it is, then there's a
4 30-day comment period that's required by statute. And
5 then you have to wait until the following meeting to
6 get it resolved.

7 So, I mean, it seems to me that we're looking
8 probably -- unless the board decides to schedule
9 another meeting in between, we're looking till April.
10 This is, you know, on a one-year appropriation. So
11 we're looking at potentially almost half a year,
12 starting where we counted from, gone before there is
13 any effectuation of what was a congressional recant.

14 MR. MEITES: Frank, this is Tom. I'm prepared
15 to have an ops and regs committee meeting that says we
16 get a staff report and immediately would make a
17 recommendation to the board, and the board can schedule
18 its deliberations just as soon as possible.

19 CHAIRMAN STRICKLAND: All right. But in terms
20 of today's action, to be responsive to what's going on
21 in the Congress, we have your motion as amended.

22 MS. TARANTOWICZ: Mr. Chairman, this is Laurie

1 Tarantowicz from the OIG. If I might ask a question?

2 CHAIRMAN STRICKLAND: Yes. Go ahead, Laurie.

3 MS. TARANTOWICZ: My question concerns the
4 effect of the motion on -- because this might affect
5 the work of our office or the work of the independent
6 public accountants conducting audits of our
7 grantees -- the effect of the motion on any claims for
8 attorney's fees that have already been made that
9 discover were made, you know, before the -- obviously,
10 before the effective date of the statute and at the
11 time would have been in violation of the law and LSC's
12 regulation.

13 Does the motion affect those matters such that
14 enforcement would be suspended?

15 CHAIRMAN STRICKLAND: Let's hear from the
16 maker of the motion.

17 MR. MEITES: That's the sense of my motion,
18 yes.

19 MS. TARANTOWICZ: Okay. Thank you.

20 CHAIRMAN STRICKLAND: So, Laurie, does that
21 answer your question?

22 MS. TARANTOWICZ: It does. Thank you.

1 CHAIRMAN STRICKLAND: All right. Any further
2 discussion on the motion as amended?

3 (No response.)

4 CHAIRMAN STRICKLAND: All right. Hearing
5 none, let's proceed to a vote on the amended motion.
6 All those in favor please say aye.

7 (A chorus of ayes.)

8 CHAIRMAN STRICKLAND: Opposed, nay.

9 (No response.)

10 CHAIRMAN STRICKLAND: The ayes have it and the
11 motion is adopted.

12 Looking back at the agenda here, we now could
13 consider and act on other business. Is there any other
14 business to come before today's meeting?

15 (No response.)

16 CHAIRMAN STRICKLAND: Is there any additional
17 public comment? We've already had some, but is there
18 any other public comment?

19 MS. PERLE: Can I just ask about my first
20 question?

21 CHAIRMAN STRICKLAND: Sure. Go ahead.

22 MS. PERLE: About the -- you said the date on

1 which enforcement would be suspended would be the date
2 of the President's signature on the bill.

3 MS. SINGLETON: Who said that?

4 MS. PERLE: Pardon me?

5 MS. SINGLETON: Who said that?

6 MS. PERLE: I think Vic said that.

7 MS. SINGLETON: Yes, but I don't think that
8 was in the motion.

9 MS. PERLE: Okay. So then when is the motion
10 effective? That's not clear to me. And there's this
11 question about the two-week period between when the
12 bill is to be signed and the beginning of January. I
13 was wondering about that.

14 MS. SINGLETON: I thought it would be
15 effective right now. Tom, what did you intend?

16 MR. MEITES: That's correct.

17 MS. PERLE: So people were talking about
18 January 1, and that was just --

19 CHAIRMAN STRICKLAND: I think those were
20 hypotheticals, weren't they?

21 MS. PERLE: Those were hypotheticals, just if
22 the program did it. So in other words, it would be the

1 same hypothetical if the program -- assuming that the
2 President signs the bill some time this week, if the
3 program went out next week and filed the motion. It
4 would be the same as if he just did it on January 4th.

5 CHAIRMAN STRICKLAND: Right. I'm saying
6 correct. That's my understanding. Is that consistent
7 with your point of your motion, Tom?

8 MR. MEITES: Yes, it is.

9 MR. FORTUNO: If I may, Mr. Chairman, before
10 there's a vote -- this is Vic Fortunato again -- I don't
11 know that you want to suspend prior to the President
12 signing the bill because until that occurs, the
13 restriction in the statute hasn't been lifted.

14 CHAIRMAN STRICKLAND: Well, maybe we should
15 consider adding some wording to the motion to that
16 effect.

17 MR. FORTUNO: Maybe suspend enforcement of the
18 regulation commencing the date that the President signs
19 the bill into law.

20 CHAIRMAN STRICKLAND: Yes. Is that -- Tom, is
21 that satisfactory, if we -- well, procedurally I want
22 to make sure we do this correctly, that we get that

1 into the motion. If we need to reconsider the matter,
2 we can do that.

3 MR. MEITES: Well, that's fine with me.
4 Whatever you all think the best procedural way to do
5 that, either a new motion or reconsider the present
6 motion.

7 M O T I O N

8 MR. FUENTES: Mr. Chairman, in order to do
9 this under parliamentary procedure in the correct
10 fashion, having voted with majority, reconsider the
11 matter just voted on?

12 CHAIRMAN STRICKLAND: All right. Is there a
13 second to the motion to reconsider?

14 MR. MEITES: Second.

15 CHAIRMAN STRICKLAND: Any discussion?

16 (No response.)

17 CHAIRMAN STRICKLAND: All those in favor,
18 please say aye.

19 (A chorus of ayes.)

20 CHAIRMAN STRICKLAND: Opposed, nay.

21 (No response.)

22 CHAIRMAN STRICKLAND: We will now reconsider

1 the motion. And Tom, would you like to make your
2 revised motion?

3 MR. MEITES: The motion is revised to have its
4 effective date the day the President signs the bill.

5 CHAIRMAN STRICKLAND: Is there a second to
6 that motion?

7 MR. FUENTES: Second the motion.

8 CHAIRMAN STRICKLAND: Discussion?

9 MS. MIKVA: I'm sorry. This Laurie Mikva.
10 What is your concern, Vic? I'm not sure I understand.

11 MR. FORTUNO: Oh, if we're going to suspend
12 enforcement of the attorney's fees restriction, I don't
13 think we should be doing that while the restriction is
14 still in effect. The statutory restriction remains in
15 effect until such time as the President signs into law
16 the bill that would lift that.

17 So I think it would be premature to suspend
18 enforcement at a time that the bill has not yet been
19 signed. So I would suggest that at the earliest,
20 enforcement should be suspended at the same time as the
21 President signs that bill into law.

22 MR. GARTEN: Not just premature. It would be

1 illegal.

2 CHAIRMAN STRICKLAND: Right.

3 MS. MIKVA: Okay. But it will suspend all
4 enforcement at that point, regardless of when the --

5 MS. SINGLETON: Yes.

6 CHAIRMAN STRICKLAND: That's correct.

7 MR. FORTUNO: That's my understanding, yes.

8 CHAIRMAN STRICKLAND: So we won't get ahead of
9 ourselves.

10 MS. MIKVA: All right. Thank you.

11 CHAIRMAN STRICKLAND: So I think we have
12 before us the new motion made by Tom Meites, seconded
13 by Tom Fuentes. Let's proceed to a vote on that
14 motion.

15 All those in favor, please say aye.

16 (A chorus of ayes.)

17 CHAIRMAN STRICKLAND: Opposed, nay.

18 (No response.)

19 CHAIRMAN STRICKLAND: It's adopted
20 unanimously.

21 And now we're back on the course of the
22 agenda. Is there any additional public comment?

1 (No response.)

2 CHAIRMAN STRICKLAND: Next is consider and act
3 on a motion to adjourn the meeting. Is there such a
4 motion?

5 M O T I O N

6 MR. GARTEN: So move.

7 CHAIRMAN STRICKLAND: Second?

8 MS. MIKVA: Second.

9 CHAIRMAN STRICKLAND: All those in favor,
10 please say aye.

11 (A chorus of ayes.)

12 CHAIRMAN STRICKLAND: Thank you very much,
13 ladies and gentlemen, and we are adjourned.

14 (Whereupon, at 3:36 p.m., the open session of
15 the board was adjourned.)

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