



OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION
AO-2014-002

SUBJECT: Allocations to PAI Requirement of Costs Associated With Services Provided
During Common Interest Litigation

DATE: March 7, 2014

Question Presented

Whether a recipient can allocate to its Private Attorney Involvement (PAI) requirement costs associated with support provided to a recipient in its representation of an eligible client by a private attorney whose separate client is not eligible for LSC-funded assistance.

Brief Answer

Yes. The recipient may allocate costs toward the PAI requirement to the extent that the private attorney's efforts on behalf of his or her separate client benefit the eligible client of the recipient, such as when the private attorney drafts part of a pleading that asserts a common claim or defense.

Legal Authority

45 C.F.R. § 1614.3 prescribes the range of activities for which recipients may allocate costs to the PAI requirement. Section 1614.3(b) permits recipients to allocate costs to PAI for "support" provided by a private attorney to the recipient in its delivery of legal assistance to eligible clients or by the recipient in furtherance of certain activities undertaken by private attorneys.

(b) Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and

(2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

Id. § 1614.3(b)(1), (2).

Analysis

Under the PAI rule, recipients may allocate costs associated with two types of support activities toward the PAI requirement. One is support provided by a private attorney to a recipient in the recipient's delivery of legal assistance to eligible clients. Id. § 1614.3(b)(1). This type of support includes co-counseling arrangements. Id. The other is providing support "in furtherance of activities undertaken pursuant to this Section[.]" Id. § 1614.3(b)(2).

Under either of these provisions, whether the recipient may allocate to the PAI requirement costs associated with services provided by a private attorney turns on whether those services benefited an eligible client. Section 1614.3(b)(1) allows a recipient to allocate to the PAI requirement costs associated with assistance that a private attorney provides to the recipient in the recipient's representation of an eligible client. Where a recipient and a private attorney each represent his or her own separate client in litigation, a recipient may well incur costs for supporting the activities of a private attorney that inure to the benefit of the recipient's eligible client. For example, the recipient and the private attorney may divide certain tasks, such as conducting or defending a deposition, drafting discovery or pleadings, or interviewing witnesses. To the extent that the private attorney undertakes these tasks and the recipient's eligible client benefits from the private attorney's work, the recipient may allocate to the PAI requirement costs associated with the private attorney's efforts.

The fact that the private attorney's efforts would also benefit a separate, ineligible client does not alter the fact that the private attorney's work benefits the recipient's eligible client. A recipient would not be able to allocate costs for any time the private attorney spends working on tasks that benefit only the private attorney's separate client, such as preparing a portion of a brief that relates to a defense or claim unique to the private attorney's client. Such work would not meet the PAI rule's purpose of involving private attorneys in providing legal assistance to eligible clients. It would therefore be impermissible for a recipient to allocate to the PAI requirement costs associated with such work.

Conclusion

In the context of common-interest litigation, a recipient may allocate to the PAI requirement costs associated with the delivery of services by a private attorney to his or her separate client. The recipient may allocate costs to the extent that the private attorney's work

benefited the recipient's client. The recipient may not allocate costs associated with work that inured solely to the benefit of the private attorney's ineligible client.

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