



Sent by e-mail to: lscrulemaking@lsc.gov

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Re: Comments on Revisions to Part 1609, 82 FR 10446 (February 13, 2017)

This letter is submitted in response to the Legal Services Corporation's (LSC) Notice of Proposed Rulemaking (NPRM) request for public comments regarding proposed revisions to the regulation on Fee-Generating Cases, 45 C.F.R. 1609. These comments are submitted on behalf of NLADA by its Civil Council, the elected representative body that establishes policy for the NLADA Civil Division, and its Regulations Committee.

NLADA appreciates the opportunity for input on LSC's proposed revisions through public comments submitted by NLADA, LSC-funded programs, and other stakeholders.

Below, we highlight areas of the NPRM that would be particularly beneficial to programs that receive LSC funding and their client communities.

1. Proposed 45 CFR 1609.2 (3) Permitting Brief Advice and Services to Eligible Clients for Potential Fee Generating Cases

NLADA fully supports LSC's addition to 45 C.F.R. 1609.2 that clarifies advice and counsel or limited services do not fall within the definition of fee generating cases. This subsection, which codifies the Office of Legal Affairs Advisory Opinion AO-2015-002 within the regulation, provides clear guidance to programs. The provision is beneficial to LSC eligible clients by affording them the opportunity to receive brief advice or services regarding a fee generating case. The program can provide legal advice or take limited action that can be critical to preserving the client's rights, such as the ability to bring an action, while seeking representation from the private bar. For example, the revised regulation allows a recipient to inform an eligible client that they must meet a deadline to file a claim (e.g., statute of limitations) or lose their right to bring the action. The client can then be advised how to seek private counsel and, if the client is unable to find an attorney willing to accept her case, the process to reapply for services.

2. Proposed Revisions to 45 CFR 1609.4: Requiring Fee-Generating Cases to be Filed in Name of Recipient

NLADA generally supports LSC proposed revisions to 45 CFR 1609.4 making clear that attorney's fees are to be allocated to the grantee and not individual attorneys. This alleviates any question regarding how attorney's fees should be allocated and alleviates potential disputes by individual attorneys with the grantee. However, one grantee expressed concerns about LSC's proposed revision to 45 CFR 1609.4(a) that requires that: "to the extent permitted by law" petitions for attorney's fees shall be filed in the name of the recipient. The concern is that state court rules may require that licensed, individual attorneys be designated on a petition for attorney's fees instead of an organization or firm, such as a recipient. Another grantee indicated that the Social Security Administration will only issue a check for attorney's fees in an individual attorney's name and not the name of an LSC funded organization.

The comments in the preamble indicate that LSC considered this issue when inserting the phrase "to the extent permitted by law" and did not intend that a recipient's compliance with a state court rule mandating designation of an individual attorney on a petition for attorney's fees would be a violation of 1609.4: "Second, LSC proposes to state explicitly that, in the event a jurisdiction requires that attorneys' fee petitions be made in a staff attorney's name, the staff attorney must remit the award to the recipient, which must then allocate an award of attorneys' fees to its LSC grant account in proportion to the amount of LSC funds used to obtain the award." 82 FR 10446, 10448.

Since there can be distinctions between statutes, court rules and other rules, NLADA recommends that the language in 45 CFR 1609.4 be revised to read:

"to the extent required by law or rules in the jurisdiction"

This would alleviate concerns or questions by recipients when required by a state or federal court rule or other rule, rather than a statute, to designate an individual attorney when filing an attorney's fee petition.

Thank you for the opportunity to provide public comments on LSC's proposals to revise Fee-Generating Cases, 45 C.F.R. 1609.

Sincerely,

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