



**LEGAL SERVICES CORPORATION**

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May 20, 1997

Roy L. Pearson, Jr., Esq.  
Assistant Director for Legal Operations  
Neighborhood Legal Services Program  
701 Fourth Street, N.W.  
Washington, D.C. 20001

Re: Application of Part 1642 in Remand Proceeding on Punitive Damages

Dear Mr. Pearson:

Your letter of May 2, 1997, requests a written opinion as to whether a Legal Services Corporation ("LSC") grantee's presentation of proof of attorney time expended in prosecuting a case at a re-trial on the issue of punitive damages violates Part 1642 of LSC's regulations which prohibits the seeking of attorneys' fees. Based on the facts presented in your letter, there would be no violation of Part 1642.

First, as you letter indicates, the prohibitions in Part 1642 do not apply to any case filed prior to April 26, 1996. 45 CFR §1642.4(a). Since your case, including the punitive damages claim, was filed long before that date, a claim for attorneys' fees is not barred. The exception attaches as of the date the case is filed and is not affected by subsequent appeals or remands. The exception would not apply, however, to any new or additional claims made in such a case on or after April 26, 1996. Thus, you may again put on proof of the amount and value of the time expended in prosecuting the case, so long as they do not relate to any new claims added since April 26, 1996.

Second, the exception for "reimbursement of costs and expenses from an opposing party" would not be applicable to your case. According to the facts presented in your letter, the presentation of proof relates to the "attorney time" in prosecuting the case. The exception for costs and expenses, which is in 45 CFR §1642.2(b)(4) of the final regulations, relates to necessary outlays for fees, court costs, copying, travel, and other direct expenses paid in the

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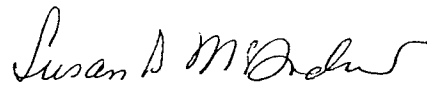
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course of the litigation. Compensation for an attorney's time is not a "cost or expense," but is the essence of the definition of attorneys' fees.

Please let me know if you have any further questions or concerns about the above matter.

Sincerely,

A handwritten signature in cursive script that reads "Susan D. McAndrew". The signature is written in black ink and is positioned above the typed name.

Susan D. McAndrew  
Assistant General Counsel