

§ 1609.3

behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) *Fee-generating case* does not include a case where:

(1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(2) A recipient undertakes representation under a contract with a government agency or other entity.

§ 1609.3 General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not provide legal assistance in a fee-generating case unless:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

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(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

(c) Recipients should refer to 45 CFR part 1642 for restrictions on claiming, or collecting and retaining attorneys' fees.

§ 1609.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

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§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients and to ensure that no LSC-funded entity shall engage in any restricted activities and that recipients maintain objective integrity and independence from organizations that engage in restricted activities.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and