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*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

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**THE PENNSYLVANIA HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
SUBCOMMITTEE ON COURTS HEARING  
ON HOUSE BILL 2075  
TUESDAY, APRIL 14, 1998  
HERSHEY PUBLIC LIBRARY  
701 COCOA AVENUE  
HERSHEY, PA 17033  
1:00 P.M.**

**AGENDA**

- 1:00 P.M.                    Opening Statement  
                                  The Honorable Daniel Clark  
                                  Chairman, Subcommittee on Courts
- Patricia A. Dubin, Esquire  
                                  Women Against Abuse
- 1:30 P.M.                    Betty Garlow, Esquire  
                                  Pennsylvania Coalition Against Domestic Violence
- 2:00 P.M.                    Ms. Erminia Kleppinger  
                                  Turning Point
- 2:30 P.M.                    Michael Viola, Esquire

IV



- WHAT'S NEW
- ACTS/REGULATIONS
- LSC STRUCTURE
- LSC DIRECTORY
- LINKS
- E-MAIL LSC

## PART 1642-ATTORNEYS' FEES

### PREAMBLE

**SUMMARY:** This final rule implements a restriction in the Legal Services Corporation's FY 1996 appropriations act that is currently incorporated by reference in the Corporation's FY 1997 appropriations act that prohibits LSC recipients from seeking attorneys' fees in cases filed on or after April 26, 1996. The rule clarifies the meaning of attorneys' fees and provides guidance on the scope of the restriction.

**DATES:** This final rule is effective on June 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, (202) 336-8817.

**SUPPLEMENTARY INFORMATION:** On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Legal Services Corporation ("LSC" or "the Corporation") Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement §504(a)(13) of the Corporation's FY 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), prohibiting LSC recipients and their employees from claiming, or collecting and retaining attorneys' fees. The Committee held hearings on July 10 and 19, and the Board adopted an interim rule on July 20, which was published on August 29, 1996, in the Federal Register with a request for comments.

The interim rule was based, in part, on a prior version of 45 CFR Part 1609, which included the Corporation's regulations dealing with attorneys' fees in relation to fee-generating cases. The Corporation decided to treat fee-generating cases and attorneys' fees in two separate rules. Revisions to the Corporation's fee-generating rule (Part 1609) were published in a proposed rule and provisions implementing the new restriction on attorneys' fees (Part 1642) were published as an interim rule on August 29, 1996. A final version of the fee-generating rule (Part 1609) was published on April 21, 1997 (62 FR 19398).

The Corporation received 37 timely comments on the interim attorneys' fees rule and the Committee held public hearings on the rule on December 13, 1996, and March 7, 1997. The Committee made several revisions to the interim rule before recommending the final rule to the Board. The Board adopted the Committee's recommended version on March 8, 1997.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, *see* Pub. L. 104-208, 110 Stat. 3009. It incorporated by reference the §504 condition on LSC grants included in the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the applicable section number of

42 U.S.C. 406(b)(1). This provision clearly envisions court involvement. Thus, although the norm is for the client to enter into a contingency fee agreement with the attorney, there is often oversight by the courts. For example, in one Social Security case, a court found that "the Court is not required to give 'blind deference' to a contractual fee agreement and must ultimately be responsible for fixing a reasonable fee for the judicial phase of the proceedings." *Kimball v. Shalala*, 826 F. Supp. 573 (D. Maine 1993). Other courts have determined that attorneys would not be permitted to receive the full 25 percent contingency fee allowed under the Social Security Act if the attorney engaged in improper conduct or was ineffective or the attorney would enjoy an undeserved windfall due to the client's large back pay award or the attorney's relatively minimal effort. *Hayes v. HHS*, 916 F.2d 351 (6th Cir. 1990). Regardless of the scope of Court involvement in any particular agreement between a client and the attorney, the Corporation is persuaded that it is reasonable to interpret the statutory language as including social security fees and that is what Congress intended.

The final definition also continues to include fee-shifting fees, which are fees paid by the losing party to compensate the attorney of the prevailing party. Such fees are generally awarded pursuant to a fee-shifting statute or under common law. The accompanying definition of "award" in this section is intended to underscore this meaning.

The Board also decided to define in a new paragraph (c) what is not included in the definition of attorneys' fees. Paragraph (c)(1) includes a provision that was moved from the prohibition section in the interim rule (§1642.3(c)(2)), which clarifies that compensation pursuant to court appointments, as authorized by 42 U.S.C. 2996e(d)(6) of the LSC Act, does not constitute attorneys' fees.

Paragraph (c)(2) is a new provision which states that a payment by a governmental agency or other third party to a recipient to represent clients is not an attorneys' fee. Such payments are generally made under a grant or contract and do not consist of an award ordered by a court or administrative party that the unsuccessful party pay attorneys' fees to the prevailing party. Nor do they constitute fees from a client's back statutory benefits.

Paragraph (c)(3) has been revised and moved from §1642.3(c)(3) of the interim rule. In response to comments, it now provides that attorneys' fees do not include sanctions imposed by court practices as well as court rules, and also do not include sanctions authorized by statute.

Finally, paragraph (c)(4) clarifies that reimbursement of costs and expenses from an opposing party or from a client as permitted under §1642.6 of this part does not constitute attorneys' fees. This provision was removed from §1642.3(c)(4) of the interim rule and revised to cite §1642.6. Fees are compensation for an attorney's time, while costs and expenses are compensation for necessary outlays made in the course of preparation for and/or litigation of a case. Some common types of costs and expenses are: document copying costs, travel expenses such as airline tickets, court reporter fees and other costs of depositions, expert witness fees, filing fees and other court costs charged litigants by the courts.

Based on experience in implementing the interim rule, Corporation staff recommended including in the final rule guidance on what it means to "claim" attorneys' fees. The Board agreed and added a definition to clarify that to "claim" attorneys' fees means to include a

costs and expenses incurred in connection with cases where the client recovers damages or statutory benefits, provided that the client has agreed in writing to reimburse the recipient for such costs and expenses out of any recovery. This section also authorizes recipients to require clients who do not qualify for *in forma pauperis* to pay court costs.

*Section 1642.7 Recipient policies, procedures and recordkeeping*

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain sufficient documentation to demonstrate compliance with this part.

**List of subjects in 45 CFR part 1642**

Attorneys' fees; Grant programs; Legal services.

For reasons set forth in the preamble, 45 CFR Part 1642 is revised to read as follows:

**PART 1642-- ATTORNEYS' FEES**

Sec.

1642.1 Purpose.

1642.2 Definitions.

1642.3 Prohibition.

1642.4 Applicability of restriction on attorneys' fees.

1642.5 Accounting for and use of attorneys' fees.

1642.6 Acceptance of reimbursement from a client.

1642.7 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(d)(6); Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321, Section 504(a)(13).

SOURCE: 62 FR 25862, May 12, 1997, unless otherwise noted.

**Section 1642.1 Purpose.**

This part is designed to insure that recipients or employees of recipients do not claim, or collect and retain attorneys' fees available under any Federal or State law permitting or requiring the awarding of attorneys' fees.

**Section 1642.2 Definitions.**

(a) "Attorneys' fees" means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees or a payment to an attorney from a client's retroactive statutory benefits.

(b) "Attorneys' fees" do not include the following:

(1) Payments made to a recipient or an employee of a recipient for a case in which a court

(b) Attorneys' fees received pursuant to §1642.4(a) shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

#### Section 1642.6 Acceptance of reimbursement from a client.

(a) When a case results in a recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

#### Section 1642.7 Recipient policies, procedures and recordkeeping.

The 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

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III

Welcome  
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& GrantsGetting  
LSC's Help

WHAT'S NEW

ACTS/REGULATIONS

LSC STRUCTURE



LSC DIRECTORY

LINKS

E-MAIL LSC

45 CFR

**PART 1609-FEE-GENERATING CASES****PREAMBLE**

**SUMMARY:** This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to fee-generating cases. A major revision is the removal of the old regulation's provisions on attorneys' fees. Attorneys' fees now are addressed in 45 CFR part 1642 of the Corporation's regulations. In addition, other substantive and clarifying revisions are made, some sections have been merged, and unnecessary provisions have been eliminated.

**EFFECTIVE DATE:** This final rule is effective on May 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** This rule, which includes provisions on fee-generating cases and attorneys' fees has been under review by the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") since September 1994. The Committee held public hearings on September 17 and October 28, 1994, and February 17, 1995, on proposed revisions. When it became apparent that Congress was considering legislation that would significantly affect this rule, the Committee suspended consideration until the new legislation became law on April 26, 1996. *See* Public Law 104-134, 110 Stat. 1321 (1996), the Corporation's FY 1996 appropriations act.

The new legislation did not affect this part's provisions on fee-generating cases but it did change the law on attorneys' fees by prohibiting recipients from claiming, or collecting and retaining, any attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. *See* §504(a)(13) of Pub. L. 104-134. On May 19, 1996, the Committee directed LSC staff to prepare an interim rule to implement the new legislative restriction on the taking of attorneys' fees by LSC recipients. The Corporation adopted a separate rule, 45 CFR part 1642, to address the attorneys' fees issue, which was published as an interim rule on August 29, 1996.

In order to delete the attorneys' fees provisions from part 1609 and make other revisions, the Committee met on July 10 and 19, 1996, to consider draft revisions to part 1609 and make a recommendation to the Board. The Board authorized the publication of a proposed rule, which was published in the Federal Register for public notice and comment on August 29, 1996.

The Corporation received 37 timely comments. The Committee held public hearings on the rule on December 14, 1996, and January 5, 1997, and made revisions to the proposed

rule, which they recommended to the Board. The Board adopted the Committee's recommended version on January 6, 1997, as a final rule.

This final rule deletes the attorneys' fees provisions in the old rule. The issue of attorneys' fees is now addressed in 45 CFR part 1642. This rule also retains the Corporation's longstanding definition of a "fee-generating case," but has added clarification of what is not considered to be a fee-generating case. In addition, the rule has been clarified and simplified by structural and minor substantive changes. Several changes have also been made to the requirements related to the referral of cases.

A section-by-section analysis of this final rule is provided below.

#### *Section 1609.1 Purpose*

This section is revised to state more clearly the purposes of this regulation, which are: (1) to ensure that recipients do not use scarce resources for cases where private attorneys are available to provide effective representation, and (2) to assist eligible clients to obtain appropriate and effective legal assistance.

#### *Section 1609.2 Definition*

This section defines "fee-generating case." The proposed rule made a technical change in numbering intended to clarify what is intended in the definition. However, the change raised comments on whether substantive changes to the definition were intended. To avoid such an interpretation, the Board rejected the changes in the proposed rule and retained the longstanding definition from the prior rule. The Board did adopt language in the proposed rule that was added to explain what is not a "fee-generating case." This revision makes it clear that court appointments are not to be considered fee-generating cases, even where fees are paid, since such cases are a professional obligation. The definition also does not include situations where recipients undertake representation under a contract with a government agency or other entity in which the agency or entity pays the recipient for each case taken. Such cases are not considered fee-generating under the rule, because a contract payment does not constitute fees that come from an award to a client or attorneys' fees that come from the losing party in a case, or from public funds.

It is important to clarify that, while this rule permits recipients to provide representation in certain fee-generating cases under the conditions set out in this rule, recipients are precluded from claiming or collecting and retaining any attorneys' fees as prohibited under part 1642.

#### *Section 1609.3 General Requirements*

This section defines the limits within which recipients may undertake fee-generating cases. This new section reorganizes and replaces §§1609.3 and 1609.4 of the old rule in order to make them easier to understand. It is also retitled. The provision requiring recipients to establish procedures for the referral of fee-generating cases is deleted, and a new section on policies and procedures is added to the rule.

Paragraph (a) provides that, except as provided in paragraph (b) of this section, a recipient may undertake a fee-generating case only after the case has been rejected by the local lawyer referral service or by two private attorneys, or when neither the referral service nor

two attorneys will take the case without a consultation fee. The old rule stated that "neither the referral service nor any attorney will consider the case without payment of a consultation fee." [emphasis added] The old rule set up an impossible standard for a recipient to meet, and the Board has decided that the standard in this final rule is reasonable and consistent with the rule's purposes.

Paragraph (b) clarifies when a recipient may undertake a fee-generating case without first attempting to refer the case to the private bar. The first situation is delineated in §1609.3(b)(1). The proposed rule would have revised this section to include any cases which, like Social Security cases, meet the terms of the underlying statutory provision, §1007(b)(1) of the Legal Services Corporation Act, under which the Corporation may not preclude recipients from taking "cases in which a client seeks only statutory benefits and appropriate private representation is not available." 42 U.S.C. §2996f(b)(1). The Committee sought comments in the proposed rule on whether there are other similar cases that should be treated in the same manner as Social Security cases. No comments urging extension of the provision to other types of cases were provided to the Corporation, and the Board decided to continue to limit the provision to Social Security cases. The only other similar type of case identified to the Board was Veterans' benefits cases, and oral comments indicated that there has not been much demand for LSC program assistance in such cases. If a particular case should arise, a program could decide to take the case after attempted referral or pursuant to §1609.3(b)(2) or (3).

Another circumstance under which a recipient may undertake a fee-generating case without first attempting to refer the case to the private bar is set out in §1609.3(b)(2). This provision is based, in part, on a provision that appeared in the original LSC regulation adopted in 1976 that allowed a recipient to determine that the case was of the type that private attorneys did not accept or did not accept without a fee. LSC removed that provision in 1984, in part because of concern that it gave too much discretion to project directors. The final rule adopts a middle ground between the two positions. It restores to the discretion of the recipient the decision about what kinds of cases would qualify, but requires that the recipient consult with appropriate representatives of the private bar in making that determination. The recipient has the authority to determine the appropriate representatives, which could include representatives of the organized bar, the local referral service, or individual private practitioners with knowledge about practices in the area, particularly related to fee-generating matters. The provision contemplates either the governing body or the director of the recipient undertaking the consultation based on local conditions.

Finally, recipients that have State-wide, multiple or exceptionally large service areas are encouraged to make separate determinations when appropriate for different sub-areas within their total service area. For example, a area that includes a large city may have attorneys that normally accept a particular type of case, while rural areas may not.

Numerous revisions are made in the language and organization of §1609.3(b)(3), which is based on the remaining provisions of §1609.4 of the old rule. The old rule used the term "free referral" instead of "referral to the private bar." The Board has decided that the term "free referral" was too vague and has substituted the more descriptive term, "referral of the case to the private bar." This provision specifically authorizes the director of the recipient (or the director's designee) to make the determinations listed, subject to policies adopted by the recipient.



Section 1609.3(b)(3)(i) is new. It recognizes that in certain cases prior experience has shown that referral efforts would be futile. The Corporation does not wish scarce resources to be expended for efforts that the recipient knows will prove useless. This provision, which is intended to address the specific circumstances in a particular case, differs from §1609.3(b)(2), which deals with categories of case types.

Section 1609.3(b)(3)(ii) is essentially the same as the comparable provision in the old rule. It allows a recipient to take a case if emergency circumstances require immediate action before referral procedures can be undertaken. The recipient must advise the client that, if appropriate, referral of the case will be attempted at a later time. However, any referral of the case must be done consistent with professional responsibility requirements.

Section 1609.3(b)(3)(iii) is a revised version of the old §1609.4(b) and is included under the category of cases where the recipient's director or designee needs to make a case-by-case determination of the appropriate treatment of the case. Language on statutory fees has been added to make it clear that if adequate statutory fees are available to attract private counsel, the recipient should try to refer the case out to the private bar, regardless of whether recovery of damages is a principal object of the client's case. This was not clear under the old rule. The Board wants it to be clear that, if fees might be available sufficient to attract private counsel and the case does not fall under any of the other categories authorizing representation, the recipient is obligated to attempt referral in accordance with §1609.3(a).

The language in the old rule relating to ancillary relief and counterclaims is deleted because it was confusing and unnecessarily complicated. Instead, this commentary includes examples of the kinds of circumstances under which the recipient's director could determine that the recovery of damages was not the principal object of the case. For example, if the principal relief sought is equitable or a declaratory judgment, inclusion of a prayer for damages would not turn the matter into a fee-generating case. Similarly, if the recipient is representing the defendant in a case, the inclusion of a counterclaim for damages to protect the defendant's rights would not make the matter a fee-generating case.

Finally, because this final rule has deleted provisions on attorneys' fees, paragraph (c) directs recipients to the Corporation's new rule on attorneys' fees, 45 CFR Part 1642.

#### *Section 1609.4 Recipient policies, procedures and recordkeeping*

This new section requires that recipients establish written policies, procedures and recordkeeping requirements that will guide recipient staff to ensure compliance with this rule.

#### *Miscellaneous changes*

Sections 1609.5 through 1609.7 of the old rule are deleted and are superseded by 45 CFR part 1642.

#### **List of subjects in 45 CFR Part 1609**

Grant programs, Legal Services

For reasons set forth in the preamble, 45 CFR part 1609 is revised to read as follows:

## **PART 1609-FEE-GENERATING CASES**

- Sec.
  - 1609.1 Purpose.
  - 1609.2 Definition.
  - 1609.3 General requirements.
  - 1609.4 Recipient policies, procedures and recordkeeping.

**AUTHORITY:** 42 U.S.C. 2996f(b)(1) and 2996e(c)(6).

**SOURCE:** 62 FR 19398, April 21, 1997, unless otherwise noted.

### **Section 1609.1 Purpose.**

This part is designed (a) to ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and (b) to assist eligible clients to obtain appropriate and effective legal assistance.

### **Section 1609.2 Definition.**

(a) "Fee-generating case" means any case or matter which, if undertaken on 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.

### **Section 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;

(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.

#### **Section 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.

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Thus, the issue is whether counsel fees may be awarded in the absence of plaintiff's obligation to pay for legal services.

The rule in this area has been described by Supreme Court as follows:

**As this court stated in *Fidelity-Philadelphia Trust Company v. Philadelphia Transportation Company*, 404 Pa. 541, 173 A.2d 109 (1961): "the settled law of this Commonwealth is that attorneys' fees are recoverable from an adverse party to a cause only when provided for by statute, or when clearly agreed to by the parties." *Id.* at 548, 173 A.2d at 113.**

***Department of Transportation v. Manor Mines, Inc.*, 523 Pa. 112, 565 A.2d 428, 433 (1989).**

The statute with which we deal clearly authorizes the imposition of such fees. The question is whether the right is limited to those instances where a prevailing party is personally liable for the fees. Plaintiff calls attention to an unreported Philadelphia County case in which fees were awarded. *Portley v. Portley*, April Term 1990, No. 3757, Family Court Division, Domestic Relations Branch, January 13, 1993. The decision was affirmed on appeal, but Superior Court's memorandum opinion (636 A.2d 1222) indicates that the exact issue before us was not preserved on appeal and was not, therefore, considered. Plaintiff also cites various federal cases, which we have read and find inapposite. She also cites *Holbein v. Holbein*, 14 D. & C. 3d 209 (Butler County 1980), where fees were awarded a legal services agency in a divorce case.

Other than *Portley*, we do not find the cases helpful because, in this court's opinion, we deal strictly with construction of particular statutory language. Issues were also somewhat different than those presently being argued.

It may be instructive however to consider that (a) statutes differ with respect to attorney fees and, (b) courts have awarded fees when it is unlikely that the rewarded party has suffered an added expense. We hasten to explain that we do not know the arrangements between the State Board of

Probation and Parole and its counsel, and it may be that the board was charged for services in ***Smith v. Commonwealth of Pennsylvania, Board of Probation and Parole***, 524 Pa. 500, 574 A.2d 558 (1990). In that case, a hapless court appointed attorney, described as pestering the court, was directed to pay the board reasonable attorney fees.


Superior Court has extensively described the process of ascertaining legislative meaning in ***Commonwealth v. Berryman***, 437 Pa. Super 258, 649 A.2d 961 (1994) alloc dn 541 Pa. 632, 663 A.2d 685 (1994). See also ***Pennsylvania Assigned Claims Plan v. English***, 541 Pa. 424, 664 A.2d 84 (1995). We summarize the discussion as follows:

1. Interpretation is subject to rules of statutory construction enacted in 1 Pa. C.S.A. 1901 et. seq.
2. The court's obligation is to seek the legislature's intent and to give effect to that intent.
3. Statutory language is read according to plain and ordinary meaning
4. Interpretation of language should remain consistent throughout the statute.
5. Where a section contains a given word, omission in a similar section shows a different legislative intent. A court may not add an omitted word unless it is necessary to the construction of the statute.
6. The statute should be considered as a whole, but every word, sentence or provision is deemed to be intended for some purpose and must be given effect.
7. A court may consider the practical consequences of a particular interpretation and should presume that the legislature did not intend a result that is absurd or unreasonable. Statutes should receive the most sensible construction possible.

We find the statute clearly authorizes assessments and awards to legal services. Section 6108(a)(8) distinguishes between out-of-pocket expenses and legal fees, clearly indicating that there is no requirement that attorney fees be actually incurred by plaintiff.

The attached order is entered.

BY THE COURT,

  
OSCAR F. SPICER  
President Judge



PROPOSED LANGUAGE AMENDING HB 2075

Pennsylvania Coalition Against Domestic Violence  
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE  
Testimony before the House Judiciary Committee

Attachment B

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for relief in protection from abuse proceedings.

§6108. Relief

(a) General rule.-- The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

\* \* \*

(8) Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses for injuries, upon agreement of the parties or when the plaintiff prevails after hearing upon the request of plaintiff's attorney, the court may direct the defendant to pay reasonable attorney fees. Non profit organizations which provide legal services to plaintiffs without charge and who are not otherwise precluded by law, are entitled to receive attorney fees under this act.