

NEIGHBORHOOD LEGAL SERVICES, INC.

**PROGRAM POLICY
FEE GENERATING CASES**

45 CFR PART 1609

July 2017

I. LIMITATIONS ON NLS ACCEPTANCE OF FEE GENERATING CASES

- a. It is impermissible for any individual while engaged in legal assistance activity funded by Neighborhood Legal Services to undertake any fee-generating case or matter, i.e., that which if undertaken by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, except as provided in paragraphs (c) and (d) below.
- b. A fee-generating case does not include a case where:
 - i. A court appoints NLS or an NLS employee to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction;
 - ii. NLS undertakes representation under a contract with a government agency or other entity; or
 - iii. NLS provides only advice and counsel or limited services, as those terms are defined in 45 CFR 1611.1(a) and (e), to an eligible client.
- c. With written authorization from the Executive Director [*or designee*], NLS may provide legal assistance in a fee-generating case if:
 - i. The case has been rejected by the local lawyer referral service, or by two private attorneys; or
 - ii. Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.
- d. NLS may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (c) of this section only when:
 - i. 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;

- ii. NLS, 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 NLS ordinarily do not accept, or do not accept without prepayment of a fee (a list of the types of cases for which NLS has made this determination is available from the Executive Director); or
- iii. NLS's Executive Director *[or designee]* has authorized, in writing, service in the case after having determined that referral of the case to the private bar is not possible because:
 - 1. Documented attempts to refer similar cases in the past generally have been futile;
 - 2. 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
 - 3. Recovery of damages is not the principal object of the client's case and substantial statutory attorneys' fees are not likely to be available.

II. AUTHORIZATION PROCEDURE AND DOCUMENTATION REQUIREMENTS

- a. To obtain required written authorization, the NLS attorney proposing to undertake a fee-generating case must send a written request to the Executive Director *[or designee]* and identify the applicable exception and provide sufficient information and documentation to support a determination that the exception applies.
- b. The Executive Director *[or designee]* shall provide any authorization in writing and, if not already stated in the request, specifically identify the basis of the authorization and describe any related determinations made.
- c. In authorized cases, the responsible NLS attorney shall maintain a copy of the written authorization, along with any supporting documentation, in the case file.

III. REQUESTING AND RECEIVING ATTORNEYS' FEES PURSUANT TO 45 CFR §1609.4

- a. Any petition seeking attorneys' fees for representation supported in whole or in part with funds provided by LSC, shall, to the extent permitted by law and rules in the jurisdiction, be filed in the name of NLS.
- b. Attorneys' fees received by NLS or an employee of NLS for representation supported in whole or in part with funds provided by LSC shall be allocated to the fund in which

NLS' LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by NLS to support the representation.

- c. Attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by NLS and may be expended for any purpose permitted by the LSC Act, regulations, and other law applicable at the time the money is received.

IV. RECEIVING REIMBURSEMENT FROM A CLIENT PURSUANT TO 45 CFR §1609

- a. When a case results in recovery of damages or statutory benefits, NLS 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 NLS for such costs and expenses out of any such recovery.
- b. NLS 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.

Adopted by resolution of the NLS Board of Directors on August 16, 2017

Thomas F. Knab
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President
Neighborhood Legal Services, Inc.

August 16, 2017
Date