

POLICY ON FEE-GENERATING CASES

Adopted 27 February 1985

Authority: Ch. 221A, §§1 and 9 Gen. Laws of Mass. (1994)

1. Purpose

This policy is adopted to ensure that recipients when using funds from MLAC, do not compete with private attorneys and to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

2. Definitions

- a. "Attorney in private practice" is one who derives not more than one-half of his or her income as an attorney from funds provided by MLAC or by the Legal Services Corporation.
- b. "Fee-generating case" is any matter which, if undertaken on behalf of an eligible client by an attorney in private practice, may reasonably be expected to result in payment of the fee of such attorney from an award to the client or by the opposing party.
- c. "Recipient" is a qualified legal services program receiving funds from MLAC.

3. Prohibition

No recipient may use funds received from MLAC to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases to attorneys in private practice.

4. Authorized representation.

Other adequate representation may be deemed by the recipient to be unavailable when:

- a. The recipient has determined that free referral is not possible because:
 - (1) the case has been rejected by the local lawyer referral service, or by two attorneys in private practice ; or
 - (2) neither the referral service nor either of the two attorneys in private practice will consider the case without payment of a consultation fee; or

- (3) the case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee, which determination has been made in advance by the director of the recipient and filed with MLAC; or
- (4) 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
- b. Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or
- c. A court or, where appropriate, an administrative agency appoints a recipient or an employee of a recipient pursuant to a statute or court rule or practice of equal applicability to all attorneys in the jurisdiction; or,
- d. An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42, U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

5. Acceptance of fees

- a. A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if
 - (1) the requirements of paragraph 4 are met, and
 - (2) funds received are not used for purposes prohibited by MLAC, and are accounted for in the manner directed by MLAC.

If a legal fee is awarded or approved by a court or administrative body, it shall be remitted promptly to the recipient. The Executive Director of MLAC may, for good cause shown by the recipient, waive this requirement.

6. Acceptance of reimbursement

When a case or matter subject to this policy results in a recovery of damages, other than statutory benefits, a recipient or attorney in private practice may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

- a. the requirements of paragraph 4 are met, and
- b. the client has agreed in writing to reimburse the recipient or attorney in private practice for such costs and expenses.

7. Application

- a. This policy shall apply to cases referred by a recipient to attorneys in private practice who participate on a pro bono or partially compensated attorney panel.
- b. Nothing in this policy shall prevent a recipient from:
 - (1) requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis; or
 - (2) acting as co-counsel with an attorney in private practice on a case which meets the requirements of paragraph 4, and accepting part of any fee that may result from a shared case.