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December 13, 2012

Mr. Tim Watson
Program Counsel
Legal Services Corporation
3333 K Street NW, Third Floor
Washington, D.C. 20007-3522

RE: Program Quality Visit Report for East River Legal Services

Dear Mr. Watson:

We have reviewed the Draft Report from the Program Visit conducted by the Office of Program Performance (OPP) for East River Legal Services on September 10, 2012-September 12, 2012. The following are comments and corrections to factual inaccuracies in the Draft Report. The comments will address each finding in the report by it's number.

The second paragraph of the Program overview states that E.R.L.S. attorneys are able to represent clients in some outlying counties (e.g., the District Court in Aberdeen, 2.5 hours away). In fact, staff attorneys from E.R.L.S. rarely represent clients in the Aberdeen area. Generally, staff attorneys from E.R.L.S. make Court appearances in a radius from Sioux Falls to Watertown in the North to Mitchell in the West to Yankton in the Southwest and Elk Point in the South. Staff rarely travels more than an hour and a half from the Sioux Falls Office for these Court appearances. The other distant locations are served through our Judicare Panel, as funds allow.

It should also be noted that there are, in fact, three Native American Staff Members at E.R.L.S., two of whom are enrolled members of recognized tribes and one who is Native American by birth, but is not an enrolled member of a tribe.

Finding 2: The Program has customary legal services priorities and appears to expend it's resources to address them, but it's goals and objectives in each priority are only generally stated.

E.R.L.S. priorities are intentionally not expressed in terms of a specific case area or remedy, such as divorces, bankruptcies, etc. The priorities are worded in such a manner as to address the legal needs of particular groups who are vulnerable to abuse and discrimination as well as likely to have the need for legal representation in specific areas. The number one goal of E.R.L.S. from its inception has been to provide high quality legal representation to eligible clients with legal needs. This, as shown by the statistics quoted in your Draft Report, is a quantifiable goal. Finding 9 on page ten cites the statistics showing that E.R.L.S.' contested cases closed per 10,000 is at 155% of the national median. Also, the number of extended cases closed per 10,000 is 45% higher than the national median. This is a demonstration that E.R.L.S.' goal of providing high quality legal representation in litigated matters is being attained.

The report also cites that the Program's CSR's show only one public benefits case closed in 2011. In fact, a review of files after the Program visit shows that there were at least 40 public benefits cases handled for clients in 2010 and 2011. Unfortunately, these cases were not reported as public benefits cases and were clients being served for other matters at the time it was discovered that they had a public benefits issue. These issues were dealt with by staff without opening a separate file and a separate funding code.

Examples of these issues would be Medicaid issues regarding long term care for seniors; assistance with obtaining food stamps; assistance with payment of Medicare premiums under a Qualified Medicare Beneficiary Program run by the State of South Dakota; help with attaining public housing benefits; SSI overpayment issues and assistance with obtaining County Welfare to assist a client in attaining housing or access to healthcare. A majority of these cases were handled by the Older American's Staff Attorney. The Program intends to make immediate changes to make sure that these public benefit issues show up on our CSR's and are reported and coded properly in the future.

The statistics cited by the Draft Report show that 66.8% of cases in 2011 were family law cases. As explained to the Program Counsel doing the visit, E.R.L.S.' statistics usually show family law cases are somewhere around 50%-55%. The loss of funding for a VAWA Grant in 2011 left the Program with over 50 open files being handled by the staff attorney funded by the VAWA Grant and by private contractors. These remaining cases created an aberration in the Program's case statistics. The Program anticipates that once these files are closed within the next year to year and a half, the percentage of family law cases will decrease to approximately 50%.

Finding 4: E.R.L.S. is respectful of its clients and sensitive to their circumstances.

The third paragraph in Finding 4 addresses the Program using language services of the Lutheran Church. The language services we use are from Lutheran Social Services, a United Way non-profit organization, which, among other things, addresses specific issues of refugees and immigrants, which is funded by the Evangelical Lutheran Church of America (ELCA).

Finding 5: E.R.L.S. conducts only limited client education and outreach activities.

While it is true that E.R.L.S. does limited outreach and educational activities funded by LSC, many more presentations are done by the SMP Program, which addresses issues regarding Medicare and Medicaid, with specific emphasis on long term care. Also, the Staff Attorney funded by the Older Americans Grant makes joint presentations with the SMP Program on many occasions to provide educational materials regarding consumer law issues and the FDCPA. Outreach and educational activities supported by LSC funds are conducted by the Executive Director and Staff Attorney on issues regarding housing and domestic violence. There is simply not enough staff available through the LSC Grant to do more outreach and educational activities than are currently being done. On the other hand, the SMP Program and Older Americans section of the Program provide outreach and education to hundreds of seniors throughout the state.

Finding 6: Client intake is somewhat outmoded, though generally sufficient for Program needs.

In the past year, E.R.L.S. has lost three attorney positions, two staff attorneys and one FTE that was divided into three private contracts to lawyers in outlying areas of the Program's coverage. When that happened, intake at the Program was reduced from two half-days per week to one half-day per week.

Emergency cases are handled as they come in and have always been addressed immediately. However, there are not enough staff attorneys and support staff to increase intake because there would be no one to handle the cases as they come in. E.R.L.S. is aware of different methods of allowing intake, such as online intake. However, increasing intake at E.R.L.S. at this time is simply not possible considering the staff and funding constraints of the Program.

The legal secretary in charge of intake provides information to clients that is

provided by staff attorneys at the Program, including issues regarding housing, family law and specifically issues handled by the Older Americans Staff Attorney. As stated above, specific criteria for bankruptcies and consumer law cases have been developed in written form by that Staff Attorney and are used by the legal secretary who conducts intake. Any counsel and advice provided by the intake worker is discussed at each group case meeting and at the monthly case reviews to ensure that proper information is being given.

Finding 7: E.R.L.S.' experienced advocates are dedicated to their work and have sufficient capabilities, but the Program suffers from recent losses of advocates and allocation of advocate time presents some difficulties.

As stated above, in the last year E.R.L.S. has lost three FTE attorney positions. This has put a strain on existing staff in that cases left behind by the departing staff members have had to be taken up by existing staff members which has increased their case load and hampered the Program's ability to accept new cases.

The Report expresses concerns about the way in which the case lists are "unbalanced." However, it is unfair to compare raw numbers when talking about casework. While the Executive Director acknowledges that his caseload should be reduced in favor of tending to administrative duties outlined in this report, certain cases are more complex in nature, requiring more individual time and should not be compared to cases that turn over much faster and require less hours of work. The Executive Director has a special expertise in housing law and therefore, takes the housing cases, which are mostly evictions. These types of cases turn over in a matter of days, usually not more than 30 days. On average, they require 10-15 hours of work each. In contrast, a custody case or a consumer law case can require dozens of hours over a longer period of time.

Also, appearances in Court are not a fair evaluation of workloads. Bankruptcy cases, for example, can require 30-40 hours of work just to file the case. The only Court related appearance necessary is a short meeting of creditors. However, that one short appearance does not reflect the amount of hours put in on the case. Another example would be a litigated custody matter which, in some cases, stays open for more than a year and requires dozens of hours of work, but maybe only one Court appearance for one or two days. Evictions, on the other hand, are handled in a weekly calendar and on a given eviction Court day, can involve 4-5 cases handled within a space of two hours.

The types of cases accepted by E.R.L.S. are accepted with the primary goal of providing quality extended service to each client. The type of case and the hours required to serve the client on a particular case is what needs to be examined in determining whether or not case loads are balanced or unbalanced for purposes of evaluating workloads.

Findings 8: E.R.L.S.' minimalist approach to litigation management and advocate support is generally sufficient to meet it's needs.

Each attorney keeps their own separate calendar for Court appearances as well as the central calendar in the hallway described in this finding. However, not all of the attorney's use an electronic calendar such as Outlook. Also, the Program has recently purchased a subscription to WestLaw (WestLawNext) and no longer uses LoisLaw.

Limited resources restrict the Program's ability to provide adequate training opportunities for staff. The Program was lucky enough to obtain consumer law training for the Older American's Staff Attorney because of an agreement with the private attorney who provides the training, to allow a scholarship for the E.R.L.S. attorney to attend free of charge. Staff use Webinars where appropriate and attend appropriate CLE's sponsored by the State Bar Association, which are free of charge. The program also uses group case meetings and monthly case reviews to discuss ongoing issues in particular cases and, of course, like any law office, the staff relies on each other for suggestions and expertise as to how to handle particular situations in a particular case. However, the main obstacle to providing proper training for the staff is money.

Finding 9: E.R.L.S. primarily performs extended work, representing clients in family cases. This results in anomalous CSR's when compared to national norms.

E.R.L.S. devotes the majority of it's resources to direct representation, which has been the goal of the Program from it's inception. However, as this report points out, the Program is not doing a good job of reporting all matters of counsel and brief service, which is reflected in the Program's CSR's. The Program is dedicated to doing a better job of properly reporting and coding cases handled by staff that have previously not been reported. Our percentage of extended cases and contested cases is something the Program prides itself in and will continue. Also, contrary to the reference in the Draft Report, the Program does, in fact, report Older Americans cases that are eligible for LSC funded legal services.

The report states that the Program's cases are heavily concentrated in family law. As explained above, the loss of the VAWA Grant has created a false impression in this area. The report notes that family law cases have dropped from 70% to 66%. As previously stated, this will continue to decrease as the existing VAWA cases are closed. Also, as the public benefits cases are properly reported, that statistic will increase.

As stated above, measuring the workload of the staff attorneys by Court appearances and raw case numbers create another false impression. Eviction cases require more Court appearances because of the nature of the case and fewer hours of work. More complex cases such as consumer litigation, require more hours of work and maybe less time in Court. Further, lack of resources and support staff prevents proper discovery required for more complex litigation. Bankruptcy cases require intensive work up front, before the bankruptcy is actually filed, but very little time in terms of Court appearances. Also, contested custody cases can take months and many hours prior to it's resolution, but it is still only one case.

The Program has distributed cases based upon the expertise of the remaining staff members and tried to balance the workload in terms of the hours needed to represent the clients rather than the sheer number of cases. Each attorney works in their own fashion to serve the clients in the best way possible. For example, the Older American Staff Attorney handles any and all matters affecting Older Americans and Older American beneficiaries. The OA Contract requires elder law to be practiced in areas of Medicare, Medicaid, SS, SSDI, SSI SNAP, Consumer Defense, FDCPA, FCRA, Treasury Rules, Foreclosure, Tax Certificates and Tax Deeds, Bankruptcy, Guardianship and Conservatorship, State Administrative Matters, Estate Recovery, Property Law, Federal pensions, eligibility, and suspension matters, medical matters and many more areas. One (1) Staff Attorney is responsible for every area of elder law that touches a client and a client's case file(s). The work is intricate and exact. Without resources, there is a requirement of strong preparation, deep research and smooth execution. The Federal Judicial oversight begins with 15 minutes of filing a bankruptcy. The procedure is formal. The Older American section and it's Staff Attorney have developed methods, protocols and strategies to maintain an over 90% case winning or successful resolution of Older American legal problems without full blown litigation. This approach is mandatory as it is impossible to litigate or halt litigation in mid-stream simply because resources do not exist or run out. The fact that this work is done successfully with virtually no resources should be noted. Otherwise, the incorrect and unsupported conclusions of an unbalanced case load is perpetrated as an urban legend. It should be further noted that the Older American work areas

are neither areas that other lawyers desire to do or have the legal knowledge to do. In fact, a majority of the cases in the consumer law and bankruptcy area are resolved without need for Court appearances. Further, a recent consumer law case being handled by the Older American's staff attorney will result in attorney's fees being paid to the Program.

The Program does not have enough staff or resources to conduct Pro Se Clinics. The State Bar Association and the Unified Judicial System are working on ways to help the Courts manage Pro Se litigants and assist them in preparing forms. One of the current law student programs assisting Pro Se litigants is being staffed by students who have been trained by E.R.L.S. staff in it's Pro Bono Project, which is a partnership of E.R.L.S., the USD School of Law and the Second Circuit Bar Association.

Finding 10: E.R.L.S. uses a Judicare Program to provide representation in distant areas.

The second paragraph of finding 10 indicates some confusion about the pro bono services in South Dakota. E.R.L.S. has been the administrator for the Second Circuit Bar Association's Pro Bono Project for approximately 18 years. Within that project is what's known as the R.D. Hurd Volunteer Law School Society. This is a group of law students who come to the E.R.L.S. offices one evening per month during the school year to serve pro bono divorce clients. The clients are pre-screened for eligibility and non-priority case types. The students meet with the clients, draft the pleadings and are supervised by E.R.L.S. staff. This program generally does 50-60 cases per year.

Students who participate in the R.D. Hurd Project are then able to participate in the Unified Judicial System's Pro Se Assistance Project where the Clerk of Courts give Pro Se litigants cards with '800' numbers to call for assistance in filling out Pro Se Forms. They receive a call back from a law student who have participated in the R.D. Hurd Project and has expertise in drafting basic pleadings in divorce cases.

The Access to Justice Program (A2J) referred to in the report, is a project of the State Bar Association and covers pro bono services throughout the state. The Second Circuit Pro Bono Project involves pro bono cases within Lincoln and Minnehaha County, as well as the R.D. Hurd Project in partnership with the USD School of Law. E.R.L.S. refers cases to A2J that are outside of the Second Circuit.

In September, 2012, the Chief Justice of the South Dakota Supreme Court

convened a meeting of Bar Leaders and Judges, along with the Directors and some Board Members of the two Legal Services Programs to discuss coordination and integration of legal assistance to the poor, as well as management of the growing Pro Se case load within the Courts. The E.R.L.S. Director and one Board Member have been appointed to a Task Force to address these issues. The Task Force will address several different issues which will include Pro Se services as well as the future structure of the delivery system of legal services to the poor in South Dakota. E.R.L.S. relies on these efforts to address issues such as community education, Pro Se litigants and funding.

Finding 12: Although some improvements would be advantageous, the Board effectively carries out its oversight function.

The E.R.L.S. Board of Directors has already taken up the issue of updating and revising the Program's by laws. The Program acknowledges that Board Evaluations of the Executive Director, not unlike Personnel Evaluations of staff, are not done on a regular basis and have no specific written criteria. The Program is committed to creating a Performance Evaluation Policy and process and to conduct such evaluations on a regular basis, including Board evaluations of the Executive Director. The Board will address the issue of Strategic Planning at its upcoming meeting on December 18, 2012.

Board materials are now being provided to Board members at least ten to twelve days before Board meetings, with a goal of two week.

The Board of Directors has, from time to time, considered resource development in the form of fundraising. In fact, some local fundraising is done. Specifically, an annual Golf Tournament is held each year to help fund the Second Circuit's Pro Bono Project, which money goes to E.R.L.S. to administer the R.D. Hurd Project, as well as the Second Circuit Pro Bono Project. However, South Dakota is a small state with less than 2,000 bar members. Any fundraising done will have an effect on all other fundraising throughout the state. For example, if E.R.L.S. was to do fundraising in its own coverage area from Bar Members, which has been considered, there would be a backlash from the State Bar Association regarding its opt-out fundraiser on bar dues. The above described Task Force appointed by the State Supreme Court will be addressing resource development for all legal service providers.

On a positive note, E.R.L.S. has just been awarded a grant of \$144,341.00 from the South Dakota Attorney General's Mortgage Settlement Task Force. This money comes from the recent national settlement that has been distributed to

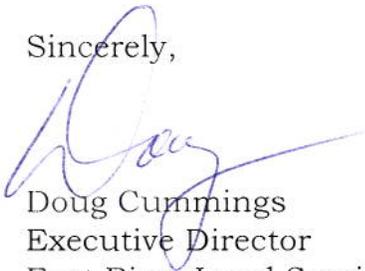
the states. The grant is to be used for funding an attorney position for two years to represent clients with housing, consumer and debtor/creditor issues.

Findings 17: Despite it's small size, E.R.L.S. appears to experience some internal communication challenges.

Staff have denied the comment in this finding regarding communications being affected by too many staff members being absent during core work hours. We ask that the last sentence of that finding be taken out of the report.

Please let me know whether or not you require an addition information prior to the final draft of the report.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Doug Cummings', is written over the typed name and title.

Doug Cummings
Executive Director
East River Legal Services

DPC:ljc