



**FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement**

Central Minnesota Legal Services
August 9-12, 2010
Case Service Report/Case Management System Review

Recipient No. 524020

I. EXECUTIVE SUMMARY

Finding 1: CMLS's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: CMLS's intake procedures and case management system support the program's compliance requirements.

Finding 3: CMLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income did not exceed 125% of the Federal Poverty Guidelines.

Finding 4: CMLS maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: CMLS is not in compliance with certain documentation requirements of 45 CFR Part 1626 in that one file lacked a required citizenship attestation.

Finding 6: CMLS is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: CMLS is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: CMLS is in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: CMLS's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: CMLS is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. as no dormant or untimely case files were discovered within the case sample.

Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: A review of CMLS's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 16: CMLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, CMLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: CMLS is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 18: CMLS is not in compliance with 45 CFR Part 1635 (Timekeeping requirement) in that some of its timekeeping records are not accurately or contemporaneously recorded.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' Fees). Interviews with CMLS management and a limited review of the program's fiscal documentation indicated compliance with this regulation during the period of 2008 through March 15, 2010 in that the program did not seek, and was not awarded attorney fees. Finally, CMLS management has included a notice in its program policies concerning a recent regulatory change involving the repeal of 45 CFR Part 1642.

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 29: The CMLS Personnel Policies Manual does not have a policy regarding salary advances.

Finding 30: CMLS's Internal Control Worksheet revealed a lack of adequate segregation of duties and/or internal controls.

II. BACKGROUND

On August 9 through August 13, 2010, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Central Minnesota Legal Services ("CMLS"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of two (2) attorneys and one (1) fiscal analyst. The two (2) attorneys and the fiscal analyst were OCE staff members.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, and case management, regulatory and statutory requirements and to ensure that CMLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed CMLS for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of CMLS's upper and middle management, staff attorneys and support staff. CMLS's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through June 30, 2010. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 175 case files which included 24 targeted files.

CMLS is an LSC recipient that operates four (4) offices in Minnesota. The main office is located in Minneapolis. The executive staff consists of an Executive Director and Agency Administrator. CMLS received a basic field grant award from LSC in the amount of \$1,505,805 for 2010, \$1,398,949 for 2009, and \$1,262,697 for 2008.

For 2009, CMLS reported 1,779 closed cases in its CSR data. CMLS's 2009 self-inspection report indicated a 2.6 % error rate with exceptions noted in four (4) files out of 152 reviewed. The problem area identified was: case closure was not timely. For 2008, CMLS reported

approximately 1,903 closed cases in its CSR data. CMLS's self-inspection report for 2008 indicated a 1.2% error rate with exceptions noted in two (2) files out of 162 reviewed. The problem area identified: non-telephone cases which lacked citizenship attestation or documentation of alien eligibility; counsel and advice or limited action cases opened prior to 10/1/07 and not falling under the exception 3.3(a)(ii) of the 2008 CSR Handbook.

By letter dated June 4, 2010, OCE requested that CMLS provide a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases closed between January 1, 2009 and June 30, 2010 ("closed 2010 cases"), and a list of all cases which remained open as of June 30, 2010 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by CMLS staff and the other for cases handled through CMLS's PAI component. CMLS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11 and 12, and the LSC *Access to Records* (January 5, 2004) protocol. CMLS was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2009, 2010, and currently open cases, as well as a proportionate distribution of cases from CMLS offices. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and CMLS agreement of June 11, 2010 and a telephone conversation on June 9, 2010 between the Team Leader and CMLS Executive Director, CMLS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided. CMLS's management and staff cooperated fully in the course of the review process. As discussed more fully below, CMLS was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries as well as the Executive Director of any compliance issues discovered during case review.

At the conclusion of the visit on August 12, 2010, OCE conducted an exit conference during which OCE advised CMLS of its preliminary findings. OCE advised CMLS that while no patterns of non-compliance were identified, CMLS was advised that there were instances of non-compliance. No distinction between 2008, 2009, and 2010 cases was noted. CMLS was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments. Afterwards, a Final Report would be issued that would include CMLS's comments.

CMLS was provided a Draft Report (“DR”) and given an opportunity to comment. CMLS’s comments were received on October 26, 2010. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

II. FINDINGS

Finding 1: CMLS's use of its automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately recorded.

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, CMLS's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 2: CMLS's intake procedures and case management system support the program's compliance related requirements.

CMLS program offices were visited to evaluate the program's intake procedures and case management system. The intake procedures and ACMS offices are essentially the same for all three offices and will be discussed together.

Minneapolis, St. Cloud and Willmar Offices

CMLA conducts intake in conjunction with Mid-Minnesota Legal Aid ("MMLA"). MMLA is a separate independent program that provides legal assistance to low income people residing in the same counties as CMLS.

Intake screening is conducted consistently throughout the program's offices. Staff interviews revealed that intake staff is obtaining information in accordance with CMLS policy and LSC regulations.

The CMLS intake process is initiated when a person seeking assistance calls the MMA intake line. The MMLA staff screens for financial eligibility, the type of legal matter they are calling about, the service area. If the caller is determined to be eligible, a conflict check is conducted. If no conflict exists for either CMLS or MMLA, and the matter is within CMLS priorities, the caller is referred to CMLS intake. If the matter is not within CMLS priorities, MMLA refers the case to another agency, if appropriate.

MMLA and CMLS intake staffs accept walk-ins. A person walking in seeking assistance would first be seen by the MMLA intake. The intake staff would then follow the same steps for intake described above for a telephone intake.

CMLS, in collaboration with Judicare of Anoka County, conducts intake for residents of Anoka County. The CMLS client services coordinator conducts intake onsite at the Anoka county Human Services Building one day a week.

Callbacks

CMLS intake staff conducts call back interviews with applicants. During the call back interview, the initial intake information is checked for accuracy and any additional facts or documents are gathered. Three attempts are made to complete the call back interview. If the applicant is not reached after three attempts, a letter is sent asking the applicant to contact the program. If the applicant does not a contact CMLS within a week, the case is recorded as “non-processed”.

CMLS’s Practice Manager Case Management System

CMLS utilizes Practice Manager (“PM”) as it case management system. After the call back interview is completed, CMLS intake staff enters the applicant’s information into PM, thereby creating an electronic case file. A case management intake sheet is printed out for the applicant to review and verify citizenship attestation. A physical file is created with the intake sheet, intake summary and blank retainer agreement. Action is taken on each applicant’s case during weekly file review. Attorneys and paralegals attend file review. Case handlers are assigned cases at this time and are responsible for contacting the client. If the case is not accepted, applicants are notified by telephone or letter. The casehandlers select the closing code when they close a case. Cases are closed by intake staff in PM by entering the closing code, outcome and completing the closing file face sheet.

The Executive Director and supervising attorney conduct oversight of cases. Oversight is conducted quarterly. Oversight consists of cases being reviewed for compliance-related requirements and the quality of legal work.

A mock intake interview was conducted during the onsite review and the ACMS was also reviewed. No defaults in essential categories such as income, assets, citizenship, etc. were identified.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 3: CMLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.¹ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines ("FPG") and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

Sampled case files evidenced that CMLS is in compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 4: CMLS maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets

¹ A numerical amount must be recorded, even if it is zero. *See* CSR handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.² See CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. See 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." See 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. See 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

The CMLS policy provides the asset ceiling is \$3,750 for the first person in a household, \$5,250 for a household of two and an additional \$250 per person for every additional member of the household thereafter. Exempt from consideration is the:

Principal residence including equity in the applicant's principal residence; (2) vehicles used by the applicant or household members for transportation; (3) assets used in producing income; (4) earnings of a minor child, and (5) other assets which are exempt from attachment under State law in Minnesota Statutes Chapters 510 and 550 or Federal law.

Sampled case files reviewed revealed that CMLS maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.³

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 5: CMLS is not in compliance with certain documentation requirements of 45 CFR Part 1626 in that one file lacked a required citizenship attestation.

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for

² A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. See CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

³ 45 CFR § 1611.2 (revised) defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁴ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

CMLS is in non-compliance with 45 CFR § 1626.6, as there was one (1) case file that was not in compliance. *See* closed 2009 Case No. 0812-0257173. This case was opened for extensive litigation and it became apparent at the conclusion of the case that the attestation (and retainer) was not in the file. The case handler wrote the client to obtain the attestation, but this effort was not successful. The above identified case file is not CSR reportable.

CMLS must take corrective action to ensure that all case files reported to LSC in the CSR data submission contain evidence of citizenship/alien eligibility screening and include a written citizenship attestation or evidence of legal alien documentation when required.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 6: CMLS is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal

⁴ *See* Kennedy Amendment at 45 CFR § 1626.4.

problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁵ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

CMLS is in substantial compliance with the requirements of 45 CFR 1611.9. One (1) case file reviewed did not contain a retainer agreement. *See* closed 2009 Case No. 0812-0257173.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 7: CMLS is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

Case files reviewed indicated that CMLS is in compliance with the requirements of 45 CFR Part 1636.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

⁵ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

Prior to the visit, CMLS provided LSC with a list of its priorities. The priorities are stated as “supporting families, preserving the home, maintaining economic stability, safety, stability, and health of citizenship/families, and protection of individuals/families with special vulnerabilities”. CMLS is in compliance with 45 CFR Part 1620. None of the sampled files reviewed revealed cases that were outside of CMLS’s priorities.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 9: CMLS is in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

LSC regulations specifically define “case” as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a “case”, reportable in the CSR data, depends, to some extent on whether the case is within the recipient’s priorities and whether the recipient has provided some level of legal assistance, limited or otherwise.

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

CMLS is in compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 as all reportable case files reviewed contained a description of the legal assistance provided.⁶

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 10: CMLS’s application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case

⁶ Five (5) files reviewed did not have a description of the legal assistance provided; however these were all rejected/deselected files which should not have (and did not) received legal assistance.

according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The case files reviewed demonstrated that CMLS's application of the CSR case closing categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 11: CMLS is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and Handbook (2008 Ed.), § 3.3 as no dormant or untimely case files were discovered within the case sample.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁷ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

CMLS is in compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as there were no untimely or dormant case files discovered during the review.

In response to the DR, CMLS offered no comments with respect to this Finding.

⁷ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

Case lists were reviewed in advance and potentially duplicate files were identified for review. No duplicate files were identified among the sampled files.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

The Program has established written policies to ensure its employees are aware of and comply with LSC requirements. The CMLS Enforcement Policy details the LSC regulations regarding political activities as set forth in 45 CFR Part 1608 on its employees.

A limited review of fiscal records reflected in CMLS' Chart of Accounts, including cash disbursements during the review period, provided no indications that the program was involved in any prohibited political activity during the review period. Likewise, research utilizing internet search programs located no news articles or other data indicating CMLS was a party involved in any political activities. Also, discussions with the Agency Administrator revealed that CMLS and its staff were not involved in any restricted political activities during the period 2008 to date.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also confirmed that CMLS is not involved in any fee-generating case.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 15: A review of CMLS's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees. Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether

such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

The review of CMLS's program integrity documents and its accounting and financial records for the review period did not reveal any transaction(s) that was inconsistent with LSC requirements and restrictions on the use of non-LSC funds and the transfer of LSC funds. The program maintains its independence and program integrity, does not have any relationships with outside organizations that engages in restricted activities and does not use its resources to subsidize another organization.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 16: CMLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, CMLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement.

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. See 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. See 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

CMLS's PAI plan is designed to ensure that CMLS involves private attorneys in the delivery of legal assistance to eligible clients through a *pro bono* mechanism, via subgrant agreements and through direct referrals from CMLS. There are essentially two main delivery programs: the Volunteer Attorney Program ("VAP") which provides legal assistance in 19 of the 21 counties served by CMLS and the Volunteer Lawyers Network ("VLN") in Hennepin County in which the main office in Minneapolis is located. In addition to these primary programs, CMLS contracts with the Minnesota State Bar Association to coordinate statewide *pro bono* efforts; with the state support center, the Minnesota Legal Services Coalition ("MLSC") to train volunteer attorneys to deliver legal assistance; and in Anoka County, CMLS is planning to provide *pro bono* outreach in the future.

The program prepares an annual PAI Plan as required under 45 CFR § 1614.4. A review of CMLS' 2010 PAI plan indicates that it meets the outlined requirements. The Agency Administrator ("AA") advised that non-personnel common costs (overhead) are allocated to PAI based on her analysis of full-time employees at each location and the percentage of their time devoted to private bar activities. This addresses the requirement under 45 CFR § 1614.3(e)(1)(i).

In its 2009 audited financial statements ("AFS"), CMLS reported PAI expenditures of \$318,421 which represents 22.8 percent of its LSC basic field award. In discussion with the AA and Executive Director it was determined they were not aware that non-LSC funded PAI expenses could also be included along with LSC funded PAI expenses in determining the program's PAI ratio. By including both LSC-funded and non-LSC funded PAI expenses, the program maintains

increased flexibility in meeting its PAI requirement. From a review of CMLS' fiscal records it was determined that the program's 2009 total PAI expenditures of \$318,421 as reported in its AFS did correctly include both LSC funded and non-LSC funded PAI expenses.

Minneapolis Office

The VLN is a non-profit corporation which has been providing legal assistance to low income persons for over 40 years.⁸ The VLN is staffed by an Executive Director and a staff of 16 persons. While it provides legal assistance primarily to those who live in Hennepin County, it will provide legal assistance throughout Minnesota.⁹ According to the CMLS Executive Director, because the VLN predates CMLS, it was decided in the early 1980s when LSC imposed the PAI program on LSC recipients, which CMLS would not compete with VLN, but would enter into a subgrant agreement. The amount of the subgrant is capped at \$12,968. Pursuant to the agreement, VLN agrees that it will provide legal assistance to at least 340 clients throughout the year. In addition, the agreement provides that a least 15% of the service provided is above the level of counsel and advice.

Clients who receive assistance from VLN are screened for eligibility pursuant to the CMLS income and asset guidelines and only those persons who are income eligible receive assistance. While the VLN guidelines allow representation of persons who may have a household income up to 300% of the FPG, these persons are not provided with legal assistance pursuant to the CMLS subgrant; only persons whose income is at or below 125% of FPG receive legal assistance.

In addition to meeting the income and asset guidelines, VLN clients assisted with the CMLS subgrant must fall within CMLS priorities and must meet the alien eligibility documentation or citizenship attestation provisions. Based on discussions with the Executive Director and a review of the relevant documentation, no compliance deficiencies with the VLN subgrant were found.

Case oversight is done by VLN staff. In addition, the CMLS Executive Director, on a quarterly basis, conducts a review of each reported case by VLN to ensure compliance and sufficiency of legal assistance provided. In addition to a review of the policies, procedures and practices related to the VLN subgrant, 20 closed cases were reviewed with the Executive Director and no deficiencies were noted. In brief, the VLN subgrant is in compliance with the requirements of Part 1614.

Willmar and St. Cloud

In both the Willmar and St. Cloud offices, CMLS places clients directly with private attorneys. In each instance the office has a pro bono coordinator who makes the placement and also provides oversight. Because the process in these offices is so similar, they will be discussed together.

⁸ The VLN was chartered by the State of Minnesota on February 8, 1966.

⁹ Although it should be noted that pursuant to the contract between CMLS and VLN "[s]ervices provided under this contract shall be rendered in the County of Hennepin" at 1.3.

In the Willmar office, the pro bono coordinator (or VAP coordinator) also performs intake duties for the office (as discussed separately in the intake section of the report). The Willmar office provides legal assistance in 11 counties: Big Stone, Chippewa, Kandiyohi, Lac qui Parle, Lincoln, Lyon, Meeker, Renville, Swift, Wright and Yellow Medicine. The St. Cloud office provides legal assistance to Benton, Chisago, Isanti, Mille Lacs, Morrison, Stearns, Sherburne, and Todd counties.

Intake is conducted by the intake worker in the St. Cloud office. Cases are reviewed for acceptance at a weekly case review meeting; if a case is deemed appropriate for referral to the VAP, the file is referred to the VAP coordinator who attempts to make a placement.¹⁰

Upon referral to a VAP attorney, the attorney is provided with, among other things, a copy of the standard retainer agreement; these are supposed to be returned to CMLS upon completion of the case. In a number of the files reviewed, the retainer agreement was not returned to CMLS, which could present a problem. However, a review of the form language used when referring the client to the private attorney, demonstrates the language is clear and delineates the duties and responsibilities of the client, CMLS and the private attorney.

In addition to the letter sent to the private attorney, a letter is also sent to the client from CMLS, indicating s/he is being referred to a private attorney. Included with this is a copy of the attestation which to be signed and returned to CMLS (and a self-addressed, postage paid envelope is included).^{11 12}

The types of cases that are referred to the VAP and VLN include cases family law cases and bankruptcies, but also cases in which CMLS may have a conflict. With respect to the conflict referrals, the oversight is necessarily more limited and is the responsibility of the private attorney.

Both the Willmar and St. Cloud VAP coordinators follow-up on all referrals over a three to six month period depending on the type of case and the update from the attorney in the last status call.

At the completion of a case, the private attorney is requested to forward a Time Sheet/Final Disposition form that includes a checklist of the disposition of the case. The VAP, however, does not require *pro bono* attorneys to forward court documents relative to the case. The CMLS VAP coordinator is able to obtain the status of court cases through the local court website/docket.

¹⁰ The procedure is similar in Willmar, except that the VAP coordinator also does intake, as discussed above.

¹¹ St Cloud VAP Referral Form Letter to Client. Specifically, in bold form the letter states the following:
I am enclosing an Affirmation of U.S. Citizenship Form for you to sign and date. Once you have done so, it can be returned to me in the Business Reply Envelope provided for such purpose. This form is required to be in each client's file.

At page two of this form letter. The difference between this – a concurrent referral – is that the recommendation would require the referral to be made contingent upon receipt of the attestation.

¹² In emergency circumstances, the attestation may be obtained after the referral. See § 1626.8.

Files reviewed in both the Willmar and St. Cloud office were generally timely handled and closed, if not always reported in a timely fashion by the private attorney.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 17: CMLS is in substantial compliance with 45 CFR § 1627.4(a) (Subgrants and membership fees or dues) in that its subgrants were approved by the LSC as required and the program is not paying prohibited membership fees or dues with LSC funds. However, one of its subgrants is not being paid quarterly as specified under the terms of its contract.

LSC regulation 45 CFR § 1627.4(a) requires that:

- a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

45 CFR § 1627.2(b)(1) defines a subrecipient as an entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000 shall be included. Furthermore, 45 CFR § 1627.2(b)(2) defines subgrant to mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition in paragraph (b)(1) of this section. 45 CFR § 1627.3 outlines requirements for all subgrants including the mandate in (a)(1) of that section which states that all subgrants must be submitted in writing to the Corporation for prior, written approval.

CMLS has three (3) LSC approved subgrants in effect for 2010. They are with the Minnesota State Bar Association ("MSBA"), Volunteer Lawyers Network ("VLN"), and Minnesota Legal Services Coalition ("MLSC"), a division of Mid-Minnesota Legal Assistance ("MMLA"). The objective for all three (3) subgrant agreements is to obtain the services of volunteer private attorneys in the delivery of general civil legal services for eligible clients of CMLS. LSC approved subgrants to MSBA, VLN, and MLSC in 2010 in the amounts of \$12,454, \$12,968, and \$18,526, respectively. During 2008 and 2009, the program had the same three LSC approved subgrants in place and for the same amounts.

Review of CMLS's subgrant expenditures for 2009 and year-to-date 2010 determined that the subgrants were paid the approved amounts. The subgrant agreements call for quarterly installment payments by MLSC to each of its subgrantees. However, it was determined that the subgrant to MLSC was not paid quarterly. For its 2009 subgrant, MLSC was paid \$18,526 on July 14, 2009 which included payment for the full year. This represented a payment made in advance of the work performed from the date of the payment through the end of 2009. No

quarterly payments have been made for the 2010 MLSC subgrant as of the date of the on-site review.

A limited review of accounting records and detailed general ledger during the review period disclosed that CMLS is in compliance with 45 CFR § 1627.4(a); non-mandatory dues and fees are being paid with non-LSC funds.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 18: CMLS is in noncompliance with 45 CFR Part 1635 (Timekeeping requirements) in that some of its timekeeping records are not accurately or contemporaneously recorded.

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

Finally, 45 CFR § 1635.3(d) mandates that recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing on a quarterly basis that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

A limited review of four advocates timekeeping records for the semi-monthly pay periods ending June 15, 2009 and December 15, 2009 disclosed that employees enters their time records in six

minute intervals electronically into the Practice Manager timekeeping system and also complete a written Payroll Authorization (“PA”) form with their total time for each day. For each period reviewed the employee’s Time & Expense (“T&E”) report generated by the Practice Manager timekeeping system was compared to the time shown on their PA form.

Several exceptions were noted as follows. In two instances the employees’ timekeeping records were not entered contemporaneously as the employee’s T&E reflected no entry for the date reviewed but their PA showed a full day of work on that same date. These are exceptions to 45 CFR § 1635.3(b)(1) which requires, in part, that time records be entered contemporaneously. Also in another case where time records were not entered contemporaneously, a part-time paralegal entered one hour worked for a day reviewed on her T&E report; however, on her PA report she showed a full day worked. Additionally, that employee’s T&E report for that pay period showed a total of 38.5 hours worked for the pay period, while her PA form showed she worked a total of six full days. Based on a 7 hour work day (a 7.5 hour work day net of two 15 minute paid breaks), her total hours should be a minimum of 42 hours; therefore, she was paid for more time than she had entered into the PM timekeeping system. In another instance, for December 2, 2009 an employee entered 8 hours in their timekeeping T&E report (seven hours of work activities and one hour paid break) but on their PA form for the same day they showed only half of a regular day worked and half a day vacation. The program needs to determine and implement sufficient procedures to ensure that timekeeping records are entered contemporaneously and accurately as required by 45 CFR § 1635.3(b)(1).

Discussion with the Agency Administrator disclosed that there were no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR § 1635.3(d). CMLS require that all of its attorneys and paralegals complete the written certification, described under this regulation, stating that they have not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. Review of these documents revealed no exceptions.

In response to the DR, CMLS stated they believe that they are in substantial compliance with 45 CFR Part 1635. CMLS stated that they have adopted a policy on timekeeping that was shared with the review team.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys’ fees). Interviews with CMLS management and a limited review of the program’s fiscal documentation indicated compliance with this regulation during the period 2008 through March 15, 2010 in that the program did not seek, and was not awarded attorney fees. Finally, CMLS management has included a notice in its program policies concerning a recent regulatory change involving the repeal of 45 CFR Part 1642.

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys’ fees in any case undertaken on behalf of a client of the

recipient. *See* 45 CFR § 1642.3.¹³ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹⁴

OCE's review of CMLS's accounting records and audited financial statements for the review period along with discussion with program management determined that the program has not recognized or reported the receipt of any attorneys' fees or court-awarded payments for cases during the review period. A review of CMLS's program policies determined that program management included a notice advising of the repeal of 45 CFR Part 1642.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of Part 1612 is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials. Recipients must have written policies and procedures to guide its staff in complying with Part 1612. *See* 45 CFR § 1612.11.

None of the sampled files and documents reviewed evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also confirmed that CMLS is not involved this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

¹³ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

¹⁴ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

Finding 21: Sampled cases complied with the requirements of 45 CFR Parts 1613 and 1615, (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that CMLS is not involved in this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 22: Sampled cases complied with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR §1617.2(a).

None of the sampled files reviewed involved initiation or participation in a class action lawsuit. Discussions with the Executive Director also confirmed that CMLS is not involved in this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Recipients may not make available any funds , personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that CMLS is not involved in this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that CMLS is not involved in this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also confirmed that CMLS is not involved in this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁵ This restriction has been contained in all subsequent appropriations acts.¹⁶ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated

¹⁵ *See* Section 504(a)(18).

¹⁶ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

clearly and concisely in 45 CFR § 1638.1: “This part is designed to ensure that recipients and their employees do not solicit clients.”

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that CMLS is not involved in this prohibited activity.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity. Discussions with the Executive Director also confirmed that CMLS is not involved in these prohibited activities.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134, Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that CMLS was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

In response to the DR, CMLS offered no comments with respect to this Finding.

Finding 29: The CMLS Personnel Policies Manual does not have a policy regarding salary advances.

CMLS permits salary advances in rare situations; however, there were no advances extended during the review period. Salary advances are limited to a repayment term of two to three pay periods and advances must be accompanied by an Advance Agreement Form.

Travel advances for conferences or meetings are made based upon an approved CMLS Travel Advance Form which is completed by the traveler and must also be signed by the Executive Director in the case of staff travel. Upon return, the traveler must submit an expense form listing all expenses, including those that were prepaid, along with receipts. The advance is then cleared by settling the amount due either the traveler or the program.

In response to the DR, CMLS stated that while not having a formal policy, they did have a form that provided terms under which a salary advance may be granted. CMLS further stated there were no advances during the review period and, since the review, they have formalized a policy on salary advances and distributed it to staff. CMLS stated the salary advance policy will be incorporated into the CMLS Personnel Policies.

Finding 30: CMLS's Internal Control Worksheet revealed a lack of adequate segregation of duties and/or internal controls.

CMLS's fiscal staff consists of its Agency Administrator with additional oversight and review provided by the Executive Director. The accounting system is directly supervised by the Agency Administrator who is also responsible for the overall operations of the financial management system. The program utilizes Sage MIP Fund Accounting software, Practice Manager for its case and time management software, and Payroll Control Systems ("PCS") for payroll.

The program's Accounting Overview contains detailed procedures which define the individual actions and responsibility to achieve effective internal controls including its Cash Disbursement

Policy, General Ledger Policy, General Journal, CMLS Payroll Procedures, Financial Record Safeguarding, Client Trust Procedure, Petty Cash Procedures, Purchase of Supplies, Furniture, and Equipment, and Private Bar Expense Allocation.

In its 2008 and its 2009 Audited Financial Statements (“AFS”), the program’s Independent Public Accountant (“IPA”) commented that, due to the small size of the program, adequate segregation of duties in its accounting function is not feasible and program management should maintain sufficient oversight to avoid errors and irregularities. The IPA went on to state that this situation is common to organizations of this size and any changes should be reviewed from a cost-benefit perspective.

Through a review of CMLS’s responses to an LSC Internal Control Worksheet prepared during the on-site visit and interviews with CMLS’s fiscal staff it appears the program has established a segregation of duties to the extent practical based on existing staffing levels. However, it was determined that a vast majority of the program’s fiscal duties fall under the responsibility of one person, the program’s Agency Administrator. In order to further strengthen its fiscal internal control, CMLS should continue to look for additional ways to incorporate the segregation of fiscal responsibilities amongst its staff. *See* 2010 Accounting Guide For LSC Recipients (“AGFLR”), Appendix VII Section J (Segregation of Duties) and Program Letter 10-2.

Also, in discussions with the Agency Administrator it was determined that her fiscal duties are not assumed by someone else when she is away from the office. LSC recommends in its AGFLR and in Program Letter 10-2 that employees should be required to take annual vacations and their duties should be assigned to others during their absence. This control is provided as guidance on how the program’s accounting procedures and internal control can be strengthened and improved with the goal of eliminating or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur. This may be accomplished by any combination of cross training of existing personnel or increasing staff as program management determines appropriate. *See* 2010 AGFLR, Appendix VII Section A-14 and Program Letter 10-2.

CMLS could further strengthen its fiscal internal control by fully implementing additional internal controls that are detailed in the Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2. Internal control recommendations are noted for the following areas: board review of a cash flow statement or a statement of cash on hand; additional segregation of fiscal duties; continuation of the Agency Administrator’s duties when she is out of the office; procedures regarding cash receipts from clients; and timekeeping and payroll records.

LSC requires that applicants who receive funding agree that they will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (“LSC Act”), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide, the CSR Handbook (2008 Edition) the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant and provided to the successful Applicant. Applicants agree to comply with both substantive and procedural

requirements, including recordkeeping and reporting requirements. *See* LSC Grant Assurances for Calendar Year 2010 Funding (Form C). *See* Assurance 1.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as the process put in place, managed and maintained by the recipient's board of directors and management, which is designed to provide reasonable assurance of achieving the objectives of safeguarding of assets against unauthorized use or disposition; reliability of financial information and reporting; and compliance with regulations and laws that have a direct and material effect on the program.

The AGFLR provides guidance on all aspects of fiscal operations and the 2010 revised edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur. *See* AGFLR (2010 Edition), Appendix VII – Accounting Procedures and Internal Control Checklist and LSC Program Letter 10-2, Appendix A - Embezzlement, Fraud, and the Critical Importance of Effective Internal Control.

CMLS Board of Directors

The CMLS Board of Directors has exhibited awareness of its financial responsibilities. The Board has approved program policies for implementation of regulations issued by the LSC as well as an Accounting Overview which incorporates the program's internal controls and procedures. There is an Audit Committee of the Board whose responsibilities include the oversight of its external audit process. The entire Board reviews and approves an updated program budget on an annual basis at its December meeting and looks at an overview of the program's financial information at each quarterly meeting. This financial oversight includes a review of income and expenses; however, it does not include a cash flow statement or a statement of cash on hand. The 2010 AGFLR recommends that a cash flow statement or a statement of cash on hand should be submitted monthly to the Finance Committee of the Board of Directors and quarterly to all Board members. This should be implemented to strengthen CMLS' internal control regarding its Board's fiscal oversight of the program. *See* AGFLR, Appendix VII Section A-18.

Bank Reconciliations

The program uses a number of bank accounts for various purposes including operating cash, client funds, investments, and payroll purposes. LSC grant receipts are deposited to CMLS's savings account with payroll transfers being made to that account as part of the payroll processing twice monthly. The bank account reconciliation process is defined in its Accounting Overview and a limited review indicated that its bank statement receipt and reconciliation process is performed timely. In its 2009 AFS, the program's IPA had recommended that the Executive Director should document her review and approval of bank reconciliations on the face of the bank reconciliation. The limited review of its bank reconciliations indicated that the program has implemented this recommendation.

Cash Receipts from Clients

CMLS will occasionally accept cash from a client to cover anticipated fees in connection with their legal representation. CMLS has written procedures on this area which are contained in the Receipt of Funds section of its Client Trust Procedure. The procedure states that the program will accept cash but will limit its use. The cash will be initially given to the attorney or paralegal who is working with that client. The procedure states that a receipt must be given to the client with a copy retained by the program in the trust folder. Money obtained from the client and the appropriate forms are then to be given to the appropriate bookkeeper.

To strengthen a program's internal control with the goal of reducing opportunities for fraudulent activities to occur, LSC recommends that if a program chooses to accept cash from a client it should designate an employee(s) who is specifically authorized to receive the cash. Also, clients should be provided a notice about the program's cash receipts policy which states that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should request to see a supervisor. To strengthen its fiscal internal control regarding cash receipts from clients, CMLS should implement this control. *See* 2010 AGFLR, Appendix VII Section H-9 and H-15 and Program Letter 10-2.

Timekeeping and Payroll

From a review of CMLS's timekeeping records, it was determined that paid breaks are not entered into its Practice Manager ("PM") timekeeping system on a consistent basis. Some employees are entering their excused break periods (which includes a 45 minute lunch and two 15 minute paid breaks) into the PM system as a non-charged time item while other employees are not entering their break periods for timekeeping purposes. It is recommended that the program determine a consistent method for the input of paid breaks into its PM timekeeping software. It was also determined through review of PM timekeeping reports and interview with CMLS's Agency Administrator that vacation, sick, and other excused leave absences are not reflected in the program's timekeeping records. The program is encouraged to revise its procedures to report excused absences (vacation, sick, holiday, etc.) in its PM timekeeping system.

Finally, there was some confusion as to the number of hours in a work day. The program's Personnel Manual states normal working hours for staff are from 8:15 a.m. to 4:30 p.m. Monday through Friday with 45 minutes for lunch. Employees are expected to work 7.5 hours per day and are allowed 15 minutes each morning and afternoon for paid rest periods. In discussion with the Agency Administrator and Executive Director, it was determined there is a difference in interpretation as to whether the 7.5 hour workday includes the paid breaks.

In response to the DR, CMLS stated that they agree with the finding and recommendations on looking to ways to improve upon the segregation of duties issue. CMLS also stated they have followed every recommendation of their independent auditor in implementing procedures to enhance their internal controls.

IV. RECOMMENDATIONS¹⁷

As a result of this review and consistent with the findings of this report, it is recommended that CMLS:

1. Make every effort to obtain a citizenship attestation directly from the client prior to or concurrent with the case being referred to the private attorney;

In response to the DR, CMLS offered no comments with respect to this Finding.

2. Look for additional ways to incorporate the segregation of fiscal responsibilities among its staff, as described in the AGFLR (2010 Edition) and LSC Program Letter 10-2;

In response to the DR, CMLS stated that they agree with the finding and recommendations on looking to ways to improve upon segregation of duties issue.

3. Determine a consistent method for the input of paid breaks into its PM timekeeping software;

In response to the DR, CMLS stated they agree with the recommendations listed in the DR and have made substantial progress in responding to the suggestions made since the CSR/CMS visit.

4. Report excused absences in its PM timekeeping system;

In response to the DR, CMLS stated they agree with the recommendations listed in the DR and have made substantial progress in responding to the suggestions made since the CSR/CMS visit.

5. Revise its Personnel Manual to clarify whether the mandatory 7.5 hour employee work day includes or excludes the two 15 minute paid break periods; and

In response to the DR, CMLS stated they agree with the recommendations listed in the DR and have made substantial progress in responding to the suggestions made since the CSR/CMS visit.

6. Ensure its subgrants are paid according to the terms of the contractual arrangement.

In response to the DR, CMLS stated they agree with the recommendations listed in the DR and have made substantial progress in responding to the suggestions made since the CSR/CMS visit.

¹⁷ Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors. By contrast, the items listed in “Required Corrective Actions” must be addressed by the program, and will be enforced by LSC.

V. REQUIRED CORRECTIVE ACTIONS

As a result of this review, and consistent with the findings of this report, CMLS is required to take the following corrective actions:

1. Ensure that all case files reported to LSC in the CSR data submission contain evidence of citizenship/alien eligibility screening and include a written citizenship attestation or evidence of legal alien documentation when required;

In response to the DR, CMLS offered no comments with respect to this Finding.

2. Strengthen internal control related to its Board's fiscal oversight of the program to ensure that a cash flow statement or a statement of cash on hand is submitted monthly for review to the Finance Committee of the Board of Directors and quarterly to all Board members as described in the AGFLR (2010 Edition) and LSC Program Letter 10-2;

In response to the DR, CMLS stated they have followed every recommendation of their independent auditor in implementing procedures to enhance their internal controls.

3. Strengthen its fiscal internal control to ensure that the Agency Administrator's duties are assigned to others during periods when she is absent from the office, such as during vacations, as described in the AGFLR (2010 Edition) and LSC Program Letter 10-2;

In response to the DR, CMLS stated that they agree with the finding and recommendations on looking to ways to improve upon the segregation of duties issue.

4. Strengthen its fiscal internal control related to cash receipts from clients and designate an employee(s) who is (are) specifically authorized to receive cash from clients. Also, clients should be provided a notice about the program's cash receipts policy which states that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should request to see a supervisor;

In response to the DR, CMLS stated that they have followed every recommendation of their independent auditor in implementing procedures to enhance their internal controls.

5. Update its Program Policy related to 45 CFR Part 1609 - Attorneys' Fees to reflect recent regulatory changes as contained in LSC Final Rule - Fee-Generating Cases; Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Attorneys Fees effective April 26, 2010 and LSC Program Letters 9-3 and 10-1; and

In response to the DR, CMLS offered no comments with respect to this Finding.

6. Determine and implement sufficient procedures to ensure that timekeeping records are entered contemporaneously and accurately as required by 45 CFR § 1635.3(b)(1).

In response to the DR, CMLS stated they believe the program is in substantial compliance with 45 CFR Part 1630. CMLS stated they regularly run monthly reports to review accuracy of time reports and have adopted a discipline policy to ensure compliance. CMLS stated that given the varied responsibilities of CMLS's staff members, including time and travel out of the office, CMLS has adopted a policy that requires every employee to contemporaneously record its time for every activity during every workday with some flexibility to accommodate work assignments. Finally, CMLS stated it believes it has adopted a reasonable policy and is implementing it to follow the regulation, identify problems and train staff and/or discipline staff that has performance issues with timekeeping requirements.



~~et~~ Lora

CENTRAL MINNESOTA LEGAL SERVICES
www.centralmnlegal.org

October 22, 2010

OFFICE OF COMPLIANCE
AND ENFORCEMENT
2010 OCT 26 A 9:51
LEGAL SERVICES CORP
RECEIVED

Danilo A. Cardona, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street NW, 3rd Fl
Washington, DC 20007-3522

RE: CSR/CMS Visit, Recipient No. 524020

Dear Mr. Cardona:

Thank you for the receipt of the draft report from the Case Service Report/Case Management System review for Central Minnesota Legal Services, Inc. conducted August 9 through 12 of this year. Our response is enclosed.

Very truly yours,

Jean A. Lastine
Executive Director

Enclosure

Minneapolis serving Hennepin and Anoka counties
430 First Avenue North, Suite 359, Mpls, MN 55401
phone: (612) 332-8151 • Hennepin clients: (612) 334-5970 • Anoka clients: (763) 783-4970 • fax: (612) 334-3402

St. Cloud serving Benton, Chisago, Isanti, Mille Lacs, Morrison, Sherburne, Stearns, Todd, Wright counties
830 West St. Germain, Suite 309, P.O. Box 1598, St. Cloud, MN 56302
phone: (320) 253-0138 • clients: 1-800-622-7773 • fax: (320) 253-9208

Willmar serving Big Stone, Chippewa, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Meeker, Renville, Swift, Yellow Medicine counties
302 SW Fifth Street, Suite 201, Willmar, MN 56201
phone: (320) 235-7662 • clients: 1-800-622-4011 • fax: (320) 235-9496

Response to Draft Report
Legal Services Corporation Office of
Compliance and Enforcement Central
Minnesota, Inc.

August 9 – 12 2010

Case Service Report/Case Management System Review

Recipient No. 524020

Finding 18: CMLS is not in Compliance with 45 CFR Part 1635 (Timekeeping Requirement) in that some of its timekeeping records are not accurately or contemporaneously recorded.

CMLS believes it is in substantial compliance with 45 CFR Part 1635. CMLS has adopted a policy on timekeeping that was shared with the review team. CMLS staff shared that CMLS regularly runs reports monthly to review the accuracy of time records. CMLS has adopted a discipline policy to ensure compliance.

While the review team reviewed a small number of time records that were not accurate, there were no overall patterns of non-compliance with the timekeeping regulation. Given the varied responsibilities of CMLS' staff members including travel and time out of the office, CMLS has adopted a policy that requires every employee to contemporaneously record its time for every activity during every workday with some flexibility to accommodate work assignments. CMLS believes it has adopted a reasonable policy and is implementing it to follow the regulation, identify problems, and train staff and/or discipline staff who have performance issues with timekeeping requirements.

Finding 29: The CMLS Personnel Policies Manual does not have a policy regarding salary advances.

As noted on page 26 of the report, while not having any formal policy, CMLS did have a form that provided terms under which a salary advance may be granted. As also noted on page 26, there were no advances during the review period. Since the review, we have formalized a policy on salary advances and have distributed it to staff. It will be incorporated into the CMLS Personnel Policies.

Finding 30: CMLS's Internal Control Worksheet revealed a lack of adequate segregation of duties and/or internal controls.

As noted in the narrative following this finding on page 6 of the draft report, "...it appears the program has established a segregation of duties to the extent practical based on existing staffing letters."

We agree with the finding and recommendations on looking for ways to continue to improve upon segregation of duties issue and note that to date CMLS has followed every recommendation of our independent auditor in implementing procedures to enhance our internal controls.

RECOMMENDATIONS

CMLS agrees with the recommendations listed in the draft report. We have made substantial progress in responding to the suggestions made since the August 2010 CSR/CMS visit.