



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

Mississippi Center for Legal Services
Case Service Report/Case Management System Review
July 12-16, 2010

Recipient No. 625071

I. EXECUTIVE SUMMARY

Finding 1: While the automated case management system (“ACMS”) appears reliable, there were some noted patterns of human error in either not recording the correct data, or in not updating case data to reflect significant changes.

Finding 2: MCLSC’s intake procedures and case management system substantially supports the program’s compliance related screening and documentation requirements. Overall, the program’s systems were strong, with one (1) exception. The program must adopt a standard screening of prospective income for all applicants.

Finding 3: Sampled case files evidenced substantial compliance with 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 (“FPG”). For LSC-funded cases whose income was over 125% sampled files also evidenced substantial compliance. However, there were a few exceptions noted regarding necessary documentation for non-LSC funded cases reported in the CSR whose income exceeded 125%.

Finding 4: Cases sampled evidenced that MCLSC is in substantial compliance with asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced that the restrictions of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) were followed, but that MCLSC was in non-compliance with the documentation requirements of the regulation in a few cases.

Finding 6: MCLSC is in general compliance with 45 CFR § 1611.9. Retainer practices are consistently followed however some further definition of the “scope” of representation may be necessary due to certain open-ended standard retainer language.

Finding 7: While most sampled cases complied with 45 CFR Part 1636 (Client identity and statement of facts), there was one (1) group case that failed to comply with the requirements of Part 1636.

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

Finding 9: While most sampled cases contained evidence of legal advice, there were a number of exceptions that mostly involved potentially dormant cases. Program practices regarding documentation of legal advice and the services provided were generally strong and in substantial compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced an overall good application of appropriate closing codes under Chapters VIII and IX, CSR Handbook (2008 Ed.). However, some exception patterns were noted that need corrective action.

Finding 11: Sampled open cases evidenced some dormant and potentially dormant cases, including both staff and PAI cases. Better systems for effective periodic review of open cases is necessary so as to ensure that all cases remain active and are closed in a timely manner so as to fully comply with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

Finding 12: MCLSC is in substantial compliance with CSR Handbook (2008 Ed.), § 3.2 regarding avoidance of duplicate case reporting.

Finding 13: Sampled cases and review of financial and other records evidenced compliance with the requirements of 45 CFR Part 1608 regarding prohibited political activities. Further, one (1) program attorney ran for judicial office in a non-partisan election, which raised no compliance concerns.

Finding 14: Sampled cases and interviews evidenced substantial compliance with Part 1609 regarding fee-generating cases.

Finding 15: MCLSC needs to adopt a notification system for non-LSC funding sources for amounts exceeding \$250, as described by 45 CFR § 1610.5.

Finding 16: The activities undertaken by MCLSC to meet the requirements of 45 CFR Part 1614 regarding private attorney involvement met basic regulatory requirements. Further, sampling of PAI fiscal records indicated that MCLSC PAI expenses have exceeded the 12.5 percent minimum regulatory requirement. However, in 2009 MCLSC did not include an appropriate allocation of indirect overhead costs in its PAI totals, thus understating total PAI expenses.

Finding 17: MCLSC needs to adopt a simple procedure by which to monitor and annually determine whether program funds paid to the contract attorneys represent over half of the attorney's professional income, so as to ensure that payments to the contract attorneys qualify as PAI allocations.

Finding 18: An LSC approved subgrant with MVLP has been administered as described with no identified compliance issues. However, several other instances of non-compliance with the subgrant provisions of 45 CFR Part 1627 were noted. There were several instances in which total payments (both for services and expenses) to individual PAI attorneys exceeded \$25,000 annually, thus requiring advance LSC subgrant approval that was not obtained.

Finding 19: Review of program fiscal records evidenced compliance with 45 CFR § 1627.4 regarding membership fees and dues.

Finding 20: MCLSC is in general compliance with 45 CFR Part 1635 in that timekeeping records sampled were contemporaneous and accurate. However, time record sampling evidenced some minor exceptions.

Finding 21: Review of internal controls evidenced that most elements reviewed were reasonable and met basic related requirements of the LSC Audit Guide for Recipients and Auditors and the

Accounting Guide. One exception was noted in that the program has not established adequate written guidelines regarding use and required documentation for corporate credit cards,

Finding 22: MCLSC is involved in two (2) statewide projects involving transfer of LSC funds between the two (2) LSC-funded Mississippi programs. These payments indicated no compliance concerns.

Finding 23: Review of MCLS fiscal records evidenced compliance with the requirements of 45 CFR Part 1630 regarding derivative income.

Finding 24: Review of fiscal records, and sample cases evidenced substantial compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 25: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). Further review of program policies, financial documents and interviews with management evidenced that MCLS has appropriate policies in place restricting lobbying and certain other activities.

Finding 26: Interviews and case sampling evidenced substantial 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 27: Sampled cases and staff interviews evidenced substantial compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 28: Sampled cases and staff interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 29: Sampled cases and staff interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 30: Sampled cases and staff interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 31: Sampled cases and staff interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 32: Sampled cases and staff interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

II. BACKGROUND OF REVIEW

On July 12-16, 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 Mississippi Center for Legal Services ("MCLSC"). 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 four (4) attorneys and two (2) fiscal analysts. All attorneys and one (1) fiscal analyst were OCE staff members; the remaining fiscal analyst was a consultant.

MCLSC's administrative offices are located in Hattiesburg, Mississippi, with five (5) client service offices located in Hattiesburg, Jackson, Meridian, McComb, and Gulfport. This was the first OCE visit to this program as currently configured and funded. Previously, the service area now handled by MSLS was divided among several different LSC recipients who were combined through a series of mergers and changes to LSC funded service areas in Mississippi.¹ MCLSC received Basic Field funding totaling \$2,912,397 for 2008: \$3,205,135 for 2009 and \$3,460,708 for 2010. LSC funding accounts for the majority of MCLSC annual funding -- in 2009 LSC funds represented 72% of total funding.

MCLSC is currently one of three LSC recipients in Mississippi, with another basic field program in the Northern part of the state, and a separate Native American ("NA") grant to the Choctaw Nation. In 2009, MCLSC ceased being the recipient of a dedicated LSC NA grant, with LSC providing a direct grant to Choctaw Legal Defense, run directly by the tribe.

In accordance with the approved workplan, the program received a full review of its compliance systems and practices, including a full review of the program's fiscal records, systems, and testing of sample expenditures, along with testing of internal controls. All offices were visited during the review. Three of the offices were visited for one day each. The Jackson office, which houses both a local client service office and the program-wide telephone intake and brief service unit ("Call Center"), was visited for two days. Sample cases were reviewed in all offices and both for staff and PAI efforts. The program's PAI program is very active and involves all offices with both compensated and pro bono cases. The pro bono placement effort is coordinated through a subgrantee, the Mississippi Volunteer Lawyers Project ("MVLP") that receives an LSC subgrant for these efforts. The MVLP was not visited in person during this review, as all case records for cases being assisted by MVLP are available at the various MCLSC offices, thus enabling the review of PAI case compliance when visiting MCLSC offices. However, MVLP management was interviewed by phone regarding the compliance-related services they provide pursuant to the LSC subgrant.

The OCE team interviewed members of MCLSC's upper and middle management, staff attorneys, and support staff. MCLSC 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 July 2010. Case file review relied upon randomly selected files, pulled files on-site, as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and

¹ MCLSC was chartered on May 1, 2005, and covers all or part of five (5) historic LSC program service areas: Central Mississippi Legal Services ("CMLS"), Southwest Mississippi Legal Services ("SWMLS"), East Mississippi Legal Services ("EMLS"), South Mississippi Legal Services ("SMLS") and Southeast Mississippi Legal Services Corporation ("SEMLSC").

proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 450 case files which included both PAI (pro bono and contract attorney) and staff files. Both open and closed files were reviewed in all offices, with most reviewed files having been closed cases. A significant majority of files reviewed were randomly selected, with only approximately 100 reviewed files having been targeted for review.

The fiscal review included interviews of fiscal, management, and other staff in the administrative offices located in Hattiesburg office. Numerous relevant program fiscal records were reviewed and tested, including the annual audited financial statements. In addition, program policy documents were reviewed, including the MCLSC Employee Manuals, the MCLSC Accounting Manual, and other policy documents. Also, review of the program's financial internal controls was conducted.

The on-site CSR/CMS review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that MCLSC has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed MCLSC for compliance with regulatory requirements of: 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);² 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees³); 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).

At all times, program management and staff fully cooperated with the review, and all documentation that was necessary for LSC to obtain was provided without exception. The program's level of cooperation facilitated an efficient and effective review of the multiple review areas.

The program was provided a Draft Report ("DR") and provided an opportunity to comment. The program requested an extension of the period in which to comment, and comments were timely received on February 15, 2011. In addition, during the comment period, a conference call with the Executive Director and the other two (2) main senior directors of the program was held to discuss certain report

² In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

³ 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. 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.

findings with the goal of ensuring clarity of this Final Report (“FR”). The comments provided by the program have been fully implemented in this FR, and the comments in their entirety are attached to this FR as an exhibit.

III. FINDINGS

Finding 1: While the automated case management system (“ACMS”) appears reliable, there were some noted patterns of human error in either not recording the correct data, or in not updating case data to reflect significant changes.

Recipients are required to utilize ACMS and procedures that 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.

Review of the ACMS system indicated that it is reliable for use and able to produce reports and case data as entered. For most sampled files, a comparison of the information yielded by the ACMS to information contained in the case files indicated consistent information. However, there were several errors noted and some error patterns evidenced, all of which resulted from simple human error in data entry. These errors were either entering differing information in the ACMS from the evidence in the file, or resulted from a failure to make changes to a case reflected in the ACMS. Both are discussed below.

There were a few miscellaneous errors that did not amount to any specific problematic patterns. For example, there were a very few instances of problem code inconsistencies.⁴ However, there were other errors that did evidence a pattern or practice that needs to be addressed. First, in a few files, when a case was transferred from one office to another, the ACMS did not get updated to reflect the change. Two files selected for review were not available at the offices listed as handling those cases. These two files appeared as 2009 Hattiesburg closed staff cases, but had actually been handled and closed by another office.⁵

Second, there were a few instances of inconsistent information regarding the case closing date.⁶ In one (1) such case, Closed 2010 Case No. 11017582, the ACMS had a closing date of December 30, 2009, but the file evidenced legal advice continuing through January 15, 2010, with a case closure date of January 25, 2010. This example is problematic as the staff making subsequent entries on the case should have been able to catch the error in the previous closing date, and re-open the case or take other appropriate action.

⁴ *See* Open Case No. 08-12001780 (file reflects that case was a housing matter while ACMS reflects matter was a 99-Other Miscellaneous); and closed 2009 Case No. 08E-2007500 (file reflects that case was a 43-Emancipation matter while ACMS reflects matter was a 64-Public Housing case). *See also* Closed 2008 Case No. 08-3000350.

⁵ Closed 2009 Case No. 2014922 was transferred to and closed by the Jackson office and Closed 2009 Case No. 07-12001354 was transferred to and closed by the Gulfport office.

⁶ *See* Closed 2009 Case No. 07-3001914 and Closed 2010 Case No. 11017582.

There were a significant number of errors noted in the proper designation of a case as being either “PAI” or “Staff”. A majority of these appear to involve clients who were initially referred to a PAI attorney, but whose case was returned to MCLSC after the client failed to keep their appointment with the PAI attorney.⁷ In each instance, legal assistance was provided by MCLSC staff but the case designation was not changed to “S” at case closing, as was necessary.⁸ There was also one case designated as staff that was actually a PAI case. *See* Closed 2008 Case No. 08E-11008997.

MCLSC should take simple corrective action to remind staff of the importance of updating the ACMS data when significant changes occur to a case file.

Finding 2: MCLSC’s intake procedures and case management system substantially supports the program’s compliance related screening and documentation requirements. Overall, the program’s systems were strong, with one (1) exception. The program must adopt a standard screening of prospective income for all applicants.

For almost all client intake MCLSC uses a paperless centralized intake and limited assistance hotline model, referred to as the “Call Center.”⁹ The Call Center system remotely connects all MCLSC offices by a “Voice Over Internet Program” (“VOIP”).¹⁰ In addition to the Call Center, some intake can be conducted at local offices and thus the intake procedures and case management systems of all program offices were also reviewed during the July 2010 CSR/CMS review. Local office intake is limited to usually in-person intake for emergencies, walk-ins and service for individuals unable to access the centralized intake system.

Call Center Intake staff conduct telephone intake by entering the applicant’s information directly into the KEMPS Case Management System (“ACMS”). The review evidenced that overall MCLSC is consistent in its use of the ACMS for conducting income and asset eligibility screenings, collecting demographic information, performing conflict checks and case history searches (duplicate checks), and screening for citizenship. There were no prohibited defaults present in the ACMS. Ongoing quality controls for the Call Center intake system include training, and a weekly review of a sample of intakes by the Call Center’s Managing Attorney. This weekly review tests for compliance issues, accuracy and completeness.

⁷ *See* Closed 2009 PAI File Nos. 11014530, 11013337, 11007749, 11013622, 11013283, 2011131, 07-12001884, 07-12001440, 110120334, and S06-001792. *See also* Closed 2008 Case No. 08-3002316 and Open PAI File No. 11025758.

⁸ The DR contained a brief discussion as to whether a contributing factor for this might be whether some staff members are able to follow independent processes whereby they are able to directly refer cases back to the Call Center, thus removing such cases from necessary regional director oversight and review. In telephone conversations after the issuance of the DR, and in comments to the DR, program management explained that they were aware of no staff members that were allowed to do such referrals back to the Call Center and added that, if this were done, it violates established MCLSC policy. This discussion was removed from the FR and replaced with this footnote reference. Comments to the DR also stated that MCLSC would take actions to ensure that all staff are following the expected, proper program procedures.

⁹ Senior program management explained that the Call Center now covers all 43 counties of the service area, but that different parts of the MCLSC service area were brought into the system at different times in the past several years. The process was completed with the inclusion of the Hattiesburg office counties in late 2009.

¹⁰ The system directs each caller into a telephone-holding queue and calls are handled in turn. While in queue, the system provides applicants with certain pre-recorded legal information designed to answer frequently asked questions and alert callers to specific issues of concern within the client community.

After the initial intake assessment is completed, the intake staff will transfer the eligible caller to a Call Center paralegal, staff attorney or compensated PAI attorney on a rotating basis. These casehandlers review the intake and immediately provide some information or referral, legal advice or brief legal services to the client. Cases that end with advice and counsel or brief legal services are closed and coded for CSR reporting.

Infrequently, the Call Center provides extended services for one of its clients. More frequently, cases for potential extended service are internally referred to the appropriate geographic MCLSC branch office. A designated branch office staff member (usually the office secretary) electronically receives the intake (called “calendarizing”) and provides the intakes to the office Managing Attorney who reviews each intake for compliance. The Managing Attorney then either rejects the case for further service or assigns the case to an attorney or paralegal for continued services.

Due to the predominant use of a well-managed centralized telephone intake system, MCLSC was found to be overall employing a uniform and strong intake processes. However, a few areas of recommendation or change were noted as discussed below.

Prospective Income

MCLSC does not consistently screen for reasonable income prospects as required by 45 CFR § 1611.7 that requires that MCLSC inquire into every applicants’ reasonable income prospects during intake. Most staff interviewed reported they do not inquire into the reasonable income prospects of applicants, and this screening item was not on paper forms provided.

MCLSC must take corrective action to ensure that all applicants are screened regarding prospective income. It is noted that during the review that program management stated that this action would be taken and that all applicants would be screened for prospective income, as required. Comments to the DR evidenced that this has been adopted through standardization of the screening scripts for the centralized intake process.

Inconsistent Paper Forms

Although most intake screening is conducted on the computer system, there are various forms used for outreach or when a computer is otherwise not available. These forms contained inappropriate variations or were otherwise inadequate. Examples of issues noted include: an outreach and group eligibility form in Gulfport that did not contain asset screening; a Call Center outreach form that did not have a separate line for a citizenship attestation; and that no form screened for prospective income.

MCLSC must take corrective action to adopt one standard paper form for all intake conducted outside of the ACMS.¹¹ This paper form should ensure full compliance and should reasonably reflect the ACMS intake process. Further, MCLSC must ensure that all forms currently in use are discontinued in use. Comments to the DR stated that steps were taken to ensure that variant forms were discontinued and that a unified paper form has been adopted for intake that is done outside of the computer system.

¹¹ As discussed, *infra*, a separate and distinct group eligibility form must also be adopted. Comments to the DR indicated that this was also done, as requested.

VAWA Exceptions

Intake interviews indicated that not all staff understand the applicability of 45 CFR §1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments. As such, MCLSC should take steps to ensure that all intake staff members understand the numerous exceptions and flexibility allowed in such cases. Comments to the DR stated that this has been done, and that the program will continue to ensure that staff members understand the flexibility and rules relating to the VAWA exceptions.

Maintenance of Consistent Policy Awareness

Interviews revealed that while MCLSC staff members were familiar with the categories of assets that could be excluded by MCLSC during financial eligibility screenings; some were not familiar with the asset ceiling amounts. One interviewee stated that MCLSC asset ceilings are \$1,500 and \$2,000 when MCLSC asset ceilings are \$7,000 for one person, \$3,000 for each additional person, with a maximum asset ceiling of \$16,000. Another staff member was found to be mistakenly including the value of exempt assets (vehicles used for transportation) during the eligibility assessment.

Similarly, interviews revealed that some staff members were not familiar with the income ceilings set by MCLSC. One staff member stated that the basic income ceiling was 150% of FPG. While interviews indicated that most staff members were generally knowledgeable of the exceptions to income for applicants between 125% and 200% of FPG, there were minor, but nonetheless incorrect differences as to how to apply the factors. Most staff applied a factor analysis while one discussed using a “spend down” method. Another staff member treated the receipt of food stamps as income. Some staff members were not aware of the existence of some authorized exceptions for those applicants over 200% of FPG, reporting that there were no authorized exceptions. Finally, there was some variation as to how to determine “household”.

It is noted that by the end of the review, MCLSC had already taken corrective action by revising its *Record of Authorized Exception to Income Limitation* (Schedule A) to better define the authorized exception income limitations in an effort to provide clearer guidance to staff concerning these exceptions.

The volume of direct intake calls conducted directly by the field offices is very low – stated in some instances to be as few as a couple per month. Due to this low volume, the persons conducting this direct intake will have little ongoing experience with intake in the future.¹² The result of this is that their exposure to changes or trends identified will be limited or will not occur. In order to affirm the program’s emphasis on a uniform intake process, MCLSC should implement some simple ongoing training or other ongoing communication for intake workers in the field offices. This training should ensure that these isolated intake workers correctly interpret MCLSC intake policy, correctly utilize the automated intake system, and that their ability to conduct the same high caliber intake screening as done by the Call Center is maintained over time.¹³

¹² MCLSC also has some other staff who infrequently conduct intake, those who serve as “back-up” for intake. Similarly, these persons may not have a consistent exposure to intake practices and changes.

¹³ Comments to the DR explained that the program will be conducting additional training for all intake workers and has adopted a new procedure whereby persons outside of the Call Center will be asked once a month to conduct intake within the Call Center system so as to reinforce the training and standard intake practices.

The implementation of LSC regulations should be consistent throughout the program. As such, MCLSC should ensure that its program forms and intake workers make clear the related policy factors and levels and how to apply them. Areas for focus include: 45 CFR §1611.7(a), 45 CFR §1611.5 (exceptions to annual income ceiling); 45 CFR § 1611.3(2) (waivers of annual asset ceiling); 45 CFR §§ 1626.4 and 6(a); and CSR Handbook (2008 Ed.), § 5.5. As necessary, additional staff training should be considered.

Group Case Intake

MCLSC does have a group eligibility policy pursuant to 45 CFR Part 1611. However, in the one group case reviewed, the screening failed to fully document all of the regulatory requirements for group clients.¹⁴ It is necessary for MCLSC to adopt a simple group eligibility form that will ensure that staff understand and document the levels of assessment necessary for group client eligibility. Comments to the DR stated that the program has adopted a separate group eligibility screening intake sheet.

Finding 3: Sampled case files evidenced substantial compliance with 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 (“FPG”). For LSC-funded cases whose income was over 125% sampled files also evidenced substantial compliance. However, there were a few exceptions noted regarding necessary documentation for non-LSC funded cases reported in the CSR whose income exceeded 125%.

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.¹⁵ *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 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, and CSR Handbook (2008 Ed.), § 5.3. Comments to the DR stated that all necessary training for intake staff will be conducted.

¹⁴ Although, from a full assessment of the case, OCE was able to determine that the group client would meet the basic eligibility requirements necessary.

¹⁵ 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.

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.

Cases reviewed in which household income was below 125% of FPG consistently contained evidence of screening of income to document LSC eligibility required by 45 CFR Part 1611.4 and program policy. The LSC-funded sampled cases with initial incomes greater than 125% of FPG, had documentation of considered factors rendering the client as income eligible, with the exception of two PAI cases.¹⁶ Further, there were some non-LSC funded cases reported to LSC over 125% that lacked the needed documentation.¹⁷ Lacking such documentation, these non-LSC cases should not be reported to LSC in the CSR.

Staff of the MVLP was interviewed as part of the review of PAI systems. During these interviews, some insights about income screening were provided. MVLP has added some additional income eligibility checking and screening (after MCLSC screening has been completed and before referral of clients to pro bono attorneys). MVLP staff stated that this was found necessary so as to ensure that clients referred to pro bono attorneys were indeed financially eligible for services.¹⁸ It is recommended that MCLSC staff coordinate with MVLP to identify any insights gained by MVLP regarding referred clients that are subsequently determined to not be eligible and determine whether any additional or expanded screening for pro bono applicants should be considered by MCLSC. Comments to the DR stated that it has been in ongoing efforts with MVLP to identify insights regarding referred clients including any additional screening needed.

Finding 4: Cases sampled evidenced that MCLSC is in substantial compliance with asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d), 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 except for categories of

¹⁶ Two (2) PAI exceptions were identified in the case sample, in which the clients were over 125% and under 200% of FPG that did not contain documentation of authorized factors. *See* Open PAI Case No. 11013219 and Closed 2010 PAI Case No. 08-3004013.

¹⁷ There were three (3) exceptions in the case sample of non-LSC funded cases, reported in the LSC CSR, in which the clients were over 125% and under 200% of FPG that did not contain documentation of authorized factors. *See* Closed 2009 Case No. 11014016, Closed 2009 PAI Case No. 11014420, and Closed 2008 Case No. 08E-2007766.

¹⁸ The MVLP staff explained that at times potential clients appear to have not truthfully disclosed all income. There was no criticism of the intake screening conducted by MCLSC, as MVLP staff noted that LSC funded programs are not required to obtain proof of income in the standard intake situation. MVLP noted that it has to be very sensitive regarding referred clients so as to ensure that an over-income person is not referred to a pro bono attorney. It was stated that when a pro bono attorney thinks they are helping poor persons for free, and a person with available income is mistakenly referred, that the private attorneys sometimes get offended.

assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.¹⁹ *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."²⁰ *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.

Sampled cases consistently contained evidence of asset screening as required by 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed.), § 5.4.²¹ Case review evidenced that intake screeners will frequently record small amounts of available cash, such as \$30 or \$50 in the assets fields. This ongoing practice demonstrates that asset questions were included as part of the intake process. Also, files with no assets were clearly indicated as such.

Finding 5: Sampled cases evidenced that the restrictions of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) were followed, but that MCLSC was in non-compliance with the documentation requirements of the regulation in a few cases.

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 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

¹⁹ 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.

²⁰ The revised 45 CFR § 1611.2 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.

²¹ Only one (1) case evidenced insufficient documentation of asset eligibility. This case was non-LSC funded, but was mistakenly reported to LSC in the CSR. *See* Closed 2009 Case No. 12002268 (client assets listed as \$92,000, with no waiver in file.) MCLSC is reminded that for non-LSC funded cases reported in the LSC CSR that the full LSC requirements for documentation are necessary.

(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.²² 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 CSR.

Almost all sampled cases had the required level of documentation to evidence screening under 45 CFR Part 1626 (Restrictions on legal assistance to aliens) had been done, and that the person was LSC-eligible. However, there were some exceptions noted, discussed below.

There were a few open cases that lacked a required citizenship attestation, but wherein the file did otherwise evidence that the person had been screened for citizenship and was eligible under the regulation. In such files, MCLSC did not violate the regulatory restriction but was in non-compliance with the related documentary requirement, and as the case is open, can attempt to remedy the issue. *See* Open Case No. 07-5000054. Also, one (1) 2009 PAI case was reported to LSC without a required attestation. *See* Closed 2009 Case No. 1018328. There were also three (3) 2010 closed cases that fit this category – for such cases, MCLSC must either locate or produce the attestation, or the cases should be deselected from CSR reporting. *See* Closed 2010 Case Nos. 110116292, 1017279, and 11015054.

This finding also affects some open PAI cases reviewed as the program can and does rely on PAI attorneys to sometimes return the citizenship attestation at the *conclusion* of the case. Two (2) sampled cases fit this pattern -- Open Case Nos. 11006573 and 11011561. In both cases, MCLSC staff stated that the contract attorney assigned to the case is to return the documentation at the conclusion of the case. However, these open files, as currently maintained in MCLS, do not have the required level of documentation. MCLSC should revisit its procedures for obtaining citizenship attestations in PAI cases to assess whether the current system is the most effective to ensure compliance. It would be more effective to require contract attorneys to confirm or actually return the citizenship attestation before conducting work on the case. MCLSC must make certain that applicants are screened for citizenship or eligible alien status during the pre-screening process and that case files contain the necessary citizenship/alien eligibility documentation before representation begins. Comments to the DR stated that the program took full corrective action regarding this item by changing the requirement for any referred PAI case that lacks an attestation. Under the new system, the attorney is being asked to provide the signed citizenship attestation at the start of the case, rather than when the case is closed.

²² *See* Kennedy Amendment at 45 CFR § 1626.4.

Walk-in Applicant Citizenship Attestations

MCLSC has been transitioning a majority of intake from the local offices, with a strong preference that the Call Center be used whenever possible. Thus, even walk-ins to local offices may be given access to a program phone so as to be screened through the centralized intake system. The majority of intake staff interviewed reported they do not obtain written citizenship attestations for those applicants who walk into the office and are provided the use of a MCLSC telephone to apply for services through the Call Center. However, in such instances a citizenship attestation should be obtained by the local office even though the client is making an application by telephone via the Call Center, as the client has appeared physically at a program office. MCLSC should take corrective action to have citizenship attestations obtained from walk-in clients who are given access to a program phone to utilize the Call Center, so as to comply with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5 that requires Recipients to obtain written citizenship attestations whenever program staff has in-person contact with the applicant.²³

Finding 6: MCLSC is in general compliance with 45 CFR § 1611.9. Retainer practices are consistently followed however some further definition of the “scope” of representation may be necessary due to certain open-ended standard retainer language.

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 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.²⁴ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The scope assigned by MCLSC to all cases as part of the retainer is a standard boilerplate statement that reads:

“I, authorize MCLSC to represent me in the following matter(s):_____”.

In the blank line that follows, various short or long statements are added, which case sampling evidenced typically clearly indicated the subject matter or actual case, for which the program is agreeing to provide representation. These statements did meet the minimum requirements of Part 1611 if full representation were intended, as the boilerplate language appears to agree to full representation.

²³ Comments to the DR stated that the program has taken full corrective action regarding this item and now requires citizenship attestations to be obtained from walk-in clients who use an office phone to access the Call Center intake system.

²⁴ 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.

However, in cases in which MCLSC does not intend to commit to full representation at the time the retainer is signed, a better delineation of “scope” is warranted.

MCLSC management should review this standard language and assess whether additional detail or restriction to scope is warranted for some case retainers. This is particularly important when it is necessary to limit the program’s commitment as the words “represent me” can be read as open-ended, and committing the program to ongoing representation. Management should also consider whether there are specialized case situations in which an attorney’s investigation, prior to the full acceptance of the case, is warranted and the retainer should reflect such a distinction, as there is a more limited level of initial commitment.²⁵ Comments to the DR indicated that MCLSC is considering this recommendation regarding whether more limited scope is warranted in some retainers.

Almost all files requiring a retainer contained an adequate document to comply with the requirements of 45 CFR § 1611.9. There were two (2) sampled case files that lacked a retainer agreement when one was required.²⁶ In addition, there were three (3) exceptions in which the retainers were executed but the area for scope and subject matter was blank.²⁷ It is recommended that MCLSC re-double its efforts to remind staff to complete the scope and subject matter elements of the retainer, and to ensure that case oversight reviews whether this is being consistently done.

Finding 7: While most sampled cases complied with 45 CFR Part 1636 (Client identity and statement of facts), there was one (1) group case that failed to comply with the requirements of Part 1636.

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).

Several sampled cases involved representation of a plaintiff in which a statement under Part 1636 was required. With one exception discussed below, all such cases contained the required statement that fully complied with the regulation. MCLSC practices in this area are generally strong – staff routinely

²⁵ In such situations, a more detailed limitation of scope could state, for example, an agreement to “investigate and consider for full representation”. This avoids an initial full acceptance that does not commit the program to engage full representation if a case is found to lack effective defenses or otherwise lack merit after initial investigation and assessment.

²⁶ *See* Open Case No. 11015726 (a group case that settled after litigation); and Closed 2010 Case No. 11016292 (case closed IA- uncontested court decision).

²⁷ *See* Closed 2009 Case Nos. 3005894 and 08-3004412 and Open Case No. 08-12001780. Another open case reasonably did not yet have a retainer – staff explained that all contacts to date were by telephone, and that the client is expected to soon return the necessary paperwork. *See* Open Case No. 11025758.

obtains a signed client identity and statement of facts as part of the collection of other documents at the beginning of the case.

The one (1) exception involved a non-LSC funded group case in which MCLSC did not identify each plaintiff in the complaint and did not obtain a statement of facts for each client. *See* Open Case No. 11015726. In this instance, there was at least one individual who received a settlement, but was not named in the complaint. 45 CFR Part 1636 requires MCLSC to “[i]dentify each plaintiff it represents by name in any complaint it files...” *See* 45 CFR § 1636.2 (a)(1). While the complaint contained specific facts supporting the plaintiffs claims, it failed to satisfy the requirements of 45 CFR Part 1636 because not all of the plaintiffs signed or dated the complaint or a separate statement of facts as required by 45 CFR § 1636.2 (a)(2).

Finding 8: Sampled cases evidenced substantial 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 that 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. The program priorities are detailed, with the overall priority areas of: “support for families”; “preserving the home”; “maintaining economic stability”; “safety, stability & health”; and “assisting populations with special vulnerabilities”.

All sampled cases were within MCLSC priorities, evidencing substantial compliance with 45 CFR Part 1620.

Finding 9: While most sampled cases contained evidence of legal advice, there were a number of exceptions that mostly involved potentially dormant cases. Program practices regarding documentation of legal advice and the services provided were generally strong and in substantial compliance with 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.

Most cases sampled evidenced the activities and advice provided to clients as required by CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), with limited exception, as discussed below. Also, in a very few instances, the level of legal work evidenced did not match the closing code selected, as discussed in the section addressing closing codes, *infra*. There were a few exception cases (most being PAI) that had been reported to LSC in a previous CSR submission that lacked evidence of legal advice.²⁸ There were also a number of open files (mostly PAI cases) that lacked any evidence of legal advice, with some of these files appearing to be dormant, as discussed in the section on timeliness, *infra*. Several of the open cases had been recently been tagged for deselection by MCLSC staff. See Open PAI Case Nos. 2010864, 11007805, and 11023735.

PAI-related Timeliness Issue

As a result of the MCLSC visit, LSC clarified a CSR timeliness rule for certain situations in which a program hears back from a pro bono attorney (or pro bono placement service) in a subsequent year, and reports that no PAI attorney assistance was provided. In a relevant case, MCLSC staff provided legal advice in 2007 and made a referral to MVLP for pro bono placement. In 2008, MVLP reported back that it was unable to obtain PAI attorney services in the case. LSC determined that it is a timely CSR reporting of this case in the 2008 CSR as a staff case (as services were provided by staff) even though the staff advice was provided in 2007. This is based on the fact that it was reasonable for the program to leave the case open into 2008 based on the pending PAI referral efforts.²⁹

Finding 10: Sampled cases evidenced an overall good application of appropriate closing codes under Chapters VIII and IX, CSR Handbook (2008 Ed.). However, some exception patterns were noted that need corrective action.

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 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.

Various closing codes were tested in the review of sampled closed cases. In addition, program staff members serving as intermediaries were engaged in conversations regarding the application of different closing codes under the CSR Handbook (2008 Ed.). The intermediaries provided for case review included several experienced staff, as well as management staff or other staff specifically assigned to

²⁸ PAI exception cases included: Closed 2008 PAI Case Nos. 06-2000450, 07-2001567, and 06-200480, and Closed 2009 PAI Case Nos. 11018328, 11014420, and S06-001792. The other such cases are Open Case Nos. 08E-2006039 and 08E-3005788.

²⁹ In Closed 2008 Case No. 07-2000874, the case was opened in January 2007 and provided advice and counsel by a MCLSC staff member. The case was then referred to MVLP. It was then closed in September 2008 after the MVLP notified MCLSC in 2008 that the case would not be handled by a pro bono attorney. Closing the case in 2008 is reasonable based on the facts of this case, and the case, and others like it, should be considered as timely when reported in the following year, as based on the pending PAI attorney referral efforts.

ongoing case closing activity or review. Overall, these staff evidenced a high level of awareness of LSC closing code definitions and distinctions, as well as related considerations regarding necessary levels of proof and necessary documentation.³⁰ Sampled cases evidenced an overall proper use of both new and revised CSR closing codes. However, there were a few exception patterns noted, discussed below. These patterns should be simple for the program to correct, through simple instruction and follow-through with staff.

Highest Level of Service Provided to the Client

An error pattern was noted in which the program incorrectly reported a case at the level of service conducted by the attorney, but not at the level of service actually *delivered to the client*, which is the requirement. These cases were typically closed as “B” when “A” was the only accurate code to use. In these cases, the program provided “A” level advice and counsel to the client, but then completed “B” level work (such as drafting a pleading for a client), that was not able to be provided to the client (usually the client failed to return). Such cases cannot be closed as “B”, but rather are only correct as an “A” based on the fact that the client did not actually obtain the “B” level of service. This affected both PAI and staff cases.³¹ MCLSC should take simple corrective action to educate staff of this LSC rule and ensure that in the future that cases are reported at the highest level of service provided to the client.

Misuse of Category “K”

MCLSC utilized closing code “K” for several closed cases, with the misuse fitting one of two categories: either the case lacked any legal advice and staff mistakenly designated the file as a CSR case (which it was not),³² or “K” was used in a file with legal advice, but another CSR closing category was more accurate, and therefore should have been selected.

There were several instances in which “K” was used but another CSR category was more accurate. Examples of incorrect “K” usage included cases that should have been closed instead as either “A”, “B”, or “H”.³³ Some staff explained that there was some belief that “K” was to be used in the instance when an “A” or “B” level case was delayed or otherwise late. It was explained that in the revised CSR guidelines that “K” does not serve to remedy a otherwise untimely case, and that there is no longer any “time element” to the proper closing of “B” as existed in the prior handbook.

³⁰ During the period leading up to the adoption of the 2008 CSR Handbook in which LSC conducted two dozen trainings on the new Handbook, MCLSC facilitated one of these trainings in Mississippi which covered the new Handbook and related compliance requirements, at which a majority of MCLSC current staff were trained. In addition, the program followed-through with additional training to ensure a smooth transition to the new closing code system. This apparently led to the wide consistency with which most staff at different offices evidenced strong basic CSR knowledge.

³¹ See Closed 2009 Case Nos. 11012063, 11012063, 11012054, 110112061, 3017220, 3010761, 3010047, and 2001886 and Closed 2008 PAI Case No. 08-3002316.

³² In several “K” coded cases there was no legal advice provided and/or documented and the inclusion of the case in the CSR was in error. See Closed 2009 Case Nos. 08-50068, 1101779, and 2014909 and Closed 2008 Case Nos. 2000088 and 2005735.

³³ See Closed 2010 Case No. 11022470 (the file evidenced “A” level assistance), Closed 2009 Case No. 12002268 (the file evidenced “A” level assistance), and Closed 2009 Case No. 11011030 (the client failed to show up for further in-person assistance and only telephonic “A” level assistance was provided). See also, Closed 2009 Case No. 03-14001610 (the file evidenced “B” level assistance), and Closed Case No. 11016480, where “B” was accurate. See also, Closed Case No. 08-3002265 (where “H”, agency decision is correct);

Most frequently the correct closing category for the incorrect “K” case closures was “L”, extended services.³⁴

Court Decision “I” Level Closing Code Errors

There were a number of miscellaneous mistakes involving proper use, or not, of “I” court decision closing codes. Mistakes included the use of an “I” closing code, when the file contained no evidence that the matter was litigated. *See* Closed 2010 Case No 07-2001826 (case closed using I(a) where “L” would be accurate) and Closed 2008 PAI Case No. 2008964 (closed at “I” level, but file documented only “A” level assistance). There were also cases which did not get closed with an “I” level code that should have been. *See* Closed 2009 Case No. 2012114 (closed as "B" where “I(b)” would be more accurate as there was an agreed order obtained in court) and Closed 2009 Case No. 06-2000630 (closed as "F" where “I(b)” is more accurate as there was a negotiated divorce settlement approved by the court). Finally, there was an instance in which an order or withdrawal (due to client’s failure to cooperate) was closed as I(a), where the CSR Handbook instructs that such cases be closed as “L”.

MCLSC should take corrective action to ensure that staff members understand, and follow, the correct closing code practices involving:

- The need for reporting only the highest level of services provided to the client;
- The proper (and infrequent) need for use of category “K”; and
- Use of “I” closing codes when there has been appropriate court action, other than a simple motion to withdraw at the beginning of a case.³⁵

Finding 11: Sampled open cases evidenced some dormant and potentially dormant cases, including both staff and PAI cases. Better systems for effective periodic review of open cases is necessary so as to ensure that all cases remain active and are closed in a timely manner so as to fully comply with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

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).³⁶ There is, however, an exception for cases opened

³⁴ Several cases incorrectly closed as “K” should have been closed as “L”, extensive services, as that was the most descriptive and accurate closing code. Examples include: Closed 2010 PAI Case No. 5010959, Closed 2010 Case No. 11021307, Closed 2008 Case No. 5007825, Closed 2009 PAI Case No. 07-5000309, and Case Nos. 08-3003834 and 08-3003877 (in these two (2) cases the program lost contact with the client, and closing code "L" Extensive Service was the accurate level of assistance provided).

³⁵ Comments to the DR stated that MCLSC has taken steps to remind staff of the three (3) findings listed here and will further address these issues with managing attorneys and at subsequent staff meetings and/or trainings.

³⁶ 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

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).

Pro Bono Case Follow-Up and Related Dormancy

Some PAI cases sampled indicated that the absence of clear, periodic oversight to ensure that cases were still active, or closed timely. Some sampled pro bono cases evidenced instances in which documentation provided by MVLP needs improvement to clearly evidence what, if any, legal services were provided by the private attorney and to support proper closing code usage and case closing by MCLSC.³⁷ Related to this, other sampled pro bono cases indicated that there has been no regularly conducted schedule for case updating by MVLP. For example, one case referred in April 2007 received no updates until the end of 2009 at which time MVLP informed MCLSC that an MVLP staff person had spent two hours on the case and but that a pro bono program was “unable to assist client”. *See* Closed 2009 PAI Case No. 07-5000262. Some MCLSC staff interviewed also indicated that in the past the reporting from MVLP on open cases did not appear to follow any set schedule. Staff explained that if they reached out to MVLP that MVLP would be responsive, but that absent an inquiry there did not appear to be regular reporting. It was stated that there is a quarterly system whereby MCLSC requests status updates from MVLP on all open cases. However, this system does not appear to be fully working. The need for more frequent case updates was discussed during an interview of MVLP staff, who indicated a clear openness to this observation and a commitment to increasing the effectiveness and frequency of oversight practices.³⁸

MCLSC should take corrective action and work with MVLP to establish an open PAI case oversight system that is regularly scheduled, and then should ensure that the schedule is followed. The system

and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

³⁷ *See* Closed 2009 Case No. 08-500681 (closed based on a letter from MVLP, however the information/documentation provided was not sufficiently descriptive to support any level of legal advice or service – the case was incorrectly closed as a “K” and reported in the 2009 CSR, but should have been deselected). *See also*, Open PAI Case No. 07-5000090 (case accepted in February 2007 with no evidence of periodic case review or oversight until May 2010 when MCLSC staff sent a letter to MVLP asking for an update. As of July 2010, the file does not yet evidence its current status and whether there was any provision of legal advice or services by a private attorney.)

³⁸ Subsequent to the on-site review, three (3) MVLP staff persons were jointly interviewed by phone, including the MVLP General Counsel, the MVLP Executive Director, and their office manager. The need for periodic oversight and the level of detail necessary to support MCLSC compliance efforts was discussed. The need to have sufficient description or evidence of the level of legal services was also discussed. The MVLP management indicated that they were moving to implement some improvements to the oversight and pro bono placement services they provide. Further, these individuals indicated clear openness and commitment to implementing any further necessary changes. It was added that MVLP has experienced some staff turnover in recent times, and also added a new general counsel in late 2009. The MVLP executive management stated that they are reviewing and assessing program systems so as to identify any necessary changes. In addition, the new MVLP general counsel has been focusing on enhanced recruitment of attorney volunteers.

should ensure at a minimum that MCLSC has reliable updates for open pro bono files at least every six months for the duration of time the case remains open. Comments to the DR indicated that the program has taken, and will be taking specific actions to ensure a more regular follow-up system for pro bono cases.

PAI Contract Attorney Case Follow-Up and Related Dormancy

There were some sampled PAI contract attorney cases that indicated needed improvements in case follow-up. These cases are handled directly by MCLSC offices and staff. Several sampled contract (and pro bono) PAI cases evidenced that there was no follow-up for extended periods after placement of the case.³⁹ This sometimes resulted in late reporting of case results to MCLS. *See* Open PAI File No. 07-2001084 in which the contract attorney received a court order in 2008, but did not forward it to MCLSC until July 2010. As a result this case must be, and will be deselected from CSR reporting by MCLS.

MCLSC should take corrective action and adopt a more regular policy and practice regarding the periodic oversight of compensated PAI cases. The policy should require that all open cases receive, at a minimum, a documented update every six months. The update should evidence either that the case remains appropriately active, or is to be closed. Comments to the DR stated that the program is adopting changes to ensure a more regular follow-up system for pro bono cases.

Dormancy in Staff Cases

There were several dormant, or potentially dormant open staff cases identified during case sampling, with a majority of these cases being staff cases in the Hattiesburg office, and the a few others noted in the Meridian office.

Hattiesburg exception open cases demonstrated that the file was not being actively engaged and/or or had no activity for a significant period of time. Exception examples include: Open Case Nos. 03-2021032 (opened on January 7, 2003 with the last time charge to the case in April 2005 – case appears inactive and likely dormant), 05-2000419 (opened in 2005 with the last time charge being in 2005 -- file also evidenced that the client had died a few years ago, and this file is clearly dormant and should be closed in a manner that it is deselected from current CSR reporting), and 03-2021374 (opened on July 2, 2003 and was reassigned in June 2006 when the prior advocate on the case left MCLSC employment -- case did involve some court representation in the beginning, but is currently inactive with no recent time charges).⁴⁰

There was also one (1) untimely closed 2009 case identified in Hattiesburg. In Closed 2009 Case No. 03-14001610, the file contained a letter from May 2004 requesting that the client make contact with the

³⁹ *See* Open PAI Case Nos. 08-3001533 (opened on February 13, 2008 with no evidence of effective periodic follow-up), 07-5000846 (no evidence of follow-up since its October 2007 opening – unknown whether the case was still active, already closed by the attorney, and/or becoming dormant), and 07-5000618 (no ongoing evidence of status review in the file since August 2007 opening -- status of case is unknown).

⁴⁰ *See also* Open Case Nos. 06-2000326 (opened on July 31, 2006), 07-2001672 (opened in 2007 and should have been closed in that year), 2017909 (opened on September 2, 2009 with a last time charge on September 9, 2009, and contained no legal advice), 2016275 (opened in July 2009, with the most recent time charge in October 2009), and 03-2021374 (clearly dormant).

program and then next had a letter dated September 30, 2009 to the client stating that the file would be closed due to lack of contact with the program. This file should not have been reported to LSC in the 2009 CSR, as it was clearly untimely.

Hattiesburg office staff explained that this office experienced staff turnover and some vacancies. However, the dormant cases also evidence the lack of a documented periodic and effective oversight system to ensure that open cases are appropriately completed and closed in a timely manner.

There were also some Meridian cases noted for potential dormancy or untimely closing.⁴¹ The above discussion evidences a need for MCLSC to take corrective actions to adopt and enforce a more frequent and effective open case review process to ensure that cases are either handled timely or are closed timely. Such a system should include documentation of periodic reviews with corresponding time charges entered for each case for each oversight review. Also, MCLSC should conduct a current review of all older open cases to ensure that they are either closed (if completed or dormant) or that they are actively engaged if remaining open. In particular, the Hattiesburg office open cases should receive a comprehensive assessment.

It is recommended that the program adopt a *time-charge based case review system*.⁴² This type of system helps to focus on those cases not receiving recent attention, and that have a higher probability of becoming dormant. This also helps to support review of ongoing work to ensure active cases are getting required attention. Such a system will also help identify some more recent cases that may need either to become more active, or be closed. Comments to the DR stated that MCLSC is considering adopting the time-based follow-up system discussed in this recommendation.

Finding 12: MCLSC is in substantial compliance with CSR Handbook (2008 Ed.), § 3.2 regarding avoidance of duplicate case reporting.

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 more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and CSR Handbook (2008 Ed.), § 6.2.

⁴¹ *See e.g.* Closed 2009 Case No. 07-12000995, in which the last work recorded in the case was dated August 16, 2007 but the file was not closed until July 2009. *See also* Open Case 08-3002349, opened on March 17, 2008 with a last client contact in September 2009.

⁴² A time based assessment would first request the computer to identify all cases that did not have a time charge by a program advocate for a certain time period, such as 4 or 6 months. Next, the cases on this list would then be reviewed and closed if completed. For cases still active or necessary to remain open, the program should then require that the case handler provide a written case update in the case record, along with a corresponding time charge. After the first one or two such reviews, the list of cases without time charges should become less. Also, when first conducting such a review, and in light of a few dormant cases identified in the case sample, there will be cases that should be both closed and deselected. However, if such a review is conducted 2-3 times each year as an ongoing practice, then after the first couple reviews, the majority of cases that might have become dormant should be identified for closing prior to becoming untimely and therefore can be reported and included in a CSR.

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.

Extensive review of three (3) years of closed program case lists for 2008, 2009 and 2010 until mid-year evidenced few instances in which the same client received more than one closed case in a given year, with little possibility of incorrect duplicate cases. A few cases for similar client names were included in the case sampling, and testing of these cases evidenced that all closed cases reported in recent CSRs were unique and no duplicate cases were reported.⁴³ Program efforts to comply with CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 have been fully effective.

Finding 13: Sampled cases and review of financial and other records evidenced compliance with the requirements of 45 CFR Part 1608 regarding prohibited political activities. Further, one (1) program attorney ran for judicial office in a non-partisan election, which raised no compliance concerns.

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 MCLSC Employee Handbook, Section 2206, implements Part 1608 for MCLSC employees. Fiscal files reviewed and sampled, including cost centers reflected in the MCLSC Chart of Accounts, a review of all cash disbursements by payee or vendor name for the year 2009 and a test check of selected individual payees found no evidence that MCLSC has been involved in prohibited political activity. Review of the program vendor list also found no indications of funds being expended to support political parties or campaigns. Web research regarding MCLSC identified no news articles or other historical data indicating MCLSC has been involved in any prohibited political activities during the review period. In addition, discussions with various intermediaries and staff, as well as program management, indicated no restricted political activities during the review period of 2008 through July 2010. Finally, no sampled cases evidenced any involvement in activities prohibited by Part 1608.

One of the MCLSC regional managing attorneys ran for a non-partisan elected judgeship approximately two years ago and was not elected. Under Mississippi Code, Section 23-15-976, these judicial offices are deemed nonpartisan and candidates are prohibited from campaigning or qualifying for such an office based on party affiliation. No issues with Part 1608 were noted.

Finding 14: Sampled cases and interviews evidenced substantial compliance with Part 1609 regarding fee-generating cases.

⁴³ There were two (2) open cases that were duplicates, but as these are open, there has been no duplicate reporting to LSC of the same case. MCLSC will simply need to ensure that these cases are only reported once when closed. *See* Open Case Nos. 11015726 and 09E-11014931, which represent the same group case

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).

Due to regulatory changes, LSC has also prescribed certain specific requirements for fee-generating cases in Program Letters 09-3 *Compliance Guidance and Interim Guidance on Attorney Fees* and 10-01 *Supplemental Guidance on Attorneys' Fees*. LSC will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are still possible, and any violations that are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. The regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

MCLSC maintains a Regulatory Policies and Reporting Manual, which includes a segment requiring conformance with 45 CFR Part 1609. Review of the document found that it requires updating to include the changes incorporated in Program Letter 10-1. The Executive Director advised that such a revision was forthcoming immediately after the visit, and after some training planned at a statewide conference. Comments to the DR stated that the updates were done as planned, after the necessary training.

The MCLSC Chart of Accounts includes a revenue account for attorney fees. An examination of the MCLSC General Ledger for the period of January 2008 through April 2010 evidenced no income reported from this source. None of the fiscal documents reviewed involved legal assistance case or matter with the possibility of receiving a fee.

Sampled cases did not evidence any compliance issues regarding Part 1609. Further, executive management stated that the program has avoided all such cases, as well as fee requests under Part 1642 for the entire review period. There was one (1) unique case in which MCLSC pleadings reserved the

right for a private attorney to join the case in the future and then ask for fees. The manner in which MCLSC handled this future potential occurrence was fully compliant with Part 1609.⁴⁴

Finding 15: MCLSC needs to adopt a notification system for non-LSC funding sources for amounts exceeding \$250, as described by 45 CFR § 1610.5.

Review of the MCLSC Accounting Manual, Program Policies and other documents found no procedure defined to provide written notification to sources of funds exceeding \$250 of the restrictions on their use as required by 45 CFR § 1610.5. Program management confirmed that no procedure was in place to comply with this regulatory requirement.

MCLSC needs to take simple corrective action to comply with the requirements of 45 CFR § 1610.5. It is noted that during the review, management stated that it would promptly initiate a policy and follow a standard process to address this requirement and to bring the program into compliance with this requirement. In comments to the DR, the program evidenced that this is now being done for all contributions over \$250.

Finding 16: The activities undertaken by MCLSC to meet the requirements of 45 CFR Part 1614 regarding private attorney involvement met basic regulatory requirements. Further, sampling of PAI fiscal records indicated that MCLSC PAI expenses have exceeded the 12.5 percent minimum regulatory requirement. However, in 2009 MCLSC did not include an appropriate allocation of indirect overhead costs in its PAI totals, thus understating total PAI expenses.

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 (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.

The regulation requires that recipients utilize financial systems and procedures and maintain supporting documentation to identify and account separately for cost related to the recipients PAI effort. Such

⁴⁴See Open Case No. 11015726, *Mason v City of Picayune*, Civil Action Case No. 1:09cv367 HS-JMR.

systems and records must meet the requirements of LSC's Audit and Accounting Guide for Recipients and Auditors and must accurately identify and account for the recipient's administrative, overhead, staff, and support costs related to PAI activities; payments to private attorneys for support or direct client services rendered; contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipients; and other actual costs as may be incurred by the recipient. *See* 45 CFR § 1614.3(e).

Recipients are required to develop a plan and budget to meet the requirements of the LSC regulation. In developing a plan, recipients are required to consult with significant segments of its client community, and must consider the legal needs of eligible clients in the area served by the recipient and the delivery mechanisms potentially available to provide opportunity for participation by private attorneys. *See* 45 CFR § 1614.4.

MCLSC has developed a plan and budget to meet the requirements of Part 1614. The plan is designed to offer options for private attorney participation through pro bono and compensated mechanisms. Private attorneys provide direct pro bono legal assistance to eligible clients under a sub-grant with MVLP. Other private attorneys provide direct legal assistance to eligible clients pursuant to contracts with MCLSC. Private attorneys are also involved in training, case reviews, and co-counseling arrangements.

In its 2009 audited financial statements (AFS), MCLSC reported PAI expenditures of \$749,965, which represents 23.4 percent of its LSC basic field award. The PAI plan appropriately addresses how non-personnel common costs (overhead) are allocated to PAI. This calculation is based on the percentage of PAI personnel costs to total personnel costs, consistent with 45 CFR § 1614.3(e)(1)(i). However, review of the 2009 MCLSC PAI fiscal records evidenced that program management elected not to apply the overhead allocation for 2009. The rationale offered was that the program had already exceeded its 12.5 percent PAI requirement. However, the overhead allocation should be applied regardless of the level of compliance with the 12.5 minimum requirement. It was explained to the program that such an omission has the effect of understating PAI expenses for the year and the allocation should be applied going forward. MCLSC should take corrective action to ensure that an appropriate allocation of indirect overhead costs is included annually in its total PAI expenses. Comments to the DR indicated that this has been addressed, stating that the allocation of indirect costs for PAI has been done in conjunction with the MCLSC local auditor and that the program will ensure the inclusion of an appropriate allocation of indirect overhead costs in the annual PAI allocation.

Contract Attorneys

Under the terms of the contracts between MCLSC and several participating attorneys, the participating attorney is paid at the rate of \$50.00 per hour for a maximum of \$24,299.00 per year.⁴⁵ Attached to the contract is a fee schedule that sets forth the standard payable hours for routine cases. (For a further critical discussion of these contracts and related compliance issues, see the subgrant section, *infra*.)

Participating attorneys agree to donate two (2) pro bono hours per month and agree to provide MCLSC with a monthly case status report. However, not all contract attorneys provide the required monthly

⁴⁵ MCLSC explained how it worked with area bar associations to identify the prevailing market rates for the types of services provided by its contract attorneys and that its rate of compensation does not exceed 50% of the prevailing market rate. The process and rate appear reasonable.

status report. Consequently, there were several contract attorney files that were reviewed that had not been updated since 2009. The DR asked MCLSC to enforce its contractual reporting requirements. In response, MCLSC stated that it planned to update its contractual requirement to mirror the same six-month rule for other PAI attorneys.

Finding 17: MCLSC needs to adopt a simple procedure by which to monitor and annually determine whether program funds paid to the contract attorneys represent over half of the attorney's professional income, so as to ensure that payments to the contract attorneys qualify as PAI allocations.

45 CFR § 1600.1 (Definitions) states that a staff attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor. Also, 45 CFR §1614.1(e) states, in part, that no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years has been a staff attorney as defined in § 1600.1 of the regulations.

At the time of the July 2010 review, MCLSC did not have any procedures in place to ensure that funding paid by the program to any contract attorney does not represent a majority of the total professional income for any of the contract attorneys utilized in its private attorney involvement (PAI) efforts. MCLSC management should take corrective action and adopt a simple beginning and ending year review system by which it obtains sufficient information from each PAI contact attorney that evidences that the MCLSC payments do not amount, and will not amount, to over one-half of the attorney's annual professional income. Further, the first such review should be conducted prior to year-end 2010. If this review evidences that the payments to a contract attorney do amount to over half of their professional income, all amounts paid to any such attorney should not be included in the PAI allocations made for 2010. Comments to the DR described a new process by which the program will be requiring information from all relevant to ensure that the program complies with this requirement.

Finding 18: An LSC approved subgrant with MVLP has been administered as described with no identified compliance issues. However, several other instances of non-compliance with the subgrant provisions of 45 CFR Part 1627 were noted. There were several instances in which total payments (both for services and expenses) to individual PAI attorneys exceeded \$25,000 annually, thus requiring advance LSC subgrant approval that was not obtained.

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 that qualifies the organization receiving such funds as a subrecipient under the definition in paragraph (b)(1) of this section.

MVLP Subgrant

MCLSC has an LSC approved subgrant with MVLP under which MVLP will perform the direct delivery of legal services including placement of pro bono PAI cases. The subgrant was \$93,000 for 2010 and \$83,706 for both 2008 and 2009. The agreement calls for quarterly installment payments to MVLP. Review of a sample of four quarters evidenced that the subgrant has been paid quarterly. No fiscal issues were identified with the administration of this grant. The MCLSC Executive Director also serves on the MVLP Board. He stated that through this board service he is able to monitor the work performed by MVLP on behalf of MCLSC.

Individual PAI Attorney Contracts

MCLSC involves numerous private attorneys through the use of contracts to provide legal services to eligible clients. Many of these contracts are written for a yearly maximum of \$24,999. The program then is to monitor payments, through a spreadsheet for each attorney, for total charges in a calendar year. Once the total amount allowed is reached, the MCLSC fiscal unit is supposed to cease additional payments of LSC funds to that attorney. Further, when a PAI attorney is close to reaching their annual contractual limit, they are sent a letter that states the amount still available.

A sample fiscal review of 12 contractual attorneys in 2009 evidenced several errors in which the total amount of LSC funds paid exceeded \$24,999, thus causing a violation of 45 CFR Part 1627.

In one (1) instance there was an addition error in the spreadsheet used to track the total payments. This resulted in the attorney receiving \$25,775 in 2009. In the other instance, a PAI attorney reached his \$24,999 contractual limit, and then a supplemental contract for \$10,415 to be paid with non-LSC funds was executed. This attorney ended up receiving \$6,001 under this supplemental contract; however, the program mistakenly paid these costs with LSC funds. In both of these cases, MCLSC was previously unaware of the mistakes prior to the LSC review team identifying the errors during the July 2010 OCE review.

In addition to these non-compliance errors, 2009 vendor files noted several other instances in which the total LSC funds paid to a contract attorney exceeded the amount shown in their PAI spreadsheet. These overpayments were due to two separate causes. First, the program had incorrectly interpreted the requirements of Part 1627, and believed that the \$25,000 ceiling covered only fees or payments for services. The program capped the payments for fees at the \$24,999 level, but would also pay for expenses such as travel, copying, and postage that exceeded the \$25,000 regulatory level. As such, the program had numerous other instances in which the total of LSC funds paid to a contract attorney exceeded \$25,000 in a given year, also violating 45 CFR Part 1627.⁴⁶

A second significant reason for the non-compliant payments of LSC funds over \$25,000 to a single attorney in a given year involved payments made in a subsequent year for billing from a prior year, that were not appropriately added to the appropriate year's "total cost" spreadsheet. For example, one attorney received a payment for \$11,400 in February 2009, of which \$10,300 was not included in the

⁴⁶ To ensure correct interpretation of the \$25,000 limit, and what monies must be included in the calculation, an LSC Office of Legal Affairs ("OLA") opinion was requested after the OCE visit and an Advisory Opinion issued by OLA. The opinion affirmed that *all payments* are included in the \$25,000 limit, both fees for services and all costs.

attorney's calculated PAI totals for 2009. The reason for not including the amount in 2009 was that the payment related to cases the attorney had completed in 2008. However, the amount was also not included in the attorney's 2008 PAI totals. If the \$10,300 been added to the attorney's 2008 PAI totals, the annual 2009 contractual maximum of \$24,999 would have been exceeded by \$3,601.

In payments tested, there were six (6) other PAI attorneys identified whose total payments with LSC funds exceeded \$24,999 when combining attorneys' fees, expenses, and/or payments made in one (1) year but attributable to work from a different year.⁴⁷

MCLSC must undertake multiple corrective action efforts regarding the above Part 1627 violations. MCLSC must take corrective action⁴⁸ to:

1. Strengthen its PAI system oversight to ensure that either total LSC funds paid to an individual attorney are limited to \$24,999 or that MCLSC obtains prior subgrant approval as required by Part 1627;
2. Ensure that tracking for total payments includes all funds paid, whether for costs or fees. To ensure accuracy, MCLSC should consider a method to automate its PAI payments and oversight through integration with its accounting systems.
3. Ensure that full corrective action for all contractual attorney arrangements is effected for calendar year 2010, and that for 2010 that no amounts of LSC funds over \$24,999 will be paid to any attorney, as no subgrant approval was sought;
4. Ensure improved review and cross-checking of involved financial recording and calculations made regarding total payments so as to avoid math errors that lead to overpayments;
5. Ensure the tracking and inclusion of all payments made to contract attorneys in a subsequent year for activities or services from a prior year. Any payments made in a subsequent year and designated as for the prior year must be included in the total calculation for the prior year, with any amounts exceeding \$24, 999 paid by non-LSC funds;
6. Review all amounts mentioned in this report and ensure that all payments exceeding \$24,999 to any attorney in a given calendar year are adjusted in the MCLSC bookkeeping records so as to have those amounts paid for by non-LSC funds;⁴⁹ and

⁴⁷ These six (6) PAI attorneys include: Woodberry (received \$24,050 for legal services provided in 2009 and an additional \$4,170 for travel for a total of \$28,220); Steen (received total payments of LSC funds from MCLSC in 2009 of \$32,221 which included \$21,225 for legal services provided in 2009 plus additional payments for travel, other expenses, and additional payments made in 2009 that related to legal services performed in 2008); Amos (received \$24,937 for legal services provided in 2009 and an additional \$235 for travel for a total of \$25,172. There were also two (2) additional payments made in January 2009 totaling \$10,457 that related to work performed in 2008 which resulted in Amos receiving \$35,629 in total LSC funds during 2009); Baker (received \$24,999 for legal services provided in 2009 and an additional \$359 for travel for a total of \$25,358); Milton (received \$24,999 for legal services provided in 2009 and an additional \$131 for travel for a total of \$25,130); and Anderson (received \$24,811 for legal services provided in 2009 and an additional \$4,362 for travel for a total of \$29,173. There were also three (3) additional payments made in 2009 totaling \$1,775 that related to work performed in 2008 which resulted in Anderson receiving \$30,948 in total LSC funds from MCLSC during 2009).

⁴⁸ In comments to the DR, MCLSC discussed corrective actions that will address the several issues set forth below. Further details provided in the program's comments can be found at the end of this report in the "Required Corrective Actions" section.

⁴⁹ It is noted that during the review, MCLSC promptly consulted with its Independent Public Accountant (IPA) and made correcting bookkeeping entries to restore certain excess amounts to LSC funds. For example, the excess 2008 payment of \$3,601 mentioned in one example above was restored back to the LSC fund account. However, there will likely be several additional adjusting entries necessary both from the additional information provided by LSC in this report, and from independent review conducted by MCLSC, so as to ensure that \$24,999 allowable limit is strictly followed for 2010.

7. Request that its IPA conduct testing during the next audit regarding the total payments of LSC funds to any one contract attorney, as well as compliance regarding the \$25,000 maximum payment level of LSC funds for 2010.

MCLSC is cautioned that, per 45 CFR Part 1627, subgrants that do not obtain prior LSC approval may be subjected to audit disallowance and recovery of the funds expended. Sample testing of contracts in which overpayments were made indicated that the payments were for valid PAI activities. Therefore, LSC will not be seeking any cost recovery for the above Part 1627 noted errors at this time. However, should this issue continue, LSC will utilize the full cost recovery options set forth by regulation.

Also, review of sample 2010 PAI expenses evidenced an apparent duplicate payment to one (1) contract attorney. A \$2,600 payment was made on both January 29 and February 26, 2010 from LSC funds to the same attorney. In both cases, the supporting documentation includes the same time and attendance reports. Program staff researched the payments and stated that this invoice was received both by mail and by fax and appears to have been mistakenly paid twice, and appears to be the result of an isolated human error. This incident requires several corrective action steps. MCLSC needs to take corrective action⁵⁰ to:

1. Verify the double payment and make the appropriate adjustments to the related accounting records for any double payment, including restoring any overpayment back to its LSC fund balance; and
2. Strengthen its payment procedures to require that payments be authorized only when accompanied by an original invoice. Further, the documents should be marked paid or otherwise cancelled to avoid duplicate payment. *See Accounting Guide For LSC Recipients, Chapter 3, Fundamental Criteria and Internal Controls.*

Finding 19: Review of program fiscal records evidenced compliance with 45 CFR §1627.4 regarding membership fees and dues.

45 CFR § 1627.4 requires that 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. However, this prohibition 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.

Review of accounting records and the detailed general ledger, including expense code 800 related to such payments, for the period of 2008 through the first quarter of 2010, evidenced compliance with 45 CFR § 1627.4(a). Mississippi Bar, NLADA, and notary fees were all charged to non-LSC funding. The MCLSC Employee Handbook, Part 704(c), provides for payment of annual basic bar dues for attorneys up to \$200 and professional dues for paralegals up to \$100 annually. Part 704(a) specifies that MCLSC will maintain an organizational membership with NLADA to be paid with non-LSC funding.

⁵⁰ In comments to the DR, MCLSC discussed corrective actions that will address the several issues set forth below. Further details provided in the program's comments can be found at the end of this report in the "Required Corrective Actions" section.

Finding 20: MCLSC is in general compliance with 45 CFR Part 1635 in that timekeeping records sampled were contemporaneous and accurate. However, time record sampling evidenced some minor exceptions.

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.

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. Per 45 CFR § 1635.3(b) 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; and 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 as required under 45 CFR § 1635.3(c). 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 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.

Employees of MCLSC enter their time reporting in two (2) systems. Timekeeping is entered through Kemp's Clients98 (Kemps) in 15-minute increments and a separate Time and Attendance Report is entered using Quattro Pro. Sampling of timekeeping records included one employee from each of the five service offices and one employee from the administrative office, for the pay periods ending January 15 and June 30, for the years 2008, 2009, and 2010. The review disclosed that the time spent on each case, matter or supporting activity is electronically recorded and contemporaneously kept in its Kemp's timekeeping system, as required by 45 CFR §§ 1635.3(b) and (c).

However, in three (3) instances it was determined that the hours reported in Kemps exceeded the hours the employee entered in their Time and Attendance Report (Quattro Pro). This is in contradiction to the program's written instructions located on the top of the Time and Attendance Report that states that the timekeeping records must balance with the Time and Attendance Report. In one of these three instances, there was a handwritten note in the employee's Kemps timekeeping report which stated that the timesheet hours do not agree with the recorded hours in Kemps. However, there was no evidence of any additional follow-up to remedy the discrepancy.

Further, in one (1) record sampled, the employee's supervisor did not sign off on the Time and Attendance Report, as required in the MCLSC Accounting Procedures Manual.

It is noted that none of the issues described above resulted in payroll errors. Employees are paid based on salary, and that the supporting timekeeping records in Kemp's had been correctly reported and demonstrated sufficient time to justify the salary payments. These findings were discussed with MCLSC fiscal staff during the review and it was noted that MCLSC should take corrective action so as to strengthen its review procedures for timekeeping. The review should ensure that the program follows its written policies and procedures, and that the Kemps timekeeping records should be reconciled to the Quattro Pro Time and Attendance Reports, with any discrepancies being promptly and fully reconciled. Also, time records that lack any necessary signature approvals should not be processed until all required approvals are documented. Comments to the DR stated that the program is adopting procedures that will address these issues.⁵¹

Finding 21: Review of internal controls evidenced that most elements reviewed were reasonable and met basic related requirements of the LSC Audit Guide for Recipients and Auditors and the Accounting Guide. One exception was noted in that the program has not established adequate written guidelines regarding use and required documentation for corporate credit cards,

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 the Legal Services Corporation, including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide, 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.⁵²

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.⁵³

MCLSC Board

The MCLSC Board has exhibited awareness of its financial responsibilities, through the following core activities: establishment of an Audit Committee which meets with the auditor; meeting on, and approval of annual and updated Program budgets; approval of the MCLSC Accounting Manual (which incorporated internal control and reporting processes such as financial reports to the Board; and conducting an annual Certification of Program Integrity.

⁵¹ Further details provided in the program's comments can be found at the end of this report in the "Required Corrective Actions" section.

⁵² See e.g. LSC Grant Assurances for Grant Year 2010, Assurance 1.

⁵³ See LSC Accounting Guide Chapter 3 - *Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System*.

Internal Fiscal Controls

The MCLSC Accounting Manual includes segments on Segregation of Duties and Authorization of Processes and Recording Procedures that define the individual actions and responsibility to achieve effective internal control.⁵⁴ MCLSC utilizes *Sage Accpac* accounting software and *Kemp Prime Case* and *Time Management* software. The MCLSC fiscal staff consists of a Fiscal Manager/CFO, an Accounts Payable/Payroll Specialist, a part-time secretary and a part-time accounting clerk. In addition, fiscal systems are supplemented by oversight and review by the Executive Director. On-site preparation and assessment of the *LSC Internal Control Worksheet* indicated that MCLSC has a system of adequate segregation of duties to establish an effective level of internal controls.

Banking & Bank Reconciliation

MCLSC utilizes a number of bank accounts to limit risk to funds, account for client funds by geographic areas and for general clearing payables and payroll purposes. Examination of the bank account structure found that MCLSC utilizes two primary accounts for operations, a general account for payables, and a zero balance payroll account. LSC grant receipts are deposited to and expended from the general 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 the MCLSC Accounting Manual and a review of sample bank statement receipt and reconciliation processes evidenced that there is adequate segregation of duties and that reconciliation is performed timely.

Advances

MCLSC allows salary advances only in rare emergencies as defined in the MCLSC Employee Handbook. Advances are limited to a pay period and must be fully covered by an employees available leave balance. The leave balance is debited upon the advance and restored upon repayment.

Travel advances are made based upon an approved form covering the request and authorization of official travel, which cites the purpose of travel and a breakdown of anticipated costs. Where possible, costs such as air travel, conference fees, hotel etc. are directly prepaid by corporate credit card. Upon completion of travel, the advance is cleared through standardized travel expense statements that show the remaining amount due either the traveler or the Program. Sampling of travel expense forms and procedures evidenced that the program follows its procedures.

Annual Audit

The Annual Audit of MCLSC financial statements for calendar years 2008 and 2009 resulted in the issuance of unqualified reports and no questioned costs. However, as discussed *supra*, there were mistakes in applying 45 CFR Part 1627 that was not noted in the 2008 and 2009 audits.

⁵⁴ See MCLSC Accounting Manual, Part II. F, *Internal Control*.

Credit Cards

MCLSC utilizes two (2) American Express Credit cards controlled by senior management and used primarily for travel or on-line purchases. Billing receipts are forwarded to the finance office where they are associated with the monthly statements and the individual charges are coded for fund source and cost center. Limited testing found receipts associated with all charges; however the documentation did not always identify the purpose of the expenditure. In other words, while the purpose of travel may have been reflected on travel advance or expenditure forms submitted, these documents are not always included with the credit card expenditure data (ticket charges, hotel invoices, etc.), reflecting the purchase of air travel or hotel charges. As evidenced by sample statements reviewed, one card utilizes direct pay through a monthly debit. A limited review of travel expenses did not evidence any questionable expenditures.

The MCLSC Accounting Manual does not currently define the program's use of credit cards. MCLSC should take corrective action and expand the written explanation of credit card approval process. In particular, the Accounting Manual should clearly define enhanced record keeping processes so as to ensure that there is clear documentation of all expenditures, to include its business purpose. Comments to the DR stated that the program has adopted a credit card policy with an approval process providing for clear documentation of all expenditures.

Finding 22: MCLSC is involved in two (2) statewide projects involving transfer of LSC funds between the two (2) LSC-funded Mississippi programs. These payments indicated no compliance concerns.

As part of the preparation for the consolidation of prior LSC Mississippi service areas into the existing two (2) basic field programs, an agreement was reached for operation of a statewide intake system, with the costs being shared based on the percentage of poverty population in each program service area. This agreement has followed the consolidation of the LSC basic field programs to the current two basic field providers, MCLSC and North Mississippi Rural Legal Services ("NMRLS"). As currently structured, the intake system consists of two components, the "network" (consisting of statewide computer and VOIP telephone services) managed by NMRLS and "operations" (consisting of statewide intake office and staffing), managed by MCLSC. Costs are applied at 60% MCLSC and 40% NMRLS. During the year, each program pays the direct costs attributable to their segment of the statewide system and annually, each program bills the other for the other's pro rata portion of the annual cost.

Finding 23: Review of MCLSC fiscal records evidenced compliance with the requirements of 45 CFR Part 1630 regarding derivative income.

Part 1630 requires in part that costs be adequately and contemporaneously documented in business records accessible to the Corporation and any Derivative Income resulting from LSC funding is allocated to the fund in which the recipient's LSC grant is recorded. Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity.

Derivative income which is allocated to the LSC fund is subject to the requirement of 45 CFR § 1630.3(a)(4) that expenditures of such funds be in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC recipients, the terms and conditions of the grant or contract, and other applicable law.

The MCLSC Accounting Procedures Manual sets forth the internal processes used to define and allocate derivative revenue to the appropriate funding source. During the period 2008 and 2009, derivative income was attributed to LSC as follows:

	<u>2008</u>	<u>2009</u>
Interest	\$3,527	\$4,165
Insurance receipt – computer theft		\$1,708 ⁵⁵
Registration fees- PAI CLE	<u>\$5,050</u>	<u>\$6,460</u>
Total LSC Derivative income	\$8,577	\$12,333

Review of these derivative monies found that they were correctly identified as LSC derivative income and correctly allocated to the LSC fund.

Finding 24: Review of fiscal records, and sample cases evidenced substantial compliance with the requirements of 45 CFR Part 1642 (Attorneys’ fees).

Prior to December 16, 2009, recipients could not claim, or collect and retain attorney fees in any case undertaken on behalf of a client of the recipient, except as otherwise provided by LSC regulations. *See* 45 CFR § 1642.3.⁵⁶ However, with the enactment of LSC’s FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorney fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorney 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 attorney fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter10-1 (February 18, 2010); *see also*, 75 *Federal Register* 21506 (April 26, 2010).⁵⁷

A fiscal review for Part 1642 compliance was conducted including examination of the General Ledger, discussions with program management, and review of cash receipts for a period of January 2008 through December 16, 2009. This review evidenced that no attorney fees were awarded during 2008 and 2009.

⁵⁵ The insurance receipt regarded a burglary of a computer in the Jackson office that was covered by insurance. The PAI Continuing Legal Education (“CLE”) fees result from the program’s provision of CLE training for PAI attorneys, which are attributed to LSC funding.

⁵⁶ The regulations defined “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).

⁵⁷ 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.

None of the sampled files reviewed contained a direct prayer for attorney fees on behalf of the program. One sampled case reserved the right for claiming relief in the future, stating:

“...in the event Plaintiffs obtain private representation . . . (Legal Service funded entities are not permitted to request attorney fees...)”⁵⁸

This request was found to be fully compliant with the requirements of 45 CFR Part 1642, in that (at the time written) it would be permissible for private attorneys to make claims for attorney fees if the pleadings clearly state who is claiming the fees and the pleadings unequivocally state that the recipient attorney may not claim fees. This standard was met by MCLSC.

Due to a change in the law, MCLSC can now claim and collect attorney fees. The Executive Director stated that the program had not yet taken action to begin fee requests in any cases as of the July 2010 review. As part of this, MCLSC had yet to update its policy regarding fee-generating cases and the MCLSC Regulatory Policies and Reporting Manual did not reflect the regulatory changes to Part 1642, as discussed in LSC Program Letters 09-3 and 10-1. The Executive Director stated that this revision would be forthcoming subsequent to a statewide legal services training meeting during August 31-September 1, 2010, that would in part provide training on the proper policy and handling of fee cases.

Finally, it was noted that the private attorney contracts still contained prior restrictive language regarding attorney fees. Inasmuch as the restriction on attorney fees has been lifted, it is recommended that MCLSC amend its contract accordingly. *See* LSC Program Letter 10-1 (February 18, 2010). In comments to the DR, MCLSC stated that, after the planned September 2010 training regarding Parts 1609 and 1642, the program subsequently modified its retainer form and PAI contract to provide that attorney fees may be claimed and collected pursuant to Parts 1609 and 1642.

Finding 25: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). Further review of program policies, financial documents and interviews with management evidenced that MCLSC has appropriate policies in place restricting lobbying and certain other activities.

The purpose of this part 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.

The MCLSC Employee Handbook Section 2200 incorporates the restrictions imposed by 45 CFR Part 1612, is available to all staff and has been incorporated in periodic staff training.

None of the sampled files evidenced any activities prohibited under Part 1612. Further, discussions with program senior management, and other staff, including intermediaries used for case review, indicated no awareness of any activities that would raise compliance issues under this regulation.

⁵⁸ See Open Case No. 11015726.

None of the sampled fiscal files and documents reviewed for the period 2008 through April 2010 evidenced any lobbying or other related prohibited activities. Also, the Executive Director confirmed that during the period 2008 to date (July 12, 2010) that MCLSC was not involved in any prohibited activity. Further, basic web research utilizing internet search programs (*Google, Yahoo* and *Bing*) located no news articles or other data indicating MCLSC was a party involved in any prohibited lobbying or other related prohibited activities during 2008 through July 12, 2010.

Finding 26: Interviews and case sampling evidenced substantial 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).

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.

No sampled files involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Advance review of case lists with a focus on problem type and level of service, did not evidence potential cases that could involve these two regulations. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any program activities that would have been covered by the restrictions of Parts 1613 and 1615.

Finding 27: Sampled cases and staff interviews evidenced substantial compliance 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). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).⁵⁹

None of the sampled files reviewed involved initiation or participation in a class action. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any class actions handled by any program staff or office.

In one (1) case sampled, MCLSC had reserved the right to convert the case into a class action should the case be handled by a private attorney in the future. This wording does not raise a compliance issue with

⁵⁹ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

the 45 CFR § 1617.2 as the program was merely retaining future rights should the case be transferred, and was not *initiating* or *participating* in any class action.

Finding 28: Sampled cases and staff interviews 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. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any redistricting activities conducted by any program staff or office.

Finding 29: Sampled cases and staff interviews 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 eviction proceeding subject to the prohibitions of Part 1633. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any eviction cases prohibited under Part 1633.

Finding 30: Sampled cases and staff interviews 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. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any representation of prisoners prohibited by Part 1637.

Finding 31: Sampled cases and staff interviews 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 that prohibited LSC recipients and their staff from engaging a client whom they solicited. *See* Section 504(a)(18). This restriction has been contained in all subsequent appropriations acts.⁶⁰ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated 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 reviewed indicated that the program had solicited the clients in those cases. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any instances in which any program staff members had solicited clients as prohibited by Part 1638.

Finding 32: Sampled cases and staff interviews 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 any of the prohibited activities listed in Part 1643. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any cases that involved prohibited activities under Part 1643.

Finding 33: 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

⁶⁰ *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).

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.

None of the open or closed files reviewed evidenced any casework prohibited by the above LSC statutory prohibitions. Further, discussions with several program staff, including members of management (both executive and local level), and staff (including some who served as intermediaries) indicated no awareness of any instances in which any cases handled on the prohibited areas involving abortion, school desegregation, or the selective service act.

V. RECOMMENDATIONS⁶¹

Consistent with the findings of this report, it is recommended⁶² that MCLSC:

- Coordinate with MVLP to identify any insights regarding referred clients that are subsequently determined to not be eligible and determine whether any additional or expanded screening for pro bono applicants should be considered by MCLSC;

In its response to the DR, MCLSC stated that it will consider this recommendation and noted that it has been in ongoing efforts with MVLP to identify any insights regarding referred clients and any additional screening needed to facilitate placement of cases with appropriate pro bono attorneys.

- Consider whether more limited scope on some retainers is warranted;

In its response to the DR, MCLSC stated that it will consider whether more limited scope is warranted on some retainers in view of statements by the review team.

- Consider a method to automate its PAI contractual attorney payments and related oversight through integration with its accounting systems; and

In its response to the DR, MCLSC stated it will consider automation of its PAI contractual attorney payments and related oversight through integration with its accounting system. Comments noted that this issue has been referred to the fiscal department for consideration and discussion with the MCLSC accounting consultant and accounting software vendor.

- Consider adopting a *time-charge based* open case review system, as described in this report.

Comments to the DR indicated that MCLSC will consider adopting a time-charged based open case review approach as described in this report and noted that this recommendation will be discussed and addressed with its managing attorneys.

⁶¹ 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.

⁶² MCLSC comments to the DR provided a general comment that the program will be addressing the recommendations, as well as many of the required corrective actions in this report first through its managers and also in subsequent staff meeting(s) or staff trainings, as needed.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, MCLSC should take corrective action to:

1. Remind staff of the importance of updating the ACMS data when significant changes occur to a case file.

Also, take steps to ensure that staff members understand, and follow, the correct closing code practices regarding:

- The need for reporting only the highest level of services provided to the client;
- The proper (and infrequent) need for use of category “K”; and
- Use of “I” closing codes when there has been appropriate court action, other than a simple motion to withdraw at the beginning of a case;

Comments to the DR indicated that MCLSC has and will remind staff of the importance of updating the case management system data when significant changes occur to a case. Comments added that this has been done in the past and will be done consistently in the future in order to avoid inaccurate CMS data.

Comments to the DR also indicated that MCLSC has reminded staff of the need to close cases and report same with the highest level of service provided, to limit the use of closing category “K”,⁶³ and regarding the proper use of the “I” closing code.

Comments added that the program will further address the above issues with managing attorneys and at subsequent staff meeting(s) and/or staff trainings.

2. Adopt one standard paper form for all non-group client intake conducted outside of the ACMS. This paper form should ensure full compliance and should reasonably reflect the ACMS intake process. Further, MCLSC must ensure that all forms currently in use are discontinued in use; Further, MCLSC should adopt one standard paper intake form for group clients so as to ensure full compliance documentation for such clients. As part of this standardization, MCLSC should take steps to ensure that all intake and casehandling staff members understand the numerous exceptions and flexibility allowed in VAWA cases; and ensure that all applicants are screened regarding prospective income;

Comments to the DR noted that a singular paper form now has been developed for all non-group client intakes and that MCLSC will utilize one standard form for all non-group client intakes conducted outside of the case management system and

⁶³ Comments suggested that MCLSC might prohibit the use of closing category “K” as one option. As it is a viable closing category, it should still be allowed. However, LSC affirms the program’s decision to discourage the use of closing category “K”, as it is infrequently or seldom necessary. A year-end or other check on any use of “K” could then determine whether those cases have correctly use the closing category or should be otherwise changed to reflect a more accurate closing category, or deselected, if necessary.

utilize a standard form for group intake. Comments also indicated that MCLSC will discontinue the use of any inconsistent forms. Finally, comments stated that the program will ensure that all intake and casehandling staff members understand the numerous exceptions and flexibility allowed in VAWA cases;

Comments also indicated that MCLSC has taken corrective action to ensure that applicants are screened regarding prospective income, by changing the standard intake script used by the Call Center. The intake script was changed to ask all applicants if household income is expected to change, with answers being recorded on the eligibility slip.

Comments noted that issues such as the above also will be addressed with managing attorneys, and at subsequent staff meeting(s) and/or training in order to reinforce understanding and compliance.

3. Ensure that both its new paper intake forms, and all intake workers make clear the related policy factors and levels and how to apply them. The implementation of LSC regulations should be consistent throughout the program. Areas for focus include: 45 CFR § 1611.7(a), 45 CFR § 1611.5 (exceptions to annual income ceiling), 45 CFR § 1611.3(2) (waivers of annual asset ceiling), 45 CFR §§ 1626.4 and 6(a), and CSR Handbook (2008 Ed.), § 5.5. Related to this, ongoing staff training or other information systems should be routinely conducted for intake workers in the field offices and others who conduct infrequent intake screening. This communication and/or training process should ensure that these isolated intake workers correctly interpret MCLSC's intake policy, correctly utilize the automated intake system, and that their ability to conduct the same high caliber intake screening as done by the Call Center is maintained over time;

Comments to the DR stated that MCLSC will take the necessary steps to ensure that the implementation of LSC regulations is consistent throughout the program. Comments stated that the program will conduct additional training for all intake workers, whether working within or outside the Call Center, with the initial training is anticipated to occur before the end of May. Further, training for persons outside the Call Center will be reinforced by having such persons conduct periodic intake (by signing into the Call Center queue for a limited time) on a monthly basis. Comments added that if necessary, MCLSC may pursue subsequent CSR training indicated by the LSC site team as offered and available by LSC.

4. Adopt and enforce a more frequent and effective open case review process to ensure that cases are either handled timely or are closed timely. Such a system should include documentation of periodic reviews with corresponding time charges entered for each case for each oversight review. Also, MCLSC should conduct a short-term review of all older open cases to ensure that they are either closed (if completed or dormant) or that they are actively engaged if remaining open. In particular, Hattiesburg office open cases should receive a comprehensive assessment to ensure that they are either closed (if completed or dormant) or that they be actively engaged if remaining open;

Comments to the DR indicated that MCLSC is in the process of a comprehensive review of all open cases for CSR certification. Comments added that MCLSC will adopt and enforce a more effective and frequent case review process as set forth by LSC, with consideration of a time charge basis for identifying potentially dormant cases. Comments also stated that a schedule/time table for future reviews will be discussed with managing attorneys and adopted to ensure timely handling and closing of cases.

5. Ensure that staff to complete the scope and subject matter elements of the retainer, and to ensure that case oversight reviews whether this is being consistently done;

Comments to the DR indicated that MCLSC has and will remind staff to always complete the scope and subject matter elements in the retainer in order to provide proper notice of the representation (and limited scope, if any) provided by MCLSC. Comments added that review of retainers is part of case review and oversight, and will be addressed with managers and subsequently in staff meeting(s) and/or trainings, as needed.

6. Adopt and follow a more regular policy and practice regarding the periodic oversight of PAI cases. The system should ensure at a minimum that MCLSC has reliable updates for open PAI files at least every six months for the duration of time the case remains open. Such a system should include documentation of periodic reviews with corresponding time charges entered for each case for each oversight review. Each update should evidence either that the case remains appropriately active, or is to be closed. Related to this, the program should enforce the contractual monthly status report requirements for contract attorneys;

Comments to the DR indicated that MCLSC will undertake and follow a regular policy and practice regarding periodic oversight of PAI cases. Comments noted that MCLSC currently utilizes and attempts to enforce a six month update of case status reports from MVLP, which coordinates pro bono cases handled by private attorneys, and that MCLSC and MVLP are in ongoing discussions to better enforce compliance. Such periodic reviews are and will be documented and aimed at closing cases which can be closed or referred back to MCLSC. Comments also indicated that MCLSC will consider adopting the time charged basis for identification of potentially dormant cases and for better oversight. Comments also indicated that MCLSC is considering a more appropriate status update for compensated attorneys (rather than its current monthly status report) and plans to adopt a six-month status report requirement for compensated cases consistent with the timeline for pro bono cases.

7. Ensure full compliance with the documentation requirements of Part 1626. First, MCLSC should establish a system whereby citizenship attestations are obtained from walk-in clients

who are given access to a program phone to utilize the Call Center. Second, MCLSC should revisit its procedures for obtaining citizenship attestations in PAI cases to assess whether the current system is the most effective to ensure compliance. MCLSC must make certain that applicants are screened for citizenship or eligible alien status during the pre-screening process and that case files contain the necessary citizenship/alien eligibility documentation before representation begins;

Comments to the DR indicated that MCLSC has taken this corrective action. Comments stated that the applicable protocol provides that a citizenship attestation should be taken from any walk-in clients who use an office phone to access the Call Center intake, and such attestation should be forwarded to the Call Center to be made a part of the client file. Further, if any files are referred to a PAI attorney without the appropriate citizenship attestation, the attorney will be asked to provide MCLSC with a signed citizenship attestation at the start of the case, rather than when the case is closed.

LSC notes that the procedures described in the program's comments will address the focused concerns discussed in this corrective action.

8. Comply with the requirements of 45 CFR § 1610.5 regarding notice to sources of non-LSC funds over \$250;

In its comments to the DR, MCLSC stated that it will comply consistently with the requirements of 45 CFR Part 1610.5. MCLSC now provides, for all donations over \$250, a letter that includes the following language:

Consistent with Legal Services Corporation (LSC) requirement as outlined in CFR Part 1610, Mississippi Center for Legal Services may not use the funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless specifically authorized by Section 1610.4, 1610.6, or 1610.7... enclosed a copy of CFR Part 1610-Use of Non-LSC Funds, in further satisfaction of the requirement that we provide to the source of non-LSC funds written notification of the prohibition and conditions which apply to the funds.

In an email exchange with the MCLSC Executive Director subsequent to the program's submission of comments, the program clarified the use of "grant awards" used in its comments to this item, and made clear that the notice would be sent to any donation over \$250, and not just formal grants. Also, via email, it was explained that the program need not provide a copy of 45 CFR Part 1610 as part of its required notice, and that it could simply make citation reference to it. The program indicated that it would adopt this more streamlined approach.

9. Ensure compliance with Part 1627, and other PAI fiscal requirements, to include the following actions:

- Strengthen its PAI system oversight to ensure that either total LSC funds paid to an individual attorney are limited to \$24,999 or that MCLSC obtains prior subgrant approval as required by Part 1627;
- Ensure that tracking for total payments includes all funds paid, whether for costs or fees. To ensure accuracy, MCLSC should consider a method to automate its PAI payments and oversight through integration with its accounting systems.
- Ensure that full corrective action for all contractual attorney arrangements is effected for calendar year 2010, and that for 2010 that no amounts of LSC funds over \$24,999 will be paid to any attorney, as no subgrant approval was sought;
- Ensure improved review and cross-checking of involved financial recording and calculations made regarding total payments so as to avoid math errors that lead to overpayments;
- Ensure the tracking and inclusion of all payments made to contract attorneys in a subsequent year for activities or services from a prior year. Any payments made in a subsequent year and designated as for the prior year must be included in the total calculation for the prior year, with any amounts exceeding \$24, 999 paid by non-LSC funds;
- Review all amounts mentioned in this report and ensure that all payments exceeding \$24,999 to any attorney in a given calendar year are adjusted in the MCLSC bookkeeping records so as to have those amounts paid for by non-LSC funds;
- Request that its IPA conduct testing during the next audit regarding the total payments of LSC funds to any one contract attorney, as well as compliance regarding the \$25,000 maximum payment level of LSC funds for 2010;
- Ensure that double payments to contract attorneys not occur, including:
 - Verifying one double payment discussed in this report, and making the appropriate adjustments to the related accounting records for any double payment, including restoring any overpayment back to its LSC fund balance;
 - Strengthening its payment procedures to require that payments be authorized only when accompanied by an original invoice. Further, the documents should be marked paid or otherwise cancelled to avoid duplicate payment;
- Adopt a simple beginning and ending year system by which it obtains sufficient information from each PAI contact attorney that evidences that the MCLSC payments do not amount, and will not amount, to over one-half of the attorney's annual professional income. Further, the first such review should be conducted for 2010. If this review evidences that the payments to a contract attorney do amount to over half of their professional income, all amounts paid to any such attorney should not be included in the PAI allocations made for 2010; and
- Ensure that an appropriate allocation of indirect overhead costs is included annually in its annual PAI expenses.

Comments to the DR indicated that MCLSC has implemented additional internal controls that include a tracking form that is attached to each invoice and check

requisition. This form shows cumulative check numbers, total payments, and remaining contract balance. Each time a check is requested; the worksheet is prepared by the Accounting Clerk, reviewed for payment by the Chief Financial Officer, and signed by the Executive Director. This tracking form has strengthened our PAI system oversight ensuring that LSC funds paid to an individual contract attorney is limited to \$24,999. Individual payments are tracked to include total payments paid, i.e., contractual costs, copying, fees, postage, travel expenses, etc.

Comments also indicated that: MCLSC will make better use of its existing accounting system by generating vendor reports of PAI attorney payments each month; the reports are a result of each original invoice being entered into the accounting system as an accounts payable, which is tracked by contract attorney vendor; upon payment the invoice is marked cancelled to avoid duplicate payments; and that MCLSC has also developed a worksheet in which all PAI attorney's costs are tracked for each attorney on a cumulative basis for each fiscal year. Comments also discussed how the overpayments occurred as a result of human error and oversight and noted that the program has taken precautions to ensure that the errors do not occur in 2011. Comments added that the MCLSC fiscal department has verified the double payment discussed and made appropriate adjustments to the accounting record and fund balance. Further, MCLSC no longer accepts facsimile copies of invoices for payment and will only issue payments based on original invoices, marking any such documents as paid, in order to avoid any duplicate payments. Finally, the comments indicated that MCLSC will seek to recover any duplicative payment, and that it has submitted a letter of notification to applicable attorney(s), noting that funds will be recovered by repayment, offset, or other means deemed necessary to reconcile the accounts.

Further, comments to the DR noted that MCLSC has reviewed all amounts mentioned in this report and ensured that all payments exceeding \$24,999 to any contract attorney in a given calendar year have been adjusted in its accounting records and paid for by non-LSC funds. Also, MCLSC has requested its independent auditors to perform additional testing during its 2010 audit regarding payments of LSC funds to any one contract attorney, as well as compliance regarding the \$25,000 maximum payment level of LSC funds for 2010.

Regarding the necessary assurance that a PAI attorney does not meet the definition of a staff attorney as defined under the LSC Act, comments to the DR noted that MCLSC is addressing this issue within the context of contracts issued to participating attorneys. MCLSC has included language in its annual contract with PAI attorneys consistent with the regulation which provides in part as follows:

To assure that Participating Attorney is not considered a staff attorney as, Participating Attorney hereby states that not more than one half of his/her annual professional income for any portion of the last two years was derived from proceeds of a contract, if any, with MCLSC... Further,

Participating Attorney states that he/she does not anticipate that more than one half of his/her current annual professional income will be derived from any such source.

Comments added that if MCLSC determines that any participating attorney has more than one-half of his/her professional income derived from an LSC source, MCLSC will not include such payments in its PAI allocation.

Finally, comments indicated that the allocation of indirect costs for PAI has been done in conjunction with the MCLSC local auditor and that MCLSC will ensure the inclusion of an appropriate allocation of indirect overhead costs in its annual PAI allocation.

10. Strengthen its review procedures for timekeeping to ensure that the program follows its written policies and procedures, and that the Kemps timekeeping records should be reconciled to the Quattro Pro Time and Attendance Reports, with any discrepancies being promptly and fully reconciled. Also, time records that lack any necessary signature approvals should not be processed until all required approvals are documented; and

Comments to the DR indicated that MCLSC will ensure that timekeeping is reconciled to time and attendance reports and that it will promptly reconcile any discrepancies. Comments added that fiscal staff review monthly time and attendance records with payroll and take ongoing corrective action as needed, noting that any time records lacking any necessary approval signatures are not processed until proper signatures and/or other approvals are documented.

11. Expand the written explanation of credit card approval process. In particular, the Accounting Manual should clearly define enhanced record keeping processes so as to ensure that there is clear documentation of all expenditures, to include its business purpose.

In its comments to the DR, MCLSC stated that it has adopted a credit card policy with an approval process providing for clear documentation of all expenditures. Further, the policy defines appropriate role and responsibilities for the record keeping process and the business purpose, and that this is being made a part of the Accounting Manual, as requested.

**RESPONSE TO
DRAFT REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement**

**MISSISSIPPI CENTER FOR LEGAL SERVICES
Case Service Report/Case Management System Review
July 12-16, 2010**

Recipient No. 625071

Pursuant to discussions, the following Corrective actions and Responses thereto have been combined from the draft report.

**Numbers 3 and 4
Numbers 7 and 11
Numbers 10 and 16
Numbers 12 and 14
Numbers 19 and 20**

Comment: MCLSC previously identified some needed corrective actions prior to the onsite visit by the LSC review team and acted accordingly. All accepted recommendations and corrective actions either have been/or will be addressed with staff via memo communications, in meetings with managers, and in scheduled staff meeting(s) and/or training events designed to reinforce understanding and compliance.

RECOMMENDATIONS

Consistent with the findings of this report, it is recommended that MCLS:

- Coordinate with MVLP to identify any insights regarding referred clients that are subsequently determined to not be eligible and determine whether any additional or expanded screening for pro bono applicants should be considered by MCLS;

Response: MCLSC will consider the recommendation. MCLSC has been and is in ongoing efforts with MVLP to identify any insights regarding referred clients and any additional screening needed to facilitate placement of cases with appropriate pro bon attorneys.

- Consider whether more limited scope on some retainers is warranted;

Response: MCLSC will consider whether more limited scope is warranted on some retainers in view of statements by the review team. MCLSC will address the issue with its managers and in subsequent staff meeting(s) as with all of the accepted recommendations and corrective actions needed.

- Review the practice of allowing casehandlers to accept and refer cases directly to and from the Call Center, and determine whether the advantages to having such independent

case acceptance practices by casehandlers outweigh the potential issues caused by having cases outside the normal oversight procedures;

Response: MCLSC acknowledges the recommendation. However, the statement is inaccurate as a matter of MCLSC's practice and policy. If any such isolated acts occur(red), MCLSC will take the necessary steps to remind and enforce the correct practice among staff. Additionally, a reminder of the correct and proper procedures will be sent to appropriate staff as an additional compliance measure and addressed in subsequent meetings and/or trainings.

- Consider a method to automate its PAI contractual attorney payments and related oversight through integration with its accounting systems; and

Response: MCLSC will consider automation of its PAI contractual attorney payments and related oversight through integration with its accounting system. The issue is referred to the fiscal department for consideration and discussion with MCLSC's accounting consultant and accounting software vendor. Further, see response to Number 15 Required Corrective Action.

- Consider adopting a *time-charge based* open case review system, as described in this report.

Response: MCLSC will consider adopting a time-charged based open case review approach as described in this report. The recommendation will be discussed and addressed with MCLSC's managing attorneys.

REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, MCLS should take corrective action to:

1. MCLS should take simple corrective action to remind staff of the importance of updating the ACMS data when significant changes occur to a case file.

Response: MCLSC has and will remind staff of the importance of updating the case management system data when significant changes occur to a case. This has been done in the past and will be done consistently in the future in order to avoid inaccurate CMS data.

2. Ensure that all applicants are screened regarding prospective income;

Response: MCLSC has taken corrective action to address this issue within the Call Center. The intake script has been changed to ask all applicants if household income is expected to change. Answers are recorded on the eligibility slip. Further, this issue will be addressed in staff meeting(s) and/or training and information disseminated to all offices.

3. Adopt one standard paper form for all non-group client intake conducted outside of the ACMS. This paper form should ensure full compliance and should reasonably reflect the ACMS intake process. Further, MCLS must ensure that all forms currently in use are

discontinued in use; Adopt one standard paper intake form for group clients so as to ensure full compliance documentation for such clients;

Response: One paper form has been developed for all non-group client intake. MCLSC will utilize one standard form for all non-group client intake conducted outside of the case management system and utilize a standard form for group intake. MCLSC will discontinue the use of any inconsistent forms.

4. Ensure that all intake and casehandling staff members understand the numerous exceptions and flexibility allowed in VAWA cases;

Response: MCLSC will ensure that all intake and casehandling staff members understand the exceptions and flexibility allowed in VAWA cases. This and other similar issues will be addressed with managing attorneys, and at subsequent staff meeting(s) and/or training in order to reinforce understanding and compliance.

5. Ensure that both its new paper intake forms, and all intake workers make clear the related policy factors and levels and how to apply them. The implementation of LSC regulations should be consistent throughout the program. Areas for focus include: 45 CFR §1611.7(a), 45 CFR §1611.5 (exceptions to annual income ceiling); 45 CFR §1611.3(2) (waivers of annual asset ceiling); 45 CFR §1626.4 and 6(a) and CSR Handbook (2008 Ed.), § 5.5. Related to this, ongoing staff training or other information systems should be routinely conducted for intake workers in the field offices and others who conduct infrequent intake screening. This communication and/or training process should ensure that these isolated intake workers correctly interpret MCLSC intake policy, correctly utilize the automated intake system, and that their ability to conduct the same high caliber intake screening as done by the Call Center is maintained over time.

Response: MCLSC will take the necessary steps to ensure that the implementation of LSC regulations is consistent throughout the program. MCLSC will conduct additional training for all intake workers, whether working within or outside the Call Center. The initial training is anticipated to occur before the end of May. Training for persons outside the Call Center will be reinforced by such designated support conducting periodic intake by signing into the Call Center queue for a limited time on a monthly basis. If necessary, MCLSC may pursue subsequent CSR training indicated by the LSC site team as offered and available by LSC.

6. Adopt and enforce a more frequent and effective open case review process to ensure that cases are either handled timely or are closed timely. Such a system should include documentation of periodic reviews with corresponding time charges entered for each case for each oversight review. Also, MCLSC should conduct a short-term review of all older open cases to ensure that they are either closed (if completed or dormant) or that they are actively engaged if remaining open. In particular, Hattiesburg office open cases should receive a comprehensive assessment;

Response: MCLSC is in the process of a comprehensive review of all open cases for CSR certification. MCLSC will adopt and enforce a more effective and frequent case review process as recommended, with consideration of the time charged basis. A schedule/time

table for future reviews will be discussed with managing attorneys and adopted to ensure timely handling and closing of cases as recommended.

7. Ensure that staff complete the scope and subject matter elements of the retainer, and to ensure that case oversight reviews whether this is being consistently done;

Response: MCLSC has and will remind staff to always complete the scope and subject matter elements in the retainer in order to provide proper notice of the representation and limited scope, if any, provided by MCLSC; and MCLSC review of such will be a part of case review and oversight. As indicated previously, this and other issues will be addressed with managers and in subsequent staff meeting(s) and/or trainings.

8. Ensure that staff members understand, and follow, the correct closing code practices involving:

- The need for reporting only the highest level of services provided to the client;
- The proper (and infrequent) need for use of category “K”; and
- Use of “I” closing codes when there has been appropriate court action, other than a simple motion to withdraw at the beginning of a case;

Response: MCLSC has reminded staff of the need to close cases and report same with the highest level of service provided; to limit, if not eliminate the use of closing category “K”; and the proper use of the “I” closing code. MCLSC will address the issue further with managing attorneys and at subsequent staff meeting(s) and/or training.

9. Revise its Regulatory Policies and Reporting Manual so as to conform to regulatory changes to Part 1609 and 1642, as discussed in LSC Program Letters 09-3 and 10-1; Update the compensated PAI contracts to remove the prior restrictive language regarding attorney fees;

Response: MCLSC advised the review team during the July site visit that it intended to revise its retainer form and PAI contracts to address regulatory changes to Part 1609 and 1642 after training was offered on the revisions at Mississippi’s state conference in September. The training was conducted as scheduled and MCLSC subsequently modified its retainer form and PAI contract to provide that attorney’s fees may be claimed and collected pursuant to Parts 1609 and 1642.

10. Adopt and follow a more regular policy and practice regarding the periodic oversight of PAI cases. The system should ensure at a minimum that MCLSC has reliable updates for open PAI files at least every six months for the duration of time the case remains open. Such a system should include documentation of periodic reviews with corresponding time charges entered for each case for each oversight review. Each update should evidence either that the case remains appropriately active, or is to be closed; Enforce the contractual monthly status report requirements for contract attorneys;

Response: MCLSC will undertake and follow a regular policy and practice regarding periodic oversight of PAI cases. MCLSC currently utilizes and attempts to enforce a six month update of case status reports from MVLP, which coordinates pro bono cases

handled by private attorneys. MCLSC is in ongoing discussion with MVLP to better enforce compliance. Such periodic reviews are and will be documented and aimed at closing cases which can be closed or referred back to MCLSC. MCLSC will consider adopting the time charged basis for better oversight. MCLSC is considering a more appropriate status update in addressing compensated attorneys, rather than its current monthly status report. MCLSC is adopting a six month status report for compensated cases consistent with the timeline for pro bono cases.

11. Ensure full compliance with the documentation requirements of Part 1626. First, MCLS should establish a system whereby citizenship attestations are obtained from walk-in clients who are given access to a program phone to utilize the Call Center. Second, MCLS should revisit its procedures for obtaining citizenship attestations in PAI cases to assess whether the current system is the most effective to ensure compliance. MCLS must make certain that applicants are screened for citizenship or eligible alien status during the pre-screening process and that case files contain the necessary citizenship/alien eligibility documentation before representation begins;

Response: MCLSC has taken this corrective action. Protocol provides that a citizenship attestation should be taken from any walk-in clients who use an office phone to access the Call Center intake, and such attestation should be forwarded to the Call Center to be made a part of the client file. Further, if any files are referred to a PAI attorney without the appropriate citizenship attestation, the attorney will be asked to provide MCLSC with a signed citizenship attestation at the start of the case, rather than when the case is closed.

12. Comply with the requirements of 45 CFR § 1610.5 regarding notice to sources of non-LSC funds over \$250;

Response: MCLSC will comply consistently with the requirements of 45 CFR Part 1610.5. Responses to grant awards consist in part of the language as follows: Consistent with Legal Services Corporation (LSC) requirement as outlined in CFR Part 1610, Mississippi Center for Legal Services may not use the funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless specifically authorized by Section 1610.4, 1610.6, or 1610.7...enclosed a copy of CFR Part 1610-Use of Non-LSC Funds, in further satisfaction of the requirement that we provide to the source of non-LSC funds written notification of the prohibition and conditions which apply to the funds.

13. Ensure that an appropriate allocation of indirect overhead costs is included annually in its annual PAI expenses.

Response: The allocation of indirect cost has been done in conjunction with MCLSC's local auditor. MCLSC includes the appropriate allocation of indirect overhead costs in its annual PAI allocation and will ensure that the same occurs in the future.

14. Adopt a simple beginning and ending year system by which it obtains sufficient information from each PAI contract attorney that evidences that the MCLS payments do not amount, and will not amount, to over one-half of the attorney's annual professional income. Further, the first such review should be conducted for 2010. If this review evidences that the payments to a contract attorney do amount to over half of their

professional income, all amounts paid to any such attorney should not be included in the PAI allocations made for 2010;

Response: MCLSC is addressing this issue within the context of contracts issued to participating attorneys. MCLSC has included language in its annual contract with PAI attorneys consistent with the regulation which provides in part as follows: To assure that Participating Attorney is not considered a staff attorney as defined under the Legal Services Corporation (LSC) Act, Participating Attorney hereby states that not more than one half of his/her annual professional income for any portion of the last two years was derived from proceeds of a contract, if any, with MCLSC... Further, Participating Attorney states that he/she does not anticipate that more than one half of his/her current annual professional income will be derived from any such source.

If MCLSC determines that any participating attorney has more than one-half of his/her professional income derived from an LSC source, MCLSC will not include such payments in its PAI allocation.

15. Ensure compliance with Part 1627, including the following actions:

- Strengthen its PAI system oversight to ensure that either total LSC funds paid to an individual attorney are limited to \$24,999 or that MCLSC obtains prior subgrant approval as required by Part 1627;
- Ensure that tracking for total payments includes all funds paid, whether for costs or fees. To ensure accuracy, MCLSC should consider a method to automate its PAI payments and oversight through integration with its accounting systems;
- Ensure that full corrective action for all contractual attorney arrangements is effected for calendar year 2010, and that for 2010 that no amounts of LSC funds over \$24,999 will be paid to any attorney, as no subgrant approval was sought;
- Ensure improved review and cross-checking of involved financial recording and calculations made regarding total payment so as to avoid math errors that lead to overpayments;
- Ensure the tracking and inclusion of all payments made to contract attorneys in a subsequent year for activities or services from a prior year. Any payments made in a subsequent year and designated as for the prior year must be included in the total calculation for the prior year, with any amounts exceeding \$24,999 paid by non-LSC funds;
- Review all amounts mentioned in this report and ensure that all payments exceeding \$24,999 to any attorney in a given calendar year are adjusted in the MCLSC bookkeeping records so as to have those amounts paid for by non-LSC funds; and

- Request that its IPA conduct testing during the next audit regarding the total payments of LSC funds to any one contract attorney, as well as compliance regarding the \$25,000 maximum payment level of LSC funds for 2010;
- Ensure that double payments to contract attorneys not occur, including:
- Verifying one double payment discussed in this report, and making appropriate adjustments to the related accounting records for any double payment, including restoring any overpayment back to its LSC fund balance; and
- Strengthening its payment procedures to require that payments be authorized only when accompanied by an original invoice. Further, the documents should be marked paid or otherwise cancelled to avoid duplicate payment;

Response: MCLSC has implemented additional internal controls which includes a tracking form that is attached to each invoice and check requisition. This form shows cumulative check numbers, total payments, and remaining contract balance. Each time a check is requested; the worksheet is prepared by the Accounting Clerk, reviewed for payment by the Chief Financial Officer, and signed by the Executive Director. This tracking form has strengthened our PAI system oversight ensuring that LSC funds paid to an individual contract attorney is limited to \$24,999. Individual payments are tracked to include total payments paid, i.e., contractual costs, copying, fees, postage, travel expenses, etc.

MCLSC will make better use of its existing accounting system by generating vendor reports of PAI attorney payments each month. The reports are a result of each original invoice being entered into the accounting system as an accounts payable, which is tracked by contract attorney vendor. Upon payment the invoice is marked cancelled to avoid duplicate payments. MCLSC has also developed a worksheet in which all PAI attorney's costs are track for each attorney on a cumulative basis for each fiscal year.

MCLSC has reviewed all amounts mentioned in this report and ensures that all payments exceeding \$24,999 to any contract attorney in a given calendar year are adjusted in its accounting records and paid for by non-LSC funds.

MCLSC has requested its independent auditors to perform additional testing during its 2010 audit, payments of LSC funds to any one contract attorney, as well as compliance regarding the \$25,000 maximum payment level of LSC funds for 2010.

MCLSC acknowledges that the overpayments occurred as a result of human error and oversight and has taken precaution to ensure that the errors do not occur in 2011. MCLSC's fiscal department has verified the double payment discussed and made appropriate adjustments to the accounting record and fund balance. MCLSC no longer accepts facsimile copies of invoices for payment; only issues payments based on original invoices; and marks any documents paid, in order to avoid duplicate payments. Further, see response to Number 15 above.

MCLSC will seek to recover any undue payment as indicated and has submitted a letter of notification to applicable attorney(s). Funds will be recovered by repayment, offset, or other means deemed necessary to reconcile the accounts.

16. Strengthen its review procedures for timekeeping to ensure that the program follows its written policies and procedures, and that the Kemps timekeeping records should be reconciled to the Quattro Pro Time and Attendance Reports, with any discrepancies being promptly and fully reconciled. Also, time records that lack any necessary signature approvals should not be processed until all required approvals are documented; and

Response: MCLSC will ensure that timekeeping is reconciled to time and attendance reports and will promptly reconcile any discrepancies. Fiscal staff review monthly time and attendance records with payroll and takes corrective action as needed. Any time records lacking any necessary approval signature are not processed until proper signatures and/or other approvals are documented.

17. Expand the written explanation of credit card approval process. In particular, the Accounting Manual should clearly define enhanced record keeping processes so as to ensure that there is clear documentation of all expenditures, to include its business purpose.

Response: MCLSC has adopted a credit card policy with an approval process providing for clear documentation of all expenditures and defines appropriate role and responsibilities for record keeping process and business purpose, all of which is being made a part of the Accounting Manual.