



December 15, 2009

Raymond D. Macchia, Executive Director
Wyoming Interim Legal Services Provider
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Re: October 2009 On-site Review

Dear Mr. Macchia:

As you are aware, the Legal Services Corporation (LSC) Office of Compliance and Enforcement (OCE) conducted a Follow-Up on Grant Condition Reporting review of Legal Aid of Wyoming from October 20-21, 2009. This review operated as an abbreviated compliance review in addition to a condensed review of the program's compliance-related Special Grant Conditions. A case file review was conducted involving closed 2009 and open cases and included randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed 50 case files in the program's Cheyenne office, including 28 closed 2009 staff cases, 2 closed 2009 PAI cases, 15 open PAI cases, and 5 open staff cases. In addition, staff interviews regarding fiscal issues and certain issues related to its SGCs were conducted.

REPORTING ON SPECIAL GRANT CONDITIONS

A partial review of LAW's fulfillment of its current SGCs evidenced that while a few of the program's SGCs have already been completed, the majority are still in process (SGCs primarily within the purview of Office of Program Performance were not assessed by the OCE team). However, two elements of SGC 14, which required the program to implement all of the required corrective actions of the June 8, 2009 letter from OCE, have not been completed. Corrective Action 1 of the June 8, 2009 letter requested that the program "provide additional training in reference to the proper documentation of over-income clients accepted for services pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4)." As noted below, 5 of 38 LSC-eligible, CSR-reportable cases were over-income or over-asset and failed to contain waivers thus far. This illustrates a continuing need for training in the area of over-income and over-asset case acceptance procedures to ensure appropriate case acceptance prior to expenditure of LSC funds. Corrective Action 6 of June 8, 2009 letter also requested that the program "provide documentation regarding the program's due diligence efforts undertaken in

ascertaining the prevailing hourly market rate for attorneys in Cheyenne, Wyoming in order to properly calculate ILSP's [now LAW's] PAI contract rate." LAW has yet to provide such documentation.

GENERAL COMPLIANCE

In general, interviews, case review, and document review revealed that the program is performing adequately in providing limited legal assistance to appropriately screened clients within its service area at this juncture. LAW has continued to provide only limited legal assistance except in the case of emergencies and PAI referrals of extended services cases. The most significant issue identified is that its intake, case acceptance, and case closing procedures are somewhat cumbersome and could lead to systemic compliance errors in the event the program expands as planned. Currently, the program is spending enormous time on case acceptance and case closure procedures to ensure compliance although the majority of its case load consists of very brief cases. There is a concern that additional field offices, new staff, and the addition of extended service cases to its case load could result in either significantly decreased legal services or significantly decreased compliance oversight.

In reference to case review, 50 cases were reviewed, 12 were properly rejected or deselected as non-CSR eligible, and 11 of the remaining 38 CSR-reportable cases were non-compliant. The number of non-compliant cases, mostly related to intake errors, suggests that while the program's intake policies generally appear to support compliance-related requirements, improvements to initial intake screening procedures need to be implemented immediately. Case review illustrated that 10 of the 11 erroneous cases that had at least one compliance issue involving income, assets, or citizenship eligibility, or priorities. It is hard to pinpoint exactly where and why LAW's intake system breaks down when so few staff are performing intake screening but it has the potential to become an even larger issue when the program expands. In addition, because the program takes so few extended cases, it is difficult to assess the program's understanding of the full breadth of LSC regulations and requirements in cases beyond limited services.

In reference to the income and asset eligibility requirements of 45 CFR Part 1611, 5 of 38 LSC-eligible cases were either over-income or over-asset, failed to contain waivers, and should have been immediately rejected.¹ All 5 cases were open cases and staff was instructed on-site to administratively close such cases as rejected unless the program provided documentation of an over-income or over-asset waiver. The program is required to provide additional training in reference to the proper documentation of over-income clients and over-asset cases accepted for services in accordance with the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

¹ See Case Nos. 09-05-10000844, an open PAI case; 09-05-10000790, an open PAI case; 09-05-000116, an open PAI case; 09-05-10000822, an open staff case, and 09-05-10000784, an open staff case. Case No. 09-05-10000822 is a case funded by LAW's Senior Grant.

Regarding 45 CFR Part 1626, staff interviews and case review evidenced a working understanding of the citizenship/alien eligibility requirement. However, 4 of 38 CSR-eligible cases did not have a signed citizenship attestation which is somewhat unusual considering that the program is almost exclusively reliant on paper intake forms.² In addition, all 4 errors were discovered in closed cases which mean that the non-compliance was not picked up in the program's case closing review. Although not a grave concern at this point, the issue was brought to the program's attention as it has the potential to become a large issue as the program grows and handles more extended cases. The program is required to provide additional training in reference to the proper documentation of citizenship and alien eligibility required by 45 CFR Part 1626.

The case sample additionally revealed 2 cases of 38 cases outside of program priorities. As such, the program is in substantial compliance with 45 CFR Part 1620.³ However, it is recommended that the program provide additional training regarding its priorities in any training undertaken in response to the corrective actions noted below.

Two of the 38 LSC-eligible, CSR-reportable cases reviewed failed to contain an adequate description of the legal assistance provided to the client.⁴ The program's practice is to send closing letters to all clients, regardless of the level of assistance, regarding the legal assistance provided. Improvement since the time of the March 2009 on-site review was noted but the program needs to be vigilant in reference to its compliance with CSR Handbook (2008 Ed.), § 5.6. The program must provide additional training regarding proper documentation of legal assistance to its clients as this issue has the potential of becoming an issue when LAW begins to take extended service cases.

Case review revealed one instance of a case closing code error.⁵ As such, the program's application is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). The program indicated it had provided training regarding the correct use of closing codes consistent with Chapter VIII of the CSR Handbook (2008 Ed.). However, when LAW starts taking extended services cases, it is recommended that the program provide additional closing code training with an emphasis on extended closing codes, including documentation requirements.

² See Case Nos. 09-05-99000091, 09-05-000532, 09-05-99000493, and 09-05-000287.

³ See Case Nos. 09-05-03000397, a closed 2009 case which the client was seeking damages in a small claims case; and 09-05-10000784, an open case in which the client was seeking damages for lost luggage.

⁴ See Case Nos. 09-05-000834, an open PAI cases that is actually a staff case and should have been closed; and 09-05-10000782, and open PAI case that was also over-income and should have been closed. Neither case had evidence of legal assistance to the client.

⁵ See Case No. 09-05-000510, a closed 2009 case in which the closing code should have been B rather than A due to the third-party contact on behalf of the client.

In reference to private attorney involvement (“PAI”), staff interviews and case review evidenced that, thus far, the program has generally good follow-up practices in place. However, as only 3 PAI cases have been closed in 2009, no assessment of timely case closing and accurate application of closing codes can be made. The only significant compliance issues in PAI cases were related to the same intake screening procedures used in staff cases. In addition, PAI coding issues were noted in 2 PAI cases that were actually staff cases.⁶ As such, LAW must providing training to its staff on proper PAI coding.

FISCAL

The most significant issue discovered in reference to the October 2009 review is the potential costs associated with the number of consultants hired to assist the program during its start-up as a new long-term grantee. In early September 2009, the program signed consultant contracts with 8 different individuals/organizations for a variety of services with hourly rates ranging from \$67 to \$109 per hour. According to LAW’s September 30, 2009 SGC Progress Report, the hired consultants include: Alison Paul (intake/rural program), Eric Middlestadt (human resources/office operations), Melissa Pershing (strategic planning/legal work management/Board development), Cheryl Hanna (Native American programs), Steve Green (telephone systems/intake), Judy Arrigo (financial and accounting systems), and Joyce Raby (project management/technology/TIG grants), and Sheldon Roodman (a former legal services executive director). The additional consultant, Tammy Lanz, is a certified public accountant who has been assisting the program with financial operations since its inception as Wyoming’s interim legal services provider.

The number of consultant contracts, in addition to the potential for duplication of services stemming from the lack of specificity in the articulation of the scope of work as described below, presents a potential violation of 45 CFR § 1630.3 (b) with regard to reasonableness of costs. Currently, if the program has a one hour meeting with all of its consultants, the total cost for that hour would be \$790.

A review of all 9 consultant contracts was performed and revealed that 7 of the 9 contracts contained exactly the same generic language regarding the scope of work:

- 1) Serve as an active contributing member of the Wyoming Team of consultants
- 2) Assist with the fulfillment of all assigned tasks associated with the Legal Services Corporation’s Special Grant Conditions
- 3) Provide well written and well articulated documents related to this project
- 4) Share relevant expertise and experience to guide the project and the Legal Aid of Wyoming

⁶ See Case Nos. 09-05-000038 and 09-05-0008340.

The scope of work noted that “[t]his is a short conceptual list designed to provide a broad overview of the work and is not meant to be exhaustive.” As none of the seven contracts describes the specific expertise for which the consultant was hired nor its application to the consultant “project”, there appears to be a direct contradiction of LAW’s September 30, 2009 SGC Progress Report which states in part, “each consultant has been hired for a specific area of expertise but will also be expected to contribute to the overall project”.⁷

In addition, 3 of the 9 contracts had no end date and did not contain a cap on the number of billable hours or a cap on the billable dollar amount. This appears to be a direct contradiction of LAW’s September 30, 2009 SGC Progress Report which states in part, “each contract includes a maximum dollar value to ensure budgetary restraint and control”.⁸ Five of the 9 consultant contracts contained a billable cap of \$5,000.

In a further issue raised in the context of reasonableness of costs, one of the consultant contracts reviewed provided compensation in the amount of \$100 an hour for:

- 1) Administrative duties as related to the staff of the team of consultants (i.e. scheduling meetings, meeting minutes, team correspondence)
- 2) Administrative duties as related to the creation of a Strategic Plan and compliance with LSC Special Grant Conditions and related reporting to LSC (i.e. tracking team assignments, combining team work product, tracking project milestones and deadlines, etc.)
- 3) Provide personal expertise (especially with regard to technology) and input as needed in the form of written work product, recommendations, and general assistance.

While the third provision speaks to technical expertise, there certainly is a question whether \$100 an hour for “administrative duties” including scheduling meetings and minute-taking might be considered a reasonable cost under 45 CFR § 1630.3 (b), particularly in light of a \$67 per hour rate for the consultant tasked with the technical aspects of setting up the program’s intake system.

At the time of the on-site visit, 4 invoices presented by one consultant for the 8 weeks between 8/31/2009 and 10/15/2009 come to a total of \$12,700. In addition, this same consultant on four different occasions during the time frame of 8/26/2009 to 10/15/2009, submitted travel expense vouchers totaling \$416.00. Submission of travel vouchers appear to contradict the Executive Director’s September 30, 2009 memorandum to LSC which states that use of telecommuting technologies “will virtually eliminate travel expenses associated with the use of consultants, and will

⁷ See September 30, 2009 SGC Progress Report, p. 28.

⁸ *Id.*

make more funding available for obtaining direct service.”⁹ Total consultant billing from January 1, 2009 through October 15, 2009 is \$20,673.50. Invoices revealed that \$14,071 of the \$20,673 was billed from August 31, 2009 through October 15, 2009. The issue involving expenditure of funds for consultant contracts is one of continuing concern and should be monitored by program management.

In reference to other fiscal issues noted in the course of the on-site review, LAW has hired at least two former Wyoming Legal Services’ (WLS) staff attorneys as PAI contract attorneys. Pursuant to 45 CFR § 1614.1(e), “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.” As such, LAW may not hire any staff attorneys from WLS for two years from the time of relinquishment of the WLS grant on October 31, 2009. As you are aware, by letter of November 11, 2009, OCE requested that the program immediately cease any hiring of former WLS staff attorneys as PAI contract attorneys until such time as the two-year prohibition period has passed. In addition, LAW was additionally informed that any PAI contracts involving former WLS staff attorneys and dated subsequent to November 11, 2009 would be considered willful violations of 45 CFR § 1614.1(e) and subject to questioned cost proceedings.

Interviews and review of financial documents revealed that LAW moved its offices from the 2nd to the 3rd floor within its current building in an effort to create more space for the additional attorneys and case handlers the program intends to hire in the near future. The new office space also includes an office located on the 4th floor that can only be accessed through the 3rd floor and is “subleased” to a private attorney for \$600 per month although no written contract had been executed at the time of the review. A review of the general ledger sub-account “rent” indicated that Mr. Reese has paid LAW \$600 for the months of September and October in the absence of a written contract. However, for purposes of insurance and liability, LAW should execute a written agreement with Mr. Reese.

Consistent with the findings of this report, LAW is required to take the following corrective actions:

1. Provide additional training in reference to the proper documentation of over-income and over-asset clients accepted for services pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4) no later than 1 month from the date of this letter. A training agenda should be forwarded to OCE upon conclusion of such training.
2. Provide additional training regarding the documentation and specific description of legal assistance provided by the program no later than one month from the date of this

⁹*Id.*

letter. A training agenda should be forwarded to OCE upon conclusion of such training.

3. Provide additional training in reference to the proper documentation of citizenship and alien eligibility required by 45 CFR Part 1626 no later than one month from the date of this letter. A training agenda should be forwarded to OCE upon conclusion of such training.

4. Provide additional training regarding proper documentation of legal assistance to its clients no later than one month from the date of this letter. A training agenda should be forwarded to OCE upon conclusion of such training.

5. Provide training to its staff on proper coding of PAI cases and the difference between PAI and staff cases no later than one month from the date of this letter. A training agenda should be forwarded to OCE upon conclusion of such training.

6. Provide documentation to OCE regarding the program's due diligence efforts undertaken in ascertaining the prevailing hourly market rate for attorneys in Cheyenne, Wyoming in order to properly calculate LAW's PAI contract rate no later than 2 weeks from this letter.

7. Execute a sub-lease agreement for the rental of the 4th floor office with the tenant no later than 2 weeks from the date of this letter. A copy of said sub-lease should be forwarded to OCE subsequent to its execution.

Consistent with the findings of this report, it is suggested that LAW implement the following recommendations¹⁰:

1. Provide additional closing code training with an emphasis on extended service closing codes, including documentation requirements, when the program starts taking extended service cases.

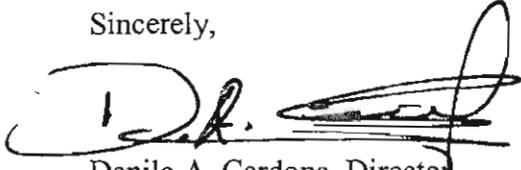
2. Provide additional training regarding its priorities in any training undertaken in response to the corrective actions noted above.

¹⁰ Items appearing as "recommendations" are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed as such. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with potential or borderline compliance issues. Often recommendations may assist a program in avoiding future compliance errors. By contrast, the items listed as "corrective actions" must be addressed by the program and will be enforced by LSC.

Raymond Macchia, ED
December 15, 2009
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Your cooperation in the on-site review was appreciated. Should you have any further questions regarding the above, please contact Kamala Vasagam at (202) 295-1535.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Cardona', with a large, stylized flourish extending to the right.

Danilo A. Cardona, Director
Office of Compliance and Enforcement.

Cc: Leda Pojman
Board Chair

All Board Members