



LEGAL SERVICES CORPORATION
OFFICE OF PROGRAM PERFORMANCE
FINAL REPORT

PROGRAM QUALITY VISIT

For

***LEGAL AID OF NORTH CAROLINA, INC.
Migrant Grant***

Recipient No. 634032

February 23 through 25, 2009

***LSC Reviewer:
Tillie Lacayo, Program Counsel,
Office of Program Performance***

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INTRODUCTION

On February 23, 2009 through February 25, 2009, Tillie Lacayo, Program Counsel, Legal Services Corporation (LSC) Office of Program Performance (OPP), conducted a program quality visit to the Farmworker Unit (FWU) of Legal Aid of North Carolina, Inc. (LANC).

Through its Program Quality Visits, OPP seeks to ensure that LSC grantees are providing the highest quality legal services to eligible clients. The purpose of the visit to the FWU was to evaluate the quality of legal services provided to migrant farmworkers in North Carolina.

In performing its evaluation of a grantee's delivery system, OPP relies on the LSC Act and regulations, LSC Performance Criteria, LSC Program Letters, and the ABA Standards for the Provision of Civil Legal Aid. Careful consideration was given to: the Migrant Grant section of LANC's narrative submitted in the last competition cycle; the grant renewal narrative submitted in 2008; case and other services reports; other reports or documents submitted by LANC to LSC concerning its migrant grant over the past year; and numerous documents submitted by the FWU in advance of the visit, including advocates' writing samples. OPP's assessment considered the FWU's work in the context of the four Performance Areas.¹

The visit was conducted in Raleigh, North Carolina, which is the location of both the administrative office of LANC and of the program's Farmworker Unit. During the course of the visit, program counsel interviewed the entire Farmworker Unit staff, LANC's executive director, members of the private bar who work with the FWU, an employment law mediator, and an adjudicating attorney with the North Carolina Industrial Commission. Some of the interviews were conducted by telephone.

OVERVIEW OF SERVICE AREA

Legal services for migrant farmworkers in North Carolina have been funded by LSC since 1979 -- through Farmworker Legal Services of North Carolina from 1979 through 1998 and through LANC's Farmworker Unit from 1999 through the present.² In 2008 LANC received \$519,293 in migrant funding from LSC.

The FWU serves migrant farmworkers throughout the entire state. The program's service area encompasses 53,821 square miles. The FWU is located in LANC's Raleigh office

¹ Unlike other LSC Program Quality Visits, which evaluate a program's performance using all of the LSC Performance Criteria as a guide, this visit did not cover each and every criterion. Since this was an evaluation of a component of LANC that provides services to a special population - migrant farmworkers - several of the criteria were not reviewed, such as financial administration, human resources administration, board governance, and overall program management and administration.

² LANC was previously known as Legal Services of North Carolina. In 2002 the program changed its name to Legal Aid of North Carolina.

and has a staff of eight consisting of a managing attorney, two staff attorneys, two litigation paralegals, a community education coordinator, an administrative assistant, and a lay Jesuit Volunteer.

REPORT SUMMARY AND OVERVIEW OF PROGRAM

The Farmworker Unit staff works well together and does an excellent job of covering a large service area with a relatively small staff. This is accomplished through extensive outreach, the majority of which is conducted from June through November of each year. The FWU has a highly dedicated staff that is linguistically and culturally competent and sensitive to the needs of the migrant farmworker community. Though a comprehensive formal needs assessment process has not been undertaken recently, the FWU stays attuned to the legal needs of migrant farmworkers through regular contact with national, state, and local organizations that serve migrant farmworkers and through its community education and outreach activities.

The Unit has a balanced mix of experienced, mid-level, and newer staff. Its supervision methods are appropriate to the experience level of staff. The Unit is well-rounded in its advocacy efforts, as it works to address the range of issues that affect farmworkers, such as insufficient pay, poor working conditions, retaliation, employer blacklisting, substandard housing, job-related injuries, human trafficking, and pesticide exposure. It offers comprehensive trainings to staff in a range of farmworker law areas as well as skills trainings on such subjects as interviewing clients, GPS mapping, and LegalFiles (case management system) training.

The FWU works with members of the private bar in the referral of cases on behalf of farmworkers, as co-counsel in wage and employment cases, and to expand its expertise in areas such as Workers Compensation, where cases have sometimes proven difficult to refer.

FWU is an active member of the national migrant farmworker advocacy community through its participation at national conferences as both trainers and attendees, through co-counseling with attorneys at other migrant programs, and through participation in state and regional coalitions and task forces.

FINDINGS AND RECOMMENDATIONS

Performance Area One. *Effectiveness in identifying the most pressing civil legal needs of low-income people in the service area and targeting resources to address those needs*

A. Periodic comprehensive assessment and ongoing consideration of legal needs

Finding 1: LANC's most recent comprehensive legal needs assessment was conducted in 2005; as part of this process the Farmworker Unit convened a focus group of tobacco workers in the Fall of 2005.

In assessing the needs of the farmworker community it serves on an ongoing basis, the FWU relies heavily upon information obtained during the extensive outreach it conducts throughout the year and on its close ties with several organizations in North Carolina that work with the migrant farmworker population. These organizations sometimes conduct their own assessments of the needs of the farmworker population relative to the purposes of the organization and share the results with the FWU and other partner organizations.³

The last formal needs assessment conducted by the Farmworker Unit (FWU) of LANC occurred in 2005 when it convened a focus group of farmworkers, all of whom worked harvesting tobacco. Though the needs assessment was somewhat limited in that it involved a small group of farmworkers who had worked only in tobacco, the focus group members, selected by grassroots organizations, were representative of North Carolina's primary crop, tobacco.

The Farmworker Unit's case priorities are: discrimination against farmworkers by civil authorities and private entities; naturalization and immigration; workers' employment rights, including the right to a safe workplace in accordance with OSHA; housing; and other meritorious cases that may significantly impact the special needs of migrant workers.

Recommendation:

I.1.1.⁴ Though the FWU's activities and its numerous contacts appear to ensure that it has up-to-date information concerning farmworker needs, the Unit should conduct a more formal needs assessment as soon as it is practicable to do so. The FWU could integrate a survey of farmworker needs into its regular outreach activities. While recognizing that assembling migrant farmworkers, most of whom are in the state for only a few months and are housed in remote areas is not an easy task, LSC recommends convening some in-depth discussions with the farmworker population. FWU should supplement the use of focus groups and surveys conducted during outreach with written surveys disseminated to other organizations in North Carolina that work with the farmworker population.

B. Setting goals and objectives; developing strategies; evaluation and adjustment

Finding 2: The Farmworker Unit conducts an annual work-planning retreat which culminates in the development of a written workplan that is reviewed regularly throughout the year.

³ For example, the North Carolina Farmworker Health Program conducts a needs assessment every year around health issues among the farmworker population.

⁴ Recommendations are numbered as follows: The Roman numeral refers to the Performance Area followed by the finding number and lastly by the recommendation number that pertains to the finding.

The FWU holds a two-day work-planning retreat annually, co-facilitated by an experienced farmworker attorney from the Southern Poverty Law Center and by LANC's assistant director of advocacy and compliance. The North Carolina Justice Center's Immigrants Legal Assistance Project (the FWU's non-LSC funded counterpart in North Carolina) is a co-participant in the work-planning retreat, thereby ensuring coordination between the two organizations and minimizing the possibility of gaps in service to the farmworker population.

The work-planning retreat, usually held at the end of the year, provides an ideal opportunity for the FWU to evaluate its work over the previous year and make adjustments to the Unit's goals and objectives for the coming year. After the retreat, a joint workplan is prepared. Each goal and objective in the workplan contains timelines, areas of responsibility, and tasks assigned to specific staff persons. The managing attorney of the FWU reviews the workplan every month or two to ensure that sufficient progress is occurring. The Unit as a whole reviews the plan in August of each year.

Performance Area Two. *Effectiveness in engaging and serving the low-income population throughout the service area.*

A. Dignity and sensitivity - linguistic and cultural competence of staff

Finding 3: The Farmworker Unit has a linguistically and culturally competent staff; staff spend many hours planning and conducting outreach in a thoughtful and sensitive manner, designed to foster trust among the migrant farmworker population.

The FWU is staffed by a managing attorney, two staff attorneys, a community education coordinator, two litigation paralegals, an administrative assistant, and a Jesuit Volunteer. The litigation paralegals do not carry independent caseloads but, rather, provide support to the attorneys in the individual cases to which they are assigned.

Every member of the FWU staff is bilingual in Spanish and English. Three staff persons are from Spanish-speaking countries and are therefore bi-cultural as well. Several staff persons learned Spanish by studying for extended periods of time in Spanish-speaking countries. One of the Unit's two litigation paralegals grew up in a farmworker family.

To communicate with farmworkers who speak languages other than English or Spanish, the FWU locates interpreters using contacts within organizations that help non-English speaking populations and in universities throughout North Carolina. Staff are familiar with and use Language Line in appropriate circumstances.

Because they have so often been taken advantage of as a group and individually, many farmworkers are wary of persons purporting to offer assistance. Also, as many farmworkers are limited in their ability to travel to legal service offices, effective advocacy requires ongoing outreach during the time in which the client population is in state. A legal services project that serves migrant farmworkers cannot function well unless it is supported by staff

that possess the dedication, energy, and willingness to work far in excess of the standard work week. Advocates must be willing to log numerous hours of travel, and to spend many evenings and weekends building relationships of trust with the client population. Interviews with the FWU advocates reflect that they are deeply committed to their work, are focused on providing quality legal services to clients, and are sensitive to the time necessary to earn the trust of the farmworker population.

Though the FWU's period of heaviest outreach is from June through November, outreach is also conducted by the Unit during other times of year.⁵ All advocates, including the Unit's managing attorney, participate in outreach at least one evening a week during the season. The FWU's outreach capacity during the season is augmented by interns from Student Action with Farmworkers (SAF), which places bilingual undergraduate students from farmworker families with the program during the summer months.

Persons interviewed from other organizations that work with migrant farmworkers in North Carolina were highly complimentary of the FWU's treatment of and sensitivity to clients and its accessibility to the farmworker community as a whole.

B. Access and office location; intake and utilization by the low-income population

Finding 4: The FWU's toll-free line, hours of telephone intake, and extensive outreach greatly enhance the Unit's accessibility to the migrant population in North Carolina.

The Farmworker Unit operates out of the Raleigh office of LANC. The most significant concentration of migrant farmworkers is located within a two-hour drive east and southeast of Raleigh. In addition to regular evening outreach during the season, overnight outreach visits are conducted to other parts of the state with large farmworker populations, such as the Elizabeth City area (white potato and cabbage workers) and the Hendersonville area (apple pickers).

The FWU's toll-free line, operative throughout the United States and Mexico, is used to conduct telephone intake five days a week. The line is open during regular business hours. Calls come directly to the Unit, by-passing the Raleigh office reception line, and thereby minimizing the possibility of lost calls. The telephone intake interviews are conducted by the program's litigation paralegals, and by the attorneys if a paralegal is not available. Four evenings a week throughout the season (Monday through Thursday until 9:00 P.M.) calls are forwarded to the cell phone of the Unit advocate on call for the evening, effectively extending intake well into the evening hours. FWU advocates rotate being on call in the evenings throughout the week.

⁵ For example, outreach to blueberry workers occurs in May and outreach to forestry workers occurs during the cold weather months.

In addition to outreach to labor camps, the program also conducts community outreach on weekends at farmworker fairs and festivals held throughout the season in various parts of the state.

C. Engagement with the low-income population

Finding 5: The FWU has an experienced and dedicated community education coordinator.

The FWU has a community education coordinator who develops the Unit's outreach schedule for visits to labor camps during the season, coordinates outreach, and gives community education presentations on a variety of topics. He has worked in this capacity since 2002 and is originally from Honduras.

The community education coordinator appears regularly on local radio and television stations to publicize the work of the Unit. He also writes articles for Spanish-language newspapers and has participated in numerous pesticide awareness presentations to farmworkers and their families. Apropos of this, he serves on the board of directors of Toxic Free North Carolina, an organization that works to promote awareness and minimize the use of toxic chemicals within in the state. The community education coordinator's willingness to go "above and beyond" for his clients was praised by both FWU staff and by personnel at organizations that work with the FWU.

Performance Area Three. *Effectiveness of legal representation and other program activities intended to benefit the low income population in its service area*

A. Legal representation

1. Staff experience

Finding 6: The Farmworker Unit contains a good mix of experience levels among staff.

The FWU has a good mix of experienced and newer staff. The managing attorney has over thirty years of experience as a migrant attorney in legal services. A second staff attorney has over twelve years experience, all with the FWU, and the newest attorney was hired in June of 2008. One of the two litigation paralegals has been with the program for nearly three years. The second has been with LANC since August of 2008, has an accounting degree and work experience in the area, and is coordinating the Taxpayer Clinic for 2009. The Community Education Coordinator has been with the program for over six years. The administrative assistant, originally from Venezuela, has been with the FWU for 2 ½ years and has prior experience working with farmworkers.

2. Legal work management and supervision

Finding 7: The FWU's legal work management and supervision system includes both formal and informal methods of supervision; management of legal work is sufficient to ensure that quality legal work is produced.

The FWU utilizes both formal and informal methods of supervision, such as weekly case review meetings, regular review of written work, co-counseling (occurs in all FWU cases), periodic review of cases on LegalFiles (the program's case management system), and prompt review of all closed cases. Legal work supervision is appropriate to the experience level of the advocate. Most staff have been formally evaluated by the FWU's managing attorney within the past year or two. However, one of the newer advocates was overdue for her six-month evaluation⁶ and the managing attorney who is supervised by the executive director, has never been formally evaluated.

Recommendation:

III.7.2 All employees should receive regular formal performance evaluations. The program should conduct formal evaluations of the newer advocates who have been with the FWU at least six months, and of the managing attorney of the FWU as soon as possible.

3. Quality and quantity of legal work

Finding 8: The FWU's advocacy is well-rounded and of a high quality.

The quality of the FWU's legal work is quite good. The Unit is well-rounded in its advocacy efforts as it works to address the range of issues that affect farmworkers, such as insufficient pay, poor working conditions, retaliation, employer blacklisting, substandard housing, job-related injuries, human trafficking, and pesticide exposure. The FWU's successful advocacy in one case brought an end to the North Carolina Growers Association's blacklisting of farmworkers who had complained about pay and working conditions. The program has special expertise with regard to the H-2A program, through which agricultural employers obtain non-immigrant visas to bring farmworkers into the U.S. to fulfill a temporary labor shortage.

The program does not shy away from complex cases involving multiple plaintiffs and/or defendants, nor from cases involving plaintiffs or defendants located outside the continental United States. In one case involving defendants in Thailand, the program used the ABA's Litigation Assistance Partnership Project (LAPP) to locate a firm with experience suing Thai entities. The program's legal work in the area of human trafficking is pro-active and includes both affirmative litigation and assistance to farmworkers who are witnesses in criminal trafficking prosecutions. The FWU helps the farmworkers obtain T-visas to remain in the United States and become reunited with their families.

⁶ The other new advocate had just reached his six-month anniversary at the time of the visit.

The FWU also engages in advocacy in the areas of pesticide use and migrant farmworker housing, and has filed administrative complaints on behalf of farmworkers in both areas.

The writing samples submitted and reviewed in advance of the visit were well-prepared and dealt with farmworker employment issues and immigration applications for trafficking victims. Members of the private bar, a mediator, and a North Carolina Industrial Commission executive attorney who were interviewed concerning the quality of the FWU's advocacy were all highly complimentary of the legal work of the migrant attorneys.

The program's CSRs vary from year to year. The breadth and nature of the Unit's advocacy and the labor-intensive nature of the cases handled explain in large part the closed case data. In addition, the program participates in a significant amount of farmworker advocacy that does not result in CSR-reportable cases. For example, during 2008 the FWU prepared detailed comments on proposed changes to the Department of Labor regulations governing the H-2A program.⁷

4. Training

Finding 9: FWU staff have access to and provide excellent training on the state, regional, and national levels.

FWU staff have access to the best migrant farmworker training available. Staff regularly attend the National Farmworker Law Conference, held every other year in conjunction with the NLADA Fall conference. In addition, staff have attended National Institute of Trial Advocacy trainings, the LANC Statewide Legal Services Conference, Workers Compensation-related trainings, immigration law training, and the American Immigration Lawyers Annual Conference.

Recent orientation and substantive/skills training for staff, held in Raleigh in August and September of 2008, included sessions in the following areas: conducting intake and outreach, interviewing clients, use of GPS mapping to locate labor camps, LegalFiles (CMS) training, the LSC Regulations, the Fair Labor Standards Act, the Migrant and Seasonal Farmworker Protection Act, the H-2A Regulations, Workers' Compensation, immigration laws; and pesticide and OSHA laws and regulations.

FWU staff also serve as trainers at national and state trainings for legal services advocates. In addition, the FWU has developed an excellent training manual for students and interns that is used during its early summer orientation held each year.

⁷ LSC funding was not used for this work.

5. Access to legal research and outside expertise

Finding 12: The FWU has good access to legal research and expertise in the areas of law in which it focuses.

The FWU uses LexisNexis for on-line research. It also has an in-house library of hard-copy reporters and treatises, such as the BNA Labor Relations Reporter, Wage and Hour Cases, a RICO treatise, Interpreter Releases, and several other relevant publications. In addition, the North Carolina Supreme Court library is located several blocks from the Raleigh office. Law school libraries at Chapel Hill and Durham offer additional resources. The program receives updates on changes in the laws affecting farmworkers through its participation on the Farmworker Justice and National Employment Law Project listservs.

6. Technology to support legal work

Finding 10: The FWU's use of technology increases access of the client population to legal services and enhances the quality of the Unit's legal work.

The FWU makes good use of technology to support its legal work and enhance its access to clients and the client population's access to legal services. The FWU has been a leader in the use of Global Positioning System (GPS) technology to map the locations of migrant labor camps throughout the state. Its staff has trained staff of other migrant programs in the use of GPS mapping technology.

The FWU has website pages in Spanish and English.⁸ The FWU website's utility and accessibility were confirmed in the recent past when a resident of China accessed the website to locate an attorney for his brother-in-law, a Thai citizen working in the U.S. on an H-2A visa.

The FWU has five cell phones, most of which are used by staff during outreach. Three are camera phones that staff have used to document conditions at labor camps. Program advocates also have laptops equipped with GPS software and maps that provide invaluable assistance in locating camps, particularly after dark.

Staff use the case management system to note significant activity in a case and to append pleadings, memoranda, and other relevant documents to the electronic case file, all of which facilitate the co-counseling of cases. The managing attorney also uses the CMS for case oversight and staff supervision.

⁸ The website, currently undergoing revision, is accessible through the LANC website, at www.legalaidnc.org.

7. Private attorney involvement

Finding 11: The FWU works with members of the private bar to increase available legal resources to the farmworker community and to enhance the program's advocacy in cases that are difficult to place with private practitioners.

The Farmworker Unit works closely with members of the private bar, some of whom are themselves former farmworker attorneys. The FWU has occasionally co-counseled cases with private attorneys in order to obtain greater leverage in the settlement of lawsuits. One such attorney, who had co-counseled a Fair Labor Standards Act (FLSA) case with the FWU's managing attorney and was interviewed by phone during the visit, had high praise for the abilities of the managing attorney and her work in the FLSA case.

Though Workers Compensation cases are fee-generating, they have proven extremely difficult to place with the private bar when they involve migrant farmworker claimants. Several reasons exist for this difficulty, including the time-consuming nature of the cases, the language and cultural barriers, the migratory existence of farmworkers, and the fact that the claims sometimes involve relatively small amounts of compensation. The FWU has found a couple of private attorneys willing to handle claims for farmworkers injured on the job, but the attorneys accept only a limited number of such cases. Because of this, the FWU has made a decision to develop sufficient experience within the Unit that staff may competently handle Workers Compensation cases that cannot be placed with the private bar. A Spanish-speaking bi-cultural Worker's Compensation attorney in Raleigh co-counseled a Workers Compensation case with an FWU staff attorney so that the latter could learn more about the area of law.⁹

8. Other program services and activities on behalf of the eligible client population

Finding 13: The FWU's Witness for Justice program is an excellent vehicle for increasing the understanding of the general population of the problems faced by migrant farmworkers.

A novel aspect of the FWU's delivery system is its Witness for Justice program, coordinated by the Unit's Jesuit Volunteer. Through Witness for Justice, the FWU introduces students and members of the community to migrant farmworkers who live in isolated labor camps around the state and lack contact with the general population. Participants in the program accompany staff on outreach visits to labor camps in the evenings during the season and observe first-hand the living and employment conditions

⁹ The managing attorney notes that this private attorney is one of only a couple who will go out to a labor camp to meet with a client. As the clients are often housed in remote camps, with no access to transportation, the ability and willingness of an attorney to travel to where the client is located becomes an issue.

of migrant farmworkers. They thereby gain a better understanding of the socio-economic and legal issues impacting farmworkers.¹⁰

Performance Area Four. *Effectiveness of governance, leadership and administration*

A. Board governance

Finding: The Board of Directors is kept sufficiently informed with regard to the Farmworker Unit activities to perform its oversight of the program's migrant grant.

The LANC Board of Directors counts among its members a former attorney with the Farmworker Unit, who is both bilingual and bicultural. She currently practices in the areas of Workers Compensation and employment law and has served on the LANC Board for a year, lending her unique perspective to the Board as a former migrant attorney.

The FWU managing attorney updates the LANC Board of Directors from time to time on specific activities of the Unit. In addition, migrant grant case statistics are presented to and reviewed by the Board regularly, together with those of the basic field and Native American grants.

B. Leadership

Finding 14: LANC and its Farmworker Unit have effective leadership that is supportive of the program's legal work on behalf of migrants.

Both the executive director of LANC and the managing attorney are effective leaders who are valued by staff. Interviews reflect that both promote a culture of high quality legal work and affirmative advocacy on behalf of clients.

The executive director is a strong leader who is very supportive of the FWU. He gained experience litigating farmworker issues when he worked with FWU attorneys on a major H-2A case on behalf of Puerto Rican-American farmworkers who were discriminated against by employers in North Carolina. In addition, he has received substantive farmworker law training at the National Farmworker Law Conference.

The managing attorney is an experienced and skilled advocate who has a good working relationship with her executive director and with the FWU staff she supervises. She is viewed by staff as someone who creates a good work environment, leads by example, is a calming force, is approachable, and is always available to help.

¹⁰ Volunteers accompany Farmworker Unit staff members in a program-owned vehicle. At the camps volunteers take notes on labor camp demographics, distribute brochures, and interact with the workers. Volunteers are encouraged to ask questions and discuss their observations with the FWU staff.

C. Participation in an integrated legal services delivery system

Finding 15: LANC's Farmworker Unit is an integral part of the national migrant farmworker advocacy community; it partners effectively with other entities both within and outside North Carolina that work with the same client population.

Participation in an integrated delivery system is another area in which the FWU excels. Among its many coordination activities are co-counseling with the North Carolina Justice Center and other legal services organizations¹¹ in appropriate cases; participation on the statewide Immigrants Rights Task Force; work with the North Carolina Farmworker Advocacy Network, the North Carolina Farmworker Health Program, Toxic-Free North Carolina,¹² and Student Action with Farmworkers; and participation on the Employment Law and Workers Compensation sections of the North Carolina Advocates for Justice.¹³ FWU advocates have also served on the boards of directors of several organizations that assist the farmworker population. Staff also serve regularly as presenters at national and regional migrant farmworker law conferences.

¹¹ The FWU has also co-counseled with Puerto Rico Legal Services' Migrant Unit and with the Southern Poverty Law Center.

¹² The FWU has accompanied members of Toxic-Free North Carolina on outreach visits to labor camps during which the latter enact mini-dramatizations to educate farmworkers about the hazards of pesticide use and what they can do to minimize the health risks to themselves and their families.

¹³ Formerly the North Carolina Academy of Trial Lawyers.