

LEGAL SERVICES OF  NORTHERN CALIFORNIA

EXECUTIVE OFFICE 517 TWELFTH STREET SACRAMENTO CA 95814
VOICE: (916) 551-2150 FAX: (916) 551-2195
E-MAIL: EXEC@LSNC.NET WEB: WWW.LSNC.NET

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Via Federal Express

Charles Greenfield
Office of Program Performance
Legal Services Corporation
3333 K Street, NW., 3rd Floor
Washington, DC 20007-3522

Re: LSC Program Quality Review
Legal Services of Northern California, Inc.
Recipient # 805240
July 26-30, 2010
Response to Draft Program Quality Report

Dear Mr. Greenfield:

This letter constitutes the response of Legal Services of Northern California, Inc. (LSNC) to the Draft Program Quality Report ("draft") dated October 7, 2010, issued by the Office of Program Performance (OPP) following its visit to our program from July 26 to July 30, 2010. On behalf of LSNC, I want to thank you and all the OPP team members for the uniformly courteous and professional manner in which the review was conducted. Our staff, managers, and Board members all enjoyed their interactions and discussions with your team members, and we found OPP's overall review and suggestions to be quite helpful and constructive.

Certainly LSNC appreciates the overall findings and conclusions set forth in the draft, which in summary describes LSNC as an outstanding program which meets or exceeds all of the standards and expectations established by the four LSC Performance Criteria. LSNC submits this response primarily to clarify and elaborate upon several important conceptual issues which LSNC discussed at length with OPP throughout the visit and during the exit conference. Although in our view OPP, at the exit conference, responded positively and appropriately to the concerns LSNC raised, some of those responses are not clearly reflected in the written draft. In part II of this response, LSNC sets forth its (very few) requests for specific revisions to the draft report.

I. Impact advocacy and CSR analysis.

As the draft observes, LSNC's mission is to provide high quality legal services which empower the poor to identify and defeat the causes and effects of poverty. Consistent with the LSC Performance Criteria, LSNC affirmatively targets its advocacy so as to maximize its resources to achieve the greatest possible benefits and systemic solutions not only for individual clients, but for similarly situated low-income persons

and the low-income community as a whole. See Performance Criteria Area 1, Criteria 2; Area 3, Criteria 1-4 (pp. 9, 20, 21, 26, 28). This proactive emphasis upon systemic advocacy results from a strategic decision by LSNC, based upon an on-going analysis of our client community's needs, the legal landscape in California, and our available resources. As the draft report acknowledges, LSNC pursues this mission through significant and successful impact litigation, legislative and administrative advocacy, and "community lawyering" activity (e.g., the representation of community-based organizations, and the provision of legal services in support of economic development activity). At the same time, as the draft also observes, LSNC provides at least a limited amount of legal services to more individuals "than any other LSC-funded program in California, even though the program ranks seventh in LSC funding for the 11 LSC funded programs in California." (Draft at 7.)

During the review process, and in the exit conference, the OPP team members quite appropriately acknowledged LSC's structural difficulty in adequately assessing a program's provision of certain complex legal work, all of which specifically is endorsed by and referenced in the Performance Criteria as well as the ABA Standards for the Provision of Civil Legal Aid, and which may result in positive and demonstrable benefits to thousands or even millions of low-income persons through a service area (or an entire state). This analytical gap exists because the baseline assessment of the overall effectiveness of a program's legal work rests almost entirely upon a review of single component of that work: a program's closed "cases," as reported to LSC in the annual Case Statistics Report ("CSR"s). More specifically, this assessment rests upon a statistical analysis which, again, focuses upon a single metric – the "case closure codes" – which in turn provides only a single piece of extremely narrow information about the "case;" that is, whether the "case" is more appropriately categorized, according to the various CSR definitions, as providing "limited service" or "extended service."

As OPP team members conceded, its statistical analysis of these case closure categories does *not* capture the following information, for *either* category of "services:"

1. Primarily, and most importantly, whether the case in fact resulted in *any benefit at all* for the individual client (e.g., whether the client even "won" or "lost");
2. Whether the case resulted in *any* benefit for any other similarly-situated low-income persons, or for the low-income community as a whole; and
3. The amount of program time and resources expended in the cases.

Notwithstanding this lack of critical information, the Quality Review process applies an analysis which *assumes* a positive correlation between a program's number or percentage of individual cases wherein the program provided "extended services," and a corresponding increase in some (undefined) measure of "benefit" to clients and the client community. In other words, the analysis assumes that the more cases a program closes in the "extended" (as opposed to the "limited") services, the more "benefit" must be conferred upon the clients (or client community). As OPP team members properly acknowledged, no such correlation *necessarily* exists.

Two examples, which were discussed at length in the exit conference, demonstrate this analytical anomaly. LSNC assists thousands of individuals each year on various issues involving a wide range of public benefits. In a large percentage of these cases, a relatively brief intervention by LSNC is successful in reversing an unfavorable action or proposed action against the client. This success is due in part to the excellent working relationships established over the years between LSNC advocates and many agency staff, and in part to agency awareness of LSNC's historical success in challenging administrative decisions in court. Further, with respect to some significant percentage of *those* cases, LSNC's brief intervention also is responsible for correcting an unlawful policy or rule which was negatively impacting hundreds or even thousands of similarly situated low-income persons. However, as noted above, OPP's CSR analysis is structurally unable to document that the services rendered in many of these (limited service) cases in fact resulted in a significant benefit to the client (and, in some cases, to many other similarly situated persons).

On the other hand, a different set of CSR data might include many cases involving the same public benefit issues, where the program's advocates (perhaps due in part to a more negative or adversarial attitude within the local administrative agencies towards the program or its clients) might be wholly *unsuccessful* in reversing the vast majority of unfavorable agency actions, even though the advocates pursue those cases to formal administrative hearings (or even judicial review). Again, however, OPP's CSR analysis does not (and cannot) reveal that, in fact, the services rendered in this group of cases resulted in *no* tangible "benefit," either to the client or to anyone else.

Yet because the first set of cases, which in fact resulted in substantially greater "benefit" to clients than the second set of cases, are categorized by LSC as providing "limited services," and because the second set of (substantially unsuccessful) cases are categorized by LSC as providing "extended services," LSC's analysis structurally presumes that the "extended services" cases must have provided more "benefit" to clients than the "limited services" cases. In fact, under the example above, the true result is precisely the *opposite* of LSC's presumption.

The same analytical anomaly exists, as LSNC also discussed at length with various members of the OPP team, within a second large universe of “cases” undertaken by LSNC, i.e., evictions. Statistically, the vast majority of evictions (known as “unlawful detainers” in California), upwards of 90% in many counties, are brought upon the basis of alleged rent non-payment. California eviction law provides only a very limited set of substantive defenses to an eviction premised upon non-payment of rent. Generally, the meritorious defenses available to tenants in such cases are procedural in nature, and implicate pure issues of law (as opposed to issues of fact). Every year across its service area, LSNC efficiently and successfully assists large numbers of tenants to obtain dismissals of their cases by raising such procedural defenses through *pro se* form motions and pleadings which have been developed over many years, and are well-accepted by our local courts. While these “cases” in fact result in significant “benefit” to many hundreds of tenants, under OPP’s analysis, they are discounted solely because they are categorized by LSC as providing only “limited services.”

Conversely, as LSNC explained to various OPP team members, even if LSNC had the resources to fully represent the rest of those thousands of tenants accused of rent non-payment all the way to the California Supreme Court, virtually all of those clients would nevertheless lose, because the California law governing the outcome in such cases is so dramatically biased against tenants, and because the core problem underlying these cases is structural and economic in character, rather than “legal.” As in the previous example, however, OPP’s CSR analysis would be unable to determine the actual relative “benefit” to clients in both categories of cases, and again OPP would presume more “benefit” to clients from the latter set of mostly unsuccessful cases, based solely on their closure codes, again reaching exactly the *opposite* conclusion from that which is supported by the “real” results of the cases.

With respect to its broad housing advocacy, as LSNC explained in detail to OPP, LSNC made a deliberate decision fifteen years ago to shift resources away from the (largely doomed) enterprise of fully representing a large number of individual tenants in eviction actions, and focused instead upon changing the underlying dynamics *causing* all those evictions, which throughout California is a critical lack of safe and decent housing that low-income families actually can *afford*. Over these years, LSNC has engaged in complex and sophisticated litigation, and in extensive LSC-permitted legislative advocacy, directed at dozens of local governments within its service area, to compel compliance with California land use and planning mandates which require local governments to adequately plan for, and facilitate the development of, new affordable housing for the poor. Those efforts by LSNC have been remarkably successful (and replicated by public interest law programs across the state), and according to a calculation made some years ago by the Western Center on Law and Poverty, directly

have led to the construction of approximately 25,000 new housing units across our service area which actually are affordable to poor persons. Yet, OPP's CSR-based analysis of that advocacy would reveal only a few dozen "extended services" cases (indistinguishable, from OPP's perspective, from the same number of "extended services" cases wherein a single tenant *lost* in an eviction action), and of course OPP's analysis would not include any review of LSNC's legislative advocacy whatsoever.

a. Impact litigation and CSR analysis.

LSNC appreciates the draft's inclusion of a description of one successful impact case recently brought by our advocates, which prevented unlawful reductions to Sacramento County's medically indigent health care program, and directly has benefitted more than 20,000 poor persons. Draft at 10-11. As we emphasized to OPP team members, literally dozens of similar cases recently have been closed or are currently in litigation, which have benefitted or potentially may benefit tens of thousands of low-income persons on issues of housing, health, civil rights, disability, and other public benefits.

For example, during the time of OPP's visit, LSNC finalized settlement negotiations in a lawsuit in which our advocates, representing three individual clients, challenged a large county's wholesale failure to timely process emergency Food Stamp applications in accordance with state and federal law. Under the terms of the settlement, the county's compliance rate with legal timelines has risen from 50% to over 95%, directly benefitting thousands of low-income households. However, when monitoring of the remedy is complete and those cases are closed, only three – not thousands – of "cases" will be reported to LSC. Had LSNC adopted a more randomized (and far less efficient) approach to this problem, it might have attempted to "fully" represent many more individuals – perhaps many dozens – affected by the county's unlawful practices, who found their way to LSNC offices. While LSNC ultimately might have been able, after a resource-intensive administrative hearing process, to compel the county to issue the Food Stamps to which each client was entitled, it could not, through that advocacy, have corrected the systemic illegality in the county's procedures. Yet OPP's analysis from the CSR report would have presumed that the inefficient (and systemically unsuccessful) advocacy, which would have resulted in dozens of closed "extended services" cases, produced far more client "benefit" than the *three* cases which *in fact* resulted in significant benefit to *thousands* of poor persons.

b. Legislative/administrative advocacy and CSR analysis.

As noted above, the LSC Performance Criteria specifically direct programs to pursue legal strategies to achieve “the greatest possible benefits and systemic solutions,” not only for individual clients, but “for other low-income people who may face similar legal problems, and for the eligible population as a whole.” Performance Area 3, Criteria 3(c) and 4 (pp. 27-28). The Performance Criteria specifically include legislative and administrative advocacy among the strategies to be considered in pursuit of such systemic benefits. Performance Area 3, Criterion 1 (p. 26). The ABA Standards for the Provision of Civil Legal Aid underscore the importance and potential benefit of such advocacy for the entire client community, recognizing that such advocacy requires sophisticated legal analysis, and should be considered to be equivalent to “full legal representation” in terms of its legal complexity and its use of program resources. Commentary to ABA Standards 3.1 (p. 101). Indeed, the ABA Standards describe at length the “essential” role of legislative and administrative advocacy in the provision of legal services to the low-income population. Commentary to ABA Standard 3.2 (pp. 105-109).

Over the years LSNC has engaged in extensive, sophisticated and extremely successful administrative and legislative advocacy, all in compliance with relevant LSC regulations and restrictions, which has directly benefitted *millions* of low-income Californians in areas such as housing, public benefits, and health. LSNC provided numerous examples of such advocacy to the OPP team during their visit, and discussed at length how successful impact litigation and legislative advocacy often are interrelated. Some years ago, LSNC’s successful lawsuit enjoining the proposed simultaneous evictions, all issued without cause, of more than 400 families in the Sacramento area led directly to LSNC’s participation in state legislation which, for the first time in over 100 years, extended the amount of advance notice to tenants required for “no cause” evictions (from 30 to 60 days).

Many other examples of such successful advocacy were described to the OPP team. One of LSNC’s Regional Counsel recently published an article in the Journal of Poverty Law and Policy describing how LSNC’s “cooperative” administrative advocacy with the California Department of Social Services, (all of which, again, was conducted in compliance with applicable LSC regulations), has achieved substantial and systemic improvements to the state welfare system, again directly benefitting *millions* of low-income California families.

Although the OPP team members acknowledged the propriety and importance of a program’s engagement in LSC permitted legislative and administrative advocacy, they also conceded that LSC’s analysis of a program’s “performance” structurally excludes

any consideration of this critical legal work. This is due to the fact that this complex, sophisticated legal advocacy, which as undertaken by LSNC has directly benefitted millions of low-income Californians over the past few years, results in *no* reported “cases” to LSC, and thus completely eludes OPP’s review.

II. Requested revisions to the draft report.

1. Summary of Findings, Paragraph 1, p. 4.

The draft states that “*While not reflected in case closing statistics, the program is involved in advocacy efforts that make a difference to a substantial number of client communities*” (emphasis supplied). For the reasons discussed at length in the preceding section, LSNC submits that the highlighted phrase in this sentence inappropriately (and negatively) qualifies and undercuts the underlying finding, and we respectfully urge OPP to delete that phrase from the sentence.

2. Performance Area 1, Criterion 2, Finding 2, Paragraph 2, at p. 6.

The draft states that “It does not appear that similar supportive assistance for other substantive priority areas, such as education and consumer rights, is provided.”

As explained at length in the exit conference, in response to OPP’s mention of its “tentative” impression on this issue of “support,” this statement is inaccurate. LSNC’s Senior and Health Law Task Forces meet regularly, just as the Housing and Public Benefits Task Forces are currently active. LSNC recently hosted a regional Education Law Task Force meeting and LSNC advocates are encouraged to attend trainings offered by other legal aid providers (some of which are hosted by LSNC) on these and other substantive areas of law, including disability law, education law, employment law, consumer rights, and immigration law. In addition, LSNC maintains an “experts list” that provides the names for LSNC staff available on an on-going basis for the purpose of consulting on various substantive areas of law. Those “experts” are participants in state and national advocate groups that keep them apprised of developments in those areas of law and permit cooperative work and co-counseling where appropriate.

For these reasons, LSNC requests that this sentence in the draft be deleted.

3. Performance Area 1, Criterion 1, Finding 6 and Recommendation 2.6.1 (p. 8-9).

The finding notes that LSNC's intake procedures "vary" somewhat by office, resulting in "dissimilar" client access to services. This is technically true, insofar as the characterization "dissimilar" does not imply "disproportionate." As explained in length in the exit conference, such variations are based upon differences in local service area characteristics, such as client population size, client transportation opportunities, local office staffing levels, and the historical office access patterns of the local client communities. As discussed at the exit conference, these differences are *deliberate* accommodations to the different intake needs of the local service area. LSNC *continually* reviews its intake process in *every* office, and makes frequent adjustments to its local intake systems. Because of the significant differences in the character of its many services areas, LSNC has repeatedly rejected, again after careful deliberation, a "one size fits all" intake system. Accordingly, we request that this recommendation be deleted since, as we made clear to OPP at the exit conference, LSNC already (and continually) is engaged in the recommended "reviews."

4. Performance Area 3, Criterion 1, Finding 9, Paragraphs 6 through 9, p. 11.

For the reasons discussed in Section I herein, LSNC submits that the statistical analysis undertaken in Paragraph 6 is misleading and is based upon an incorrect underlying presumption. Accordingly, LSNC respectfully requests that this discussion be deleted, along with the first sentence of Paragraph 6, which also implies, incorrectly, that if LSNC reported more "extended services" cases to LSC, those cases necessarily would have provided some greater measure of "results" to the clients.

With respect to the "concern" raised in Paragraph 9 related to public housing evictions, predatory lending, and foreclosure cases, LSNC already responded at length to this issue during the exit conference, as follows:

(1) LSNC affirmatively *prioritizes* the representation of public housing tenants, within the universe of eviction cases, but under California law most of that successful representation occurs before the local housing agency, not in court.

(2) LSNC *currently* is litigating *five* highly complex cases involving predatory lending and unlawful foreclosure issues, expending (to date) nearly *one thousand* hours of LSNC staff attorney and PAI time, and has assisted hundreds of other clients in foreclosure-related issues (including tenants in foreclosed properties). However, as discussed at the exit conference, most of the clients affected by these issues come to

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LSNC through its senior legal services programs, because the reality of real estate economics in California, as perhaps opposed to other parts of the country, is such that relatively few LSC-eligible clients can even contemplate the purchase of a home in our service area.

Since the above "concerns" raised in the sentence at issue were fully addressed in the exit conference, LSNC respectfully requests that this sentence be deleted from the draft.


5. Performance Area 4, Criterion 5, Finding 18, Paragraph 3, and Recommendation 4.18.1, p. 17.

As discussed at length in the exit conference, OPP's tentative impression that LSNC recently experienced "significant turnover" among its core staff attorneys (or any other staff), especially as a result of compensation issues, was inaccurate. LSNC proactively, continually, and carefully "assesses" the "basis and experience" of core staff turnover in order to "develop strategies to preserve its investment in personnel." This inaccuracy, already pointed out to OPP during the exit conference, should be corrected in the draft, and the recommendation should be deleted.

Conclusion

LSNC appreciates the opportunity to submit this response to OPP's draft report, and I certainly would be happy to personally discuss with you any of the issues raised herein. Thank you very much.

Very truly yours,



Gary F. Smith
Executive Director

cc: LSNC Board of Directors

GFS/bt