

# CSR FREQUENTLY ASKED QUESTIONS

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# CSR FREQUENTLY ASKED QUESTIONS

## CHAPTER I – Purpose, Scope, and Effective Date

No current questions.

## CHAPTER II – Key Definitions

### Section 2.1 – Definition of Case

**Question 1** – If an applicant is "acceptable" under the LSC regulations but is not "accepted" (for example, because of a conflict) is it forbidden to provide that applicant with legal advice or other legal services?

**Answer:** Technically, under most state ethics rules you cannot accept a case that is a conflict. If you cannot accept a case, you cannot give legal advice. The underlying rule of Section 2.1(c) is simple. A program **MUST** accept a case **BEFORE** giving legal advice. If for some reason you cannot accept a case, then the program must not provide legal advice or other legal services.

**Question 2** – We have the following questions:

Investigation is conducted on behalf of an eligible client, and a letter containing advice is returned as undeliverable. (a) Can the case be counted as "limited action" based on the time spent investigating, or must it be deselected if the client didn't receive documented advice or the benefit of the investigation? (b) If the client did receive documented advice, can it be counted as limited action even though contact with client has been lost?

**Answer** – As to question a, if the client did not receive the advice letter, you cannot count the case as a CSR case and it must be deselected, because the client did not actually receive the legal advice, even though your program did the work. This is specifically stated in Footnote 5 to the 2008 CSR Handbook which reads;

*The legal assistance must actually be provided to the client in order for the assistance to be reported as a case in a CSR. For example, if the program performs legal research but does not*

*advise the client of the results of the research, this would not constitute a CSR-reportable case. Similarly, if the program sends a letter to a client containing legal advice which is then returned to the program as undeliverable (and the program has not orally advised the client), this also would not constitute a CSR-reportable case.*

As to question b, the case can be counted as a CSR case in this scenario, because the scenario states that the client actually received the advice and contact with the client was lost after the advice was given and received. It would, however, appear that the case should be closed as A, Counsel and Advice, rather than B, Limited Action, since the requirements for Category B were not met: no third party was contacted on behalf of the client and the letter was an advice letter, not a legal document, such as a routine will or power of attorney.

**Question 3** -- What is the appropriate closing code in the following scenario? A client requests that the attorney draft a will or divorce paperwork. The attorney drafts the documents but the client does not return. Legal assistance was provided prior to the attorney drafting the documents on behalf of the client. Many of us believe closing code "B" is the applicable closing code since the attorney took the time and resources to draft the paperwork on the client's behalf. Others believe "A" is the applicable closing code since the documents were never provided to the client.

**Answer** – the correct closing code is A, Counsel & Advice. While the program did the work of drafting the paperwork for the client, the client never received that service. The principle is that only services actually rendered to the client may be counted, no matter how much work a program does. This principle is clearly articulated in Footnote 5 to Section 2.1(d) of the 2008 CSR Handbook which reads:

*The legal assistance must actually be provided to the client in order for the assistance to be reported as a case in a CSR. For example, if the program performs legal research but does not advise the client of the results of the research, this would not constitute a CSR-reportable case. Similarly, if the program sends a letter to a client containing legal advice which is then returned to the program as undeliverable (and the program has not orally advised the client), this also would not constitute a CSR-reportable case.*

In this instance, the program did render legal advice to the client, so the case can be counted as a CSR case, but only the services that the client received can be counted and these services support only an A, Counsel & Advice closing code.

## **Section 2.2 – Definition of Legal Assistance**

**Question 1** – In certain states, crime victims (or guardian of a victim, or close relative of a deceased victim) are entitled to certain rights, including possible compensation to victims of crime and the payment for a medical examination for a victim of a sexual assault, and when requested, referral to available social service agencies that may offer additional assistance.

Our social workers provide clients (who are normally seeing an attorney for a related matter, e.g. protective order or divorce) with information regarding their right to this compensation, and further assist them with the application itself. If an application is denied or an award reduced, the social workers help clients with the appeal process and reconsideration request, as paralegals do in food stamps or Social Security cases. All of this work is supervised by attorneys. Would this work be considered “legal assistance” or “cases” under the 2008 CSR Handbook?

**Answer** – If there is a legal analysis provided to a client regarding their individual eligibility for benefits programs, it is a case. *See* Section 2.2. If only information is provided and no analysis of their individual eligibility is conducted, the activity is clearly a Matter (Other Service). *See* Section 2.3. If legal assistance is provided, the case should then be closed with a closing category that accurately describes the level of assistance rendered by the program. For example, if a client is advised as to eligibility for compensation, it would be A, Counsel & Advice. If the program assists a client with an application, it would be B, Limited Action. In the event of an appeal or request for reconsideration, it will be B, Limited Action, or L, Extended Service, depending on the extent and nature of the work done for the client.

**Question 2** – The PAI staff send letters to applicants who have been accepted for referral to a volunteer attorney that contain advice so that we can still report the client as having received legal advice from an attorney on staff in the event that the client does not return a retainer agreement or fails to contact their volunteer attorney. (Please note that the letters and enclosures are generally prepared by a clerical employee but are reviewed by an attorney prior to being mailed.)

If these are not adequate to count as advice, what recommendations would you make?

**Answer** – The sample letters discussed in your question, though extensive and useful, are legal information and not legal advice. They do not contain individualized analysis and advice about the client’s particular problem; they do not contain recommendations as to that client’s future course of action; and they are not based on a review of the client’s particular circumstances. Because of this lack of legal analysis applying the law to the client’s unique circumstances, these letters do not meet the definition of legal assistance (legal advice is a subset of legal assistance) set forth in Section 2.2 of the 2008 CSR Handbook which reads:

For CSR purposes, legal assistance is defined as the provision of limited service or extended service on behalf of a client or clients that meets the criteria of the CSR Closing Categories contained in Chapter VIII. Legal assistance is specific to the client’s unique circumstances and involves a legal analysis that is tailored to the client’s factual situation. Legal assistance involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented. The provision of legal assistance creates an attorney-client relationship.

This response does not attempt to give you a guide to help you to count an activity as legal advice. Work should be done for the benefit of the clients and, if it includes activities that meet the definition quoted above, then it is eligible to be counted as a CSR case.

Finally, since these letters do not meet the definition of legal advice, it would be best to delete the final signature line or rephrase it so as to avoid saying the letters are legal advice.

**Question 3** – We have received LSC’s letter about expectations LSC has that local programs will promote EITC with communities and assist people to file where possible. We are wondering whether that assistance is considered “legal services” for purposes of counting the cases in our LSC CSR reports.

**Answer** – While LSC has encouraged EITC cases and has established a new Problem Code 23 in the 2008 CSR Handbook to identify them, there are no special rules allowing EITC services to be counted as CSR cases. As with any other service to clients, whether the service is reportable as a CSR case depends on whether it meets the criteria for a case in Chapter 2 of the 2008 CSR Handbook. Accordingly, some EITC services, for example the preparation of a tax return for a client to claim EITC, could count as CSR cases, while others which do not meet the definition of legal assistance in Chapter 2, Section 2, would be reported under Other Services.

**Question 4** – In LSC's CSR FAQ's, under Section 6.4, question 2 discusses the situation where a husband and wife have a shared legal problem. LSC directs us to count that as 2 clients, but one case. Based on the analysis provided, it does not appear that the fact that they were married is particularly determinative, is it? They could have been an unmarried couple and the answer would have been the same? What about roommates in a landlord-tenant situation?

**Answer** – the FAQ you are inquiring about is actually Section 6.4, Question 1 which reads:

**Question 1** -- *A married couple, who jointly own real property as tenants by the entirety, seeks legal representation with a pending mortgage foreclosure hearing. The case is acceptable as the couple is LSC-eligible. At case review meeting the case is accepted and assigned to staff attorney to represent at the upcoming foreclosure hearing.*

*Should one file be opened?*

*If two files are opened -- one in the name of husband and the other in the name of wife -- is one of these a duplicate?*

*If one file is opened and only wife signs retainer and citizenship attestation form and husband does not, can the case be closed as CSR reportable?*

*Answer – Only one file should be opened. This is a situation of two clients, one case. If two files are opened, one is a duplicate and should not be reported. If the wife signs the retainer and citizenship attestation form and the husband does not, there is one eligible client and the case should be reported, but only one client, the wife, should be reported.*

You are correct that the fact that the two clients are husband and wife is not determinative of whether one case or two cases should be reported when the program is representing both clients. While the particular fact situation is possible only for a husband and wife, because it is a tenancy by the entireties, two unrelated persons could be joint tenants or tenants in common in a foreclosure situation and the result would still be two clients, but only one case.

More generally, if two (or more) clients are rendered legal assistance on the same legal problem, more than one client should be reported, but only one case should be reported.

**Question 5** – Under Puerto Rico’s law, “any interested party” can apply and obtain a certified copy of a birth record from Puerto Rico’s Registry of Demographic Statistics, when the birth place is Puerto Rico. Among others, “any interested party”, includes the concerned person whose birth certificate is requested and also that person’s legal representative. A recent law approved by Puerto Rico’s Legislative Assembly, **Law No.191** of December 22, 2009, aimed at the prevention and deterrence of the identity fraud problem, will make null and invalid all the birth certificates issued in Puerto Rico before **July 1, 2010**, and thereafter the only valid and acceptable birth certificates will be those ones issued in the new form adopted by the above mentioned agency.

It is foreseeable that many eligible clients will reach our program offices for assistance in obtaining a valid copy either of their own or their children birth certificates. Hereby we request your advice concerning whether this kind of assistance, for **CSR** purposes, can be reported as a case, and if so, should be closed as Category B-Limited Action.

*Answer – We understand your concern that, based on the facts stated in your inquiry, you will have a large number of eligible clients seeking your program’s assistance to obtain a valid birth certificate under the new Puerto Rican law. Nevertheless, assisting an eligible client to obtain a birth certificate is not a CSR case. It does not meet the definition of Legal Assistance in Section 2.2 of the 2008 CSR Handbook, because this action does not require legal analysis tailored to the client’s specific circumstances or the application of legal judgment to the client’s situation. Some clients would need information as to the relevant Puerto Rican government office, its address, and any requirements for documentation of the identity of the applicant, while others may need a letter drafted for their signature (or submitted on their behalf). Such work is an Other Service (formerly Matter) to be reported under Section VI, A, 2, Direct Services, in the Other Services Report. (There could be a few unusual cases where legal analysis is required to determine if a client’s birth place is considered to be Puerto Rico. Any such case would be reportable as a CSR case).*

If a client should be denied a birth certificate or be unable to get a response from the relevant agency, then assisting that client to obtain a birth certificate may well constitute a CSR case, most likely B, Limited Action, but possibly another closing code, depending on the level of legal work required.

**Question 6** -- During a clinic, some persons ask specific questions out loud regarding their specific situations. These persons are aware that when they do so that they have waived their attorney-client privilege, either through signing a document prior to the clinic, or by oral explanation. If a program records the specific advice provided to the client, even though the program never met individually with the client, can this be counted as an "A" case?

**Answer** – First, no case can be counted unless all eligibility information on the client has been recorded and the client is eligible. Furthermore, in accordance with LSC restrictions on provision of legal advice to unscreened or ineligible persons, a grantee should not allow the provision of legal advice in an open clinic setting unless all participants in the clinic have been screened and found to be LSC-eligible.

Assuming all the participants are eligible, the next question is whether the advice given qualifies as legal advice, rather than legal information. If there was actual legal advice given to a client (who was aware that the circumstances in which it was given involved a waiver of attorney-client privilege), it may be counted as A, Counsel and Advice, even though it was not given in private and there was no one-on-one meeting with the client. It is, of course, much preferable that actual legal advice be delivered in a private one-on-one setting.

### **Section 2.4 – Definition of Client**

**Question 1** – We are looking into developing a new type of intake. What we are doing is outsourcing some intake functions. For example:

Scenario a: In Genesee County they passed a millage to fund health care coverage for poor persons. People can get coverage for as little as \$5 per month. It is income based. They use TANF standards, which means they would all meet LSC financial standards.

The Genesee Health Plan (GHP) gathers and pays for health care. We have a contract with GHP to teach them how to screen people for other insurance coverage (SSI, Medicaid, Veterans, Workers Comp, etc). I developed a template for them to use, and they are reviewing all cases. They then refer cases to us if hearings are necessary. Upon referral, these are clearly clients. It is my belief that when they do the screening for us, they are not clients, nor are they matters. However, we are providing a real service to approx 28,000 people.

Scenario b: in another case, I will train and supervise paralegal/social workers who are employed by the University of Michigan Medical School. They will do intake in the Emergency Room, and they refer the cases over the internet to my lawyers.

Patients/clients will sign retainers, releases etc. When do they become clients for CSR purposes?

**Answer --** In scenario a, we agree that, although it is a useful service, the screening activities you describe are not cases until the clients are actually referred to, accepted by, and receive legal services from your program. We do not think they are numerically reportable Matters (Other Services) either at that stage, although they could be reported under item 5, Indirect Services, and discussed in the Matters Narrative. You are also correct that those who are referred to your program (and accepted) then clearly become clients.

In scenario b, since this is a contract your program has, the patients become clients after completion of the intake and acceptance for service by the program just as if their intake was accomplished over the telephone (of course, a CSR case can only be reported if your program actually renders some counsel and advice or other legal service to them, but that is true of any intake situation since the client could withdraw or otherwise disappear before any actual legal services are rendered).

## **CHAPTER III – Case Management Systems**

### **Section 3.2 – Single Recording of Cases**

**Question 1 --** I was just at a program visit and while we were on site an issue came up that I was unclear about. The facts are as follows:

The program completes pleading documents for clients in garnishment cases. The garnishment cases are heard at the District Court [] which is over 2 hours from program and in the service area of another program. Since the courthouse is so far from the program's office they forward the pleadings to the other program who then files and represents the client in court if necessary. Once the case is closed the second program will send a closing letter to the client. Can both programs report the case to LSC based on the level of service provided to the client by that program?

**Answer –** Section 3.2 of the 2008 CSR Handbook generally addresses the question of when to report one case and when to report more than one case.

#### ***3.2 Single Recording of Cases***

*Through the use of automated case management systems and procedures, programs shall ensure that cases involving the same client and same legal*

*problem are not recorded and reported to LSC more than once as required by §§ 6.1 through 6.5 of this Handbook...*

This clearly applies to any one program. However, by its terms, it does not address the issue of two programs assisting the same client on the same issue. The word “programs” in this passage refers to “programs” in general, as in “all programs” and is not a reference to two programs as in this situation. There are two arguments why the duplication rule of §3.2 should not be applied to a case referred or transferred between programs. First, the 2008 CSR Handbook §§ 6.1 through 6.5 quite extensively covers when only one case should be reported and it does not cover this situation.

Secondly, in §§ 6.2 and 6.3, the Handbook discusses activities that must be reported as a single case if the assistance is rendered “during the same calendar year.” If the legal assistance ends and the case is closed and then has to be resumed in a subsequent year, what would otherwise be required to be reported as one case may be reported as two cases. This provision is adopted for reasonable administrative convenience so programs can close cases and not be obliged to check back to see whether the case should be reopened if the same client returns in a subsequent year. On the same principle of administrative convenience, if a case is referred or transferred between separate LSC programs (note – transfers to or from a subrecipient do not qualify), each program is permitted for administrative convenience to report the work that program does for the client, without any obligation to check on how the other program has reported it in their CSR’s.

Accordingly, the legal assistance rendered to the client in this case, and in any other referred/transferred cases between two, separate LSC grantee programs, may be reported as two cases with each program reporting one case at the appropriate level of service (closing category) it provided to the client.

### **Section 3.3 – Timely Closing of Cases**

**Question 1 – Facts:** In April of 2007, our program provided limited legal assistance to the client prior to referring the case to our local pro bono program. The pro bono program, places the case with an attorney but no legal assistance is provided by the pro bono attorney to the client (client did not follow through with appointments or withdrew). In 2008, the case gets returned to our program for closure.

Since legal assistance was not rendered by the PAI attorney, our program would have to change the case handler and case type back to as the program staff attorney’s case for limited legal assistance which had been provided in April of 2007 – prior to the referral of the case to PAI. The closure code would be an “A” – counsel and advice.

Query: Since the legal assistance was provided in April of 2007, can we *timely close* such a case by our program as “counsel and advice” in 2008? *See* LSC 2008 CSR Handbook, CSR 3.3(a).

Additional Query: Would the answer change if the limited legal assistance was provided by ALSA in 2006? That is, would it now be an untimely closure?

**Answer** – Yes, you can timely close this case in 2008. The case closure is timely based on Section 3.3(a) (ii) of the 2008 CSR Handbook which allows an A or B case to be closed in the year after it is opened if:

*(ii) there is any entry in the file or in the case management system stating a reason why the case should be held open into the following year, in which circumstance the case shall be closed in the grant year in which assistance on behalf of the client was completed.*

The referral to PAI is certainly an adequate reason for keeping the case open – indeed, it is required that a case referred to PAI remain open until the PAI part of the case is completed. In this instance, the PAI activities concluded unsuccessfully and the case was returned to the program. Since Counsel and Advice was rendered to the client, the case can and should be closed in 2008 as a staff Counsel and Advice case.

**Additional Answer:** If the case was opened in 2006, it should have been closed in 2007 and is untimely if carried over into 2008, as Section 3.3(a)(ii) is not normally expected to be used for more than one year's extension of time. Exception -- if the case was opened in the last quarter of 2006 (October 1-December 31), it could be timely closed in 2008, because it would have been automatically extended into 2007 under the provisions of Section 3.3(a)(i) and could then be extended into 2008 under Section 3(a)(ii). It should be noted that, while under the rules of the 2008 CSR Handbook such a case could be opened as early as October 1, 2006 and not closed until some time in 2008, such a lapse of time ought to be rare. In all but a few exceptional cases, PAI followup procedures under 45 CFR 1614 should have discovered the lack of a successful referral and caused the case to be returned to the program much earlier.

**Question 2** – We interview an applicant and determined them eligible for services and provide legal advice at the time of the initial interview. We then place that client on a waiting list for referral to a volunteer attorney, most likely for a divorce. A year may pass before the client comes to the top of the waiting list. During that year there may be various contacts with the client. However when the client comes to the top of the list, the client does not respond to our letters and phone calls so we will close the case.

If we close the case in the year following the year opened, does the fact that the client was placed on a waiting list constitute a valid reason for the case to remain open?

**Answer to Question a** – Yes, it does under the criterion of Section 3.3(a)(ii), since there was reason to expect further activity in the case. There should be a note in the file or the case management system to that effect.

b) If we close the same case two years following the year opened, should we just deselect?

Answer to Question b – Yes you should deselect such cases.

c) There are hundreds of cases like this that are given advice and then placed on a waiting list. Should we close the advice case and create a waiting list record that is not reporting to LSC unless it is actually referred to a volunteer?

Answer to Question c – It has long been LSC policy that the same case cannot be closed once as a staff case and later as a PAI case, except in the situation where the client's case is closed and the client returns in the next calendar year. However, if you determine that the PAI referral has failed, you may close the case as a staff case subject to the time limits discussed above.

**Question 3** -- During an on-site CSR/CMS visit a question arose concerning the timely closing of extended service cases. Can extended service cases with notations in the file as to the last date that service was provided in the case be closed in the following grant year or does that exception only apply in the absence of an entry in the case management system, or the file? Can you please clarify in which circumstances extended service cases can be closed in the following grant year.

**Answer** -- An extended service case can still be closed in the calendar year after the calendar year that includes the last date in which service was provided in the case. The discussion of an entry in the case file is intended to allow a further exception if an entry explains that the case should continue to remain open. Thus the case can still be closed in the calendar year after the year of the last activity **or** after the last year in which there is an entry in the case management system stating that the case should be held open into the following year. Either one constitutes an action that keeps the case "alive" for that year.

### **Section 3.5 – Identification and De-Selection of Non-CSR Cases**

**Question 1** – Why can't a program use a "rejected" code for the third example provided under Section 3.5 – case files where administrative or computer error caused a case to be opened when no case should have been opened? If the computer opened a file and no case was ever accepted, would it not be more accurate to note the incorrectly opened file as "rejected" since no case was ever accepted?

**Answer** – No, it would not be more accurate to use the "rejected" code for a case file opened on account of administrative or computer error, because there is no applicant to be "rejected" in these instances. Programs are required under Section 3.5 to have a method to "de-select case files that were opened as LSC-eligible but are not reportable as CSR cases." Section 3.5 gives six examples of such types of cases. As explained in Footnote 15, the "rejected" code "shall be used only for applicants who do not qualify for

services or who are otherwise not accepted for services by the program." Under the third example in Section 3.5, there is no rejected applicant, so the "rejected" code should not be used.

If a program is concerned about differentiating de-selected cases where there was an applicant that are initially accepted -- examples (1), (2), (5), and (6) -- from cases in which there was no actual applicant, the program can add a subcode of its own or use two different "exit" codes or de-selection methods.

**Question 2** – The deselection process (section 3.5) includes as an example “case files where the client gave the program erroneous information at intake and the correction of which showed that the client was ineligible” I don’t see any logical distinction between this and a case in which the client gives the correct information but we miscalculate to the same effect – i.e., the miscalculation appears to make them ineligible, services are delivered and the discovery of the error makes the client ineligible. So I am adding that to the reasons for deselection. Am I missing something?

**Answer** – Yes, your logic is correct. Section 3.5 includes six examples of case files “that were opened as LSC-eligible, but are not reportable to LSC as cases.” Thus, other, similar situations where a case was opened as LSC-eligible, but the case is not reportable as a case to LSC should also be de-selected under Section 3.5.

## **CHAPTER IV – Reporting Requirements**

### **Section 4.4 – Inclusion of Certain Subrecipient Cases**

**Question 1** – Certain programs use state-funded “call lines” to do most of their counsel and advice services. Under the new CSR Handbook, it appears that such programs would lose the ability to report the case work from such “call lines” unless some LSC funds were used to pay for them. Is this a correct assessment?

**Answer** – Yes, this is a correct interpretation of Section 4.4 of the 2008 CSR Handbook. Programs will not be able to count such cases for CSR purposes under the arrangements described above. It was never LSC’s intention for totally non-LSC funded cases closed by entities other than the LSC program to be counted as CSR cases but the 2001 CSR Handbook did not contain a fully explicit rule on this practice. The 2008 CSR Handbook's Section 4.4 explicitly addresses this situation in its second sentence: *“Organizations receiving transfers of only non-LSC funds from a recipient are not subrecipients under 45 CFR Part 1627 and none of their cases may be reported to LSC.”*

There are two requirements in Section 4.4 for counting cases closed by an entity other than the recipient: (1) the other entity must be a subrecipient under the provisions of 45 CFR 1627; and (2) the cases must be supported in whole or in part by LSC funds. The

one, narrow exception to this twofold rule is that recipients using non-LSC funds to meet their PAI requirement may report such non-LSC funded PAI cases if they meet the definitions of the 2008 CSR Handbook. However, such cases must also meet all the requirements of 45 CFR 1614 in order to be considered PAI cases.

**Question 2** -- In recent years, our Volunteer Lawyer Programs have closed cases originally referred to them by our program as well as others on which they conducted their own intake. For at least 2009 and 2010, we have reported only the VLP cases in our database.

In the report following its visit, the LSC team said that if our program's subgranted funds are used to support independent intake by subgrantees, we should also report LSC-eligible cases for which the VLPs do their own intake in the CSR submission.

We are seeking clarification of which VLP cases we should report in CSRs. If our program should report cases not in its database, under what circumstances should we report LSC-eligible cases outside our database?

**Answer** – The decision on whether a case is reportable does not hinge on whether it is maintained in a program's database or elsewhere. For subgrantee cases, the relevant rule is contained in Section 4.4 of the 2008 CSR Handbook which reads as follows:

***Section 4.4 -- Inclusion of Certain Subrecipient Cases***

*Recipients shall report only cases closed by subrecipients as defined by 45 CFR §1627.2 that are supported in whole or in part with LSC funds. Organizations receiving transfers of only non-LSC funds from a recipient are not subrecipients under 45 CFR Part 1627 and none of their cases may be reported to LSC. However, recipients using non-LSC funds to meet the LSC PAI requirement through arrangements with another organization may report the non-LSC funded PAI cases closed by that organization if such cases meet the definitions and requirements of this Handbook.*

Most programs that have subrecipients do not maintain the subrecipients' cases in their databases. Consequently, most such programs will need to get complete CSR reports on their subrecipients' cases from these subrecipients in order to include in their annual CSR submissions those LSC-eligible subrecipient cases supported in whole or in part with LSC funds.

## **CHAPTER V – Documentation Requirements**

### **Section 5.3 – Income Documentation Requirements**

**Question 1** – We are receiving requests for services from many more foreclosure clients now than we did in past years. Many of the clients are well within the 187.5% or 200% gross income level, however, expenses for bills actually being paid are sometimes not

sufficient to bring them within 125% of the poverty level and thus qualify them for services.

Is it permissible to annualize mortgage payments for these clients in the same way we would annualize income for folks who have seasonal employment? We are currently debating a client who was at 176% of the poverty level, but with her ARM mortgage, her payments went to within 70% of her gross income. We annualized her mortgage payments over the past 12 months and qualified her at 98% of poverty. Were we correct or are we wrong in our assessment?

**Answer --** Yes, you are correct. Annualizing a client's expenses is certainly valid, if, as is clearly the case with a mortgage, these expenses are likely to continue at their current level. Indeed, we see no issue at all with this decision. As we understand it, at the time of eligibility determination, her ARM had already reset and was consuming 70% of her income. The eligibility test is as of the time the prospective client applies; at that time, and prospectively, she clearly has more than enough fixed obligations (high mortgage payments) to qualify under the applicable exception in 45 CFR 1611.5(a)(4)(iii) – provided that, as is the case in this instance, the client's total income is not above 200% of the poverty level.

**Question 2 –** I was just checking in with you again concerning my question about adequate documentation under 1611.5 to an exception to the income requirement. Remember we are a sub-grantee and an LSC funded program refers cases to us after screening for eligibility. Can we accept their selection of a funding code as adequate documentation under 1611.5 to allow an exception to the income requirement.

The original referral that brought this question to light was: A case with a household of 3 which was originally at 173% of the poverty level and after the consideration of a fixed debt mortgage payment of \$500 the household income was brought down to 138%. The client, a 22 year old male, had no income and was seeking assistance with an uncontested divorce. LSA uses the entering of funding number 2 in their case management system to indicate that they have made the decision that in light of a factor and consideration of resources and costs of litigation, they have accepted the client on the basis of an authorized exception. My question is if this indication, funding code 2 on LSA's intake sheet, is adequate documentation for our VLP file or if we are required to make and document our own determination?

**Answer –** Once a recipient has determined a client to be eligible, 45 CFR 1611.7(d) authorizes another recipient to rely on that prior determination without having to review or redetermine financial eligibility (barring a change in circumstance or "substantial reason to believe" the initial determination was not valid). Similarly, a subrecipient being referred a case by a grantee which has made a financial eligibility determination may also rely on the initial determination by the recipient. Accordingly, you may accept the eligibility determination of LSA as evidenced by their funding code as adequate documentation for this case. It is LSA's exercise of discretion to determine this client

eligible under 45 CFR 1611.5 and LSA's responsibility to support the eligibility determination should it be questioned.

### **Section 5.4 – Asset Documentation Requirements**

**Question 1** -- I'm confused about the last paragraph of Section 5.4 of the new handbook. Here's what I think is intended. Assume a program uses the asset ceiling for food stamps to determine a client's income/asset eligibility and the legal services Board has said that anyone receiving food stamps meets the asset test for eligibility. Let's say that the client is also receiving Medicaid. The income and asset ceilings for Medicaid are LESS restrictive than for food stamps, but they (the asset and income ceilings for Medicaid) are MORE restrictive than the legal services asset ceiling. In this scenario the client will still qualify and asset documentation is not required as long as the Board has authorized this standard and there's a note qualifying the eligibility. Correct?

**Answer** – Yes, we agree with your analysis. Even if the governmental program for the poor is not the sole source of income for the client, the grantee may use that program's asset eligibility determination to qualify a client under either of two circumstances: (1) that grantee's asset eligibility standards are more restrictive than those of the program; or (2) the grantee's Board has accepted such governmental program's asset standard as sufficient for client asset eligibility. In the second instance, the grantee must have on file Board resolution, Board minutes, or other written evidence of action by its Board stating that eligibility for this other program for the poor qualifies a client as asset-eligible.

### **Section 5.5 – Citizenship and Alien Eligibility Documentation**

**Question 1** – Can a program report a case involving a domestic violence victim, who is a citizen, if it failed to obtain a written citizenship attestation? Should this case be included in its CSR?

**Revised Answer:** By a December 4, 2008, Advisory Opinion #AO – 2009-1008, the LSC Office of Legal Affairs has ruled on this issue. The ruling supersedes the prior answer to this question. Accordingly, such cases may be included in a program's CSR. In brief the ruling is:

*The LSC statutes and regulations prohibit grantees from serving certain non-citizens. Three specific statutes lift those restrictions for specific categories of people, including victims of human trafficking or domestic violence, regardless of citizenship or alienage status. LSC grantees are not required by law or regulation to inquire into the citizenship or alienage status of people with legal issues in those categories because Congress has determined that individuals with those legal problems may be served by LSC grantees regardless of their citizenship or alienage status.*

**Question 2** – I received a call from a woman who has a Landlord/Tenant court date for non-payment of rent. Her court date is 1-28-08. When completing the Intake, she explained that she is not a citizen but has an expired I-94 document. She has requested an extension from INS and has a receipt for her request, however her extension is still being processed. She does not expect that to happen prior to her court date. Is this person eligible for any service from our Program?

**Answer** – Your potential client is not eligible because she does not have documentation as required in 45 CFR 1626.7. We do not see how the receipt from INS can be considered as documentation of eligibility, because there is no guarantee that INS will rule favorably on her request for extension and she currently has an expired I-94. Thus, she does not currently fall into eligible status nor is there any guarantee she will become eligible in the near future.

**Question 3** – If only Counsel and Advice (CSR Closure Category A) or Limited Action (CSR Closure Category B) services are provided to a client and if the office has no in-person contact with the client but the office mails or faxes the client a questionnaire to complete and return to the office prior to a telephone interview, must the office also mail or fax a citizenship attestation form (or documentation of alien eligibility form) to be signed by the client, or is the oral declaration of the client as to citizenship/alien eligibility sufficient?

**Answer** – In this instance with no in-person contact, the oral declaration of the client is sufficient, irrespective of whether your program faxed the client a questionnaire. Should the case come to involve more extended representation, then the program would be required to obtain a signed citizenship form as required under 45 C.F.R. 1626.6 or obtain the documentation of eligible alien status required under 45 C.F.R. 1626.7.

**Question 4** – A recent telephone applicant reports that he has lost his alien registration card; however, he clearly has legal status in the U.S. because he receives SSI. Would he be considered eligible for advice over the telephone? We assume he would not be eligible for further services without documentation. Please clarify.

**Answer** – The client is eligible to receive Limited Service over the telephone, since such telephone assistance does not require submission of documentation of alien eligibility but only a written or computer record of the client's oral response to the question of whether the client is an eligible alien (see Section 5.5 of the 2008 CSR Handbook and see 45 CFR 1626.7(a)). As to the client's eligibility for Extended Service, this would depend on whether he or she can obtain any of the other documents listed in the part of the Appendix to 45 CFR 1626 relating to Lawful Permanent Residents.

**Question 5** – When a recipient has an original citizenship attestation for a client in the form prescribed in Section 5.5 of the Handbook, may the recipient use a copy of that attestation to satisfy the citizenship attestation requirement for subsequent cases for the same client or must each case have its own original citizenship attestation?

Answer – If the cases are initiated simultaneously or within a period of a few months of each other, a copy of the Citizenship Attestation is sufficient.<sup>1</sup> If there is a more substantial time lapse, you need to inquire of the client if he or she is a citizen as citizenship status can (rarely) change. If the verbal answer is yes, then you can use a copy of the prior Citizenship Attestation with a notation that continuing citizenship was verbally confirmed.

**Question 6** – I was wondering if the CSR committee has responded to an inquiry regarding whether electronic signatures on the citizenship attestation are acceptable? Since we are on the subject, I should ask are electronic signatures acceptable for retainers?

Answer – Yes, an electronic signature on a Citizenship Attestation is acceptable if it is a digital image of the handwritten signature of the prospective client, or includes such a digital image of the prospective client’s signature (we are aware that there are many digital signatures that do not use an image of an actual signature – these are not approved for this purpose at this time). Also, the document must meet **all** the requirements of Sec. 5.5 of the 2008 CSR Handbook, including the existence of a separate (electronic) signature tied to the Citizenship Attestation.

Similarly, an electronic signature of the type discussed above is also acceptable for a Retainer Agreement.

**Question 7** -- We have requested by the court to represent a dependent child (age 17) as attorney-ad-litem, who was born in Romania but then adopted by U.S. Citizens. The child is currently in a foster home. She is a victim of sexual assault by the adoptive father and alleges that the adoptive mother is now stalking her. The parents had hired a counselor for the child who is not licensed by the State of Florida and they are trying to have her committed to a state “lock-down” mental facility as part of their scheme to discredit her claim of sexual assault. We are being appointed by the court to provide services to the child regarding mental health issues and educational issue. One of the first tasks in the case plan would be to dismiss this counselor and refer the child to a counselor who is licensed. Also, the case plan would be to argue before a court that institutionalization is not appropriate for this child, and it would represent further victimization of the child by the parents. The only documentation that has been provided

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<sup>1</sup> If the cases are not simultaneous and if your program has any reason to think that the client’s citizenship status may have changed, then, however short the time lapse may be, you should inquire of the client if he/she is still a citizen (see 45 CFR 1626.6(b)).

to us is the Romanian birth certificate. We are in an adversarial position with the parents. Will this service qualify in assisting this child “to escape from her circumstances as a victim and to ameliorate the current effects of her victimization” as described in CLASP Regulatory Policy Memorandum, 2006-1?

Additional Information:

On October 30, 2000, President Clinton signed into law the Child Citizenship Act of 2000 which allows foreign born adopted children to become citizens when they enter the United States.

The child must meet the following requirements:

- Have at least one American citizen parent by birth or naturalization;
- Be under 18 years of age;
- Live in the legal and physical custody of the American citizen parent; **and**
- Be admitted as an immigrant for lawful permanent residence.

In addition, if the child is adopted, the adoption must be full and final.

In view of the above, for our current client who is 17 years old and can sign a Citizenship Attestation, as well as for future clients who may be too young to do so, what documentation will LSC require for clients that fall under this act?

Answer – In a December 4, 2008 Advisory Opinion #AO – 2009-1008, the LSC Office of Legal Affairs has ruled in relevant part that:

*The LSC statutes and regulations prohibit grantees from serving certain non-citizens. Three specific statutes lift those restrictions for specific categories of people, including victims of human trafficking or domestic violence, regardless of citizenship or alienage status. LSC grantees are not required by law or regulation to inquire into the citizenship or alienage status of people with legal issues in those categories because Congress has determined that individuals with those legal problems may be served by LSC grantees regardless of their citizenship or alienage status.*

The circumstances set forth in your question involve domestic abuse against your client, so it would appear that in her case a Citizenship Attestation is not required.

Note – a CLASP Regulatory Policy Memorandum is not an LSC document and therefore cannot be cited as to LSC policy or requirements, however good a guide it may or may not be for an LSC program in a particular situation.

In this response, we do not reach the broader question of how a Citizenship Attestation may be obtained for a juvenile client when it cannot be obtained from the parent(s) or guardian. We plan to address this issue in a future Frequently Asked Question.

**Question 8** – I have two questions about treatment of Guardian ad Litem cases:

Question a -- Are Guardian ad Litem situations cases, since the court appoints the program and it is not clear there is an attorney-client relationship.

Answer a – LSC considers these appointments to be cases. For minors, cases closed in 2008 or thereafter should be coded under the new Case Closing Code 44, Minor Guardian/Conservatorship; for cases closed in 2007, they should be coded under 33 Guardian/Conservatorship. LSC accepts the court appointment in lieu of a retainer agreement for such cases.

Question b -- If Guardian ad Litem appointments qualify as cases, is a citizenship attestation form required.

Answer b – The applicable regulation, 45 CFR §1626.6(a), requires recipients “to require *all* applicants for legal assistance who claim to be citizens...to attest in writing that they are citizens” (emphasis added). There is no exception in this regulation for minors or other legally incompetent persons. Rather, for such persons, the preamble to the April 21, 1997 final regulation notes that “an attestation of citizenship may be done by a parent, a legal guardian, guardian ad litem, or other representative of the child” other than the recipient. (See 42 F.R. 19412).

### **Section 5.6 – Legal Assistance Documentation Requirements**

**Question 1** – We are having an internal debate about the level of detail required in the "notes" in order to signify that personalized information was provided to a client in an "advice only" case. Staff often summarize the service provided as follows:

"advised on parental rights (or divorce) process"

"went over eviction time frames"

"advised about debt collection"

"helped with family law papers"

Do we need to provide additional detail to meet the 2008 CSR Handbook standard for a case?

**Answer** – Yes, you do need additional detail. First, your notes should reflect that you advised clients as to their specific legal circumstances, because what you showed in your questions could be mere provision of information. For example, in item 2, you would need to relate the advice to the tenant’s specific situation -- e.g. telling tenant the specific date for his/her response. Item 1 is almost sufficient and would be if it said something like “advised client as to his or her legal alternatives in parental rights (or divorce)

process.” The third, again should relate to the client’s specific situation and specific debt problems. The fourth is insufficiently specific about the subject of the legal advice to meet the requirement. Something more specific would be needed – for example: “advised on process for probate of relative’s will” or on “requirements for making a valid will”, or on “requirements for a valid power of attorney.”

## **CHAPTER VI – Types of Case Services**

### **Section 6.2 – Cases Involving Multiple Levels of Assistance**

**Question 1** – When a program provides more than one type of assistance to an eligible client in the same calendar year, the CSR Handbook says to close the case at the “highest level of service”. But the CSR Handbook is silent as to whether there is a hierarchy of service under closing codes A-B-F-G-H-I-K-L.

In other words, is a B "higher" than an A or are they to be considered different but equal? Is a Court Decision the highest level of assistance?

**Answer:** Section 6.2 of the 2008 CSR Handbook states that cases should be closed at the highest level of service. However, Section 6.2 applies only when “more than one type of assistance” related to essentially the same legal problem is provided to the same client during a calendar year. It is intended as a rule of decision when a client received one type of service and then another type of service in an attempt to resolve essentially the same legal problem within the same calendar year. For example, if a program obtains a Court Decision and then, later in the same calendar year, advises the client as to recommended actions based on that Court Decision, the case should be closed as a Court Decision when the secondary advice service is completed.

Also, as a rule of decision, if a program renders Limited Service (A or B) and Extended Service (F, G, H, or I) to a client relating to essentially the same legal issue, the case should be closed under the Extended Service closing code. Within Limited Service, if a program has rendered both A, Counsel and Advice, and B, Limited Action, the case should be closed as B, Limited Action. Within Extended Service, if a program has rendered more than one of F, G, H, and I, the program should close the case under the “higher” closing code which is the one later in the alphabet. Thus the sequence is: A, B, F, G, H, I in that order. Again, note that this applies only when service rendered actually includes work that fits two or more Case Closing Codes. Before using this rule of decision, a program must first apply any CSR Handbook guidance, whether in the text or footnotes, that draws lines between Codes, such as between G, Settled with Litigation and H, Administrative Agency Decision and/or I, Court Decision.

K and L are outside this sequence. For K, “Other”, the issue never arises since a case can only be closed under this Code if it cannot be closed under any other. Category L, “Extensive Service” cannot be used where a settlement or Court or Administrative

Agency Decision has been reached, so Codes F, G, H, and I must be excluded before L can be used. If there is a question between closing a case as A or B, or as L, the decision hinges on the level of service rendered and not on which case closing code is higher. Only cases in which extended service is provided may be closed as L.

### **Section 6.3 Cases Involving Repeated Instances of Assistance**

**Question 1** – (a) Client is provided legal advice in an eviction case for non-payment of rent. Client then pays the rent. Later in the same calendar year, the client calls again for advice regarding eviction for non-payment of rent by the same landlord. Should there be one CSR case or two CSR cases under this fact pattern?

(b) Client is advised that the client's sole source of income is exempt from collection. Later in the same calendar year, client calls again with a different sole source of income and is advised that this source of income is also exempt from collection. Should there be one CSR case or two CSR cases under this fact pattern?

**Answer** – In question a, only one case should be reported, pursuant to the provisions of Section 6.3 of the 2008 CSR Handbook, because the client's circumstances (non-payment of rent) are substantially the same over time and are within the same calendar year. Each time, the client has not paid the rent due and is threatened with eviction.

In question b, there is also a similarity in the legal questions, but, unlike the scenario in question a, the underlying facts are different – a different source of income on which the client needs advice as to its status as exempt from collection action. Even though the advice is the same in both instances, they may be counted as separate cases, since different source of income constitute a different factual circumstance.

### **Section 6.4 Cases Involving Related Legal Problems**

**Question 1** – A married couple, who jointly own real property as tenants by the entirety, seeks legal representation with a pending mortgage foreclosure hearing. The case is acceptable as the couple is LSC-eligible. At case review meeting the case is accepted and assigned to staff attorney to represent at the upcoming foreclosure hearing.

Should one file be opened?

If two files are opened -- one in the name of husband and the other in the name of wife -- is one of these a duplicate?

If one file is opened and only wife signs retainer and citizenship attestation form and husband does not, can the case be closed as CSR reportable?

**Answer** – Only one file should be opened. This is a situation of two clients, one case. If two files are opened, one is a duplicate and should not be reported. If the wife signs the retainer and citizenship attestation form and the husband does not, there is one eligible client and the case should be reported, but only one client, the wife, should be reported.

**Question 2** – If an attorney assisted a client with a Power of Attorney, a Health Care Power of Attorney and a Living Will, could the three separate cases be reported to LSC as advance directives? The 2008 Handbook 6.4(a)(ii) seems to indicate such but footnote 34 is confusing to our staff. The three advance directive cases would involve different legal issues and separate legal documents would be prepared. The documents may, or may not, be executed on the same date. Would reporting three separate type 96 cases for the same client violate the duplicate case rule?

**Answer** – Section 6.4(a)(ii) applies only to Category A, Counsel & Advice cases. It appears that your program is preparing legal documents which fall into Category B, Limited Action. Accordingly, the relevant Section governing how many cases may be counted is Section 6.4(b). Since three separate legal documents are prepared, relating to different facts and legal issues, three cases may be reported, even though they all fall into a single Problem Code.

**Question 3** – In our family court, there is an individual calendar system. Each case is assigned a particular judge based on the docket number, and whenever there is a contempt or modification complaint filed involving the same two parties, the subsequent action will always have the same docket number as the original action (for example, the Complaint for Divorce) so that the parties always appear in front of the same judge. The issue has arisen for two different clients.

(a) In the first case, I represented client in a modification action filed by the opposing party. The issue involved custody. After I conducted discovery, including two depositions, I filed a motion and had the case dismissed last year. (The case also involved representation in Abuse Prevention Order proceedings which were also completed last year). The client had continuing visitation and other issues, so I kept the case open. Now client wants to file her own Complaint for Modification to obtain an order for child support. We did not file a counterclaim for child support in the opposing party's action because of our litigation strategy. Can we close the case involving the opposing party's modification action involving custody, and open another case for the modification complaint the client now wants to file to obtain child support?

(b) In the second case, I represented client in a divorce action that went to trial last year. The Judge issued her decision this year, in January, and now the client wants to file a Complaint for Contempt against the opposing party for failure to abide by the judgment. The contempt action is outside of our priorities for representation, and we would like

to open a new case for the contempt action and provide client counsel and advice through our PAI program.

**Answer** – In order to have a clear rule of decision, LSC has adopted a general rule of one Civil Action Number, one case (see CSR Handbook, Section 6.4(b)).

(a) However, in scenario (a), the circumstances of the first situation you have described based fit within an exception, for two reasons: (1) the first "case" was substantively concluded "last year" even though you actually kept the case open in your CMS for a legitimate reason and the new pleading will be filed this year; and (2) the "one civil action rule" applies to related legal problems dealt with "simultaneously" through a single process, but this situation would not be considered "simultaneous", as you obtained dismissal of the first case before the child support petition was/will be filed. *Important CMS note -- when you close the first case, you **must also retire that case number**. You can leave the "file" open for future action, but when you close the second case, whether in the same year as the first case or thereafter, you must close it under a new case number.*

(b) In scenario (b), the contempt action would be in the same year the divorce case was decided and is an action flowing directly out of the divorce case that was just decided, rather than a different issue. A decision to refer a case to PAI makes no difference as to whether it was one case or two. Accordingly, scenario (b) is one case and it should still be closed as a staff case, once the PAI component is completed (see 2008 CSR Handbook, Section 10.1(b)(iv)).

**Question 4** – In Virginia, the Juvenile & Domestic Relations District Courts have a policy designed to increase their statistics in order to justify additional judges. This policy requires that when a custody dispute petition is filed, a separate case number is assigned for each child whose custody is in dispute. A child support petition is also given a separate case number. (In contrast, if the same issues were brought in Circuit Court as part of a divorce proceeding, it would be given a single case number.) So if a parent has a custody and support dispute involving 5 children, these would generate at least 6 separate case numbers in the J&DR Court, even though they would be dealt with as a single proceeding. As a result, the "single legal process" test and the "Civil Action Number" test in the revised CSR Handbook are at odds in this context. In the past, we would treat these as a single case, using the "single legal process" approach. Is this still appropriate, or must we now create 6 cases for this single legal process? If the latter, must we then break out the advocate's time for each phone call, each hearing, each activity, among the six cases?

**Answer** – The Civil Action Number test is intended as a clear rule of decision which, in the vast majority of court cases, will easily determine the issue of how many cases to count. The Civil Action Number test is also under the rubric of the more general (and usually more difficult to apply) test of use of a "single legal process." In this instance, the Civil Action Number test gives what appears to be an unreasonable result and the

broader “single legal process” test gives a different result. Assuming, as your question implies, that, in the professional judgment of your program, this is substantively one case, we concur that you should continue to use the broader “single legal process” test and report this as one case, provided that you take care to apply this test to all similar cases in your program.

As you point out, were this in another court, it would have only one Civil Action Number. Any test we use cannot always be a good fit for 50 States and numerous courts in each of these States. Even if we disagreed in a particular case, LSC would not consider it a violation of the CSR case reporting rules if a program in good faith considered a particular instance of multiple Civil Action Numbers as one case because, in that program’s professional opinion, it is substantively a single legal process.

**Question 5** – When a recipient represents a client on multiple legal problems simultaneously, and the legal problems are to be reported as separate cases, may the recipient utilize a single retainer agreement to satisfy the requirements of 1611.9 if the single retainer describes each of the legal problems and the nature of the legal services to be provided for each?

**Answer** – Yes. When you are representing a client simultaneously on multiple legal problems, there is no requirement for more than one Retainer Agreement, irrespective of the number of cases reported, provided that the Retainer Agreement covers all the legal problems to be addressed and services to be provided. A copy of this Retainer Agreement, paper or electronic, should be placed in each case file.

**Question 6** – Our program often creates both wills and advance directives for clients. In the past we have considered both as one case since there was not a separate "advance directives" problem code. With the new problem code we assume that for cases in which we prepare documents, we should open one file for the will, another for the advance directive.

However, if only advice is given on both issues at the same time, we would consider it only one case. Please advise us whether this is a correct interpretation.

**Answer** – You are clearly correct that if the legal assistance given is limited to Counsel & Advice, only one case should be opened, as per the guidelines in Section 6.4(a) of the 2008 CSR Handbook.

We also agree with your interpretation when the legal assistance is the preparation of separate legal documents, a Will and an Advance Directive. The relevant language is in Section 6.4(b) the 2008 CSR Handbook where the test is whether the program attempts to resolve a client’s related legal problems through a single legal process. By analogy, the legal process in this situation is the preparation of (1) a Will and (2) an Advance Directive. Although these legal documents do have some similarities, they are not dependent on one another and are more similar to two separate filings or other legal

processes. The fact that they fall into two different Problem Codes supports this conclusion. Accordingly, it is correct to report one case for the Will and another for the Advance Directive.

**Question 7** – I do DV work, primarily divorces, but occasionally also get involved in Order of Protection (OP) cases. In my service area, the custom is to transfer the OP case to the divorce case so as to let only one judge make rulings regarding fault. Also, some of the judges around here EXPECT the divorce attorney to handle the OP.

At my most recent training, it was determined that if the OP gets transferred to the divorce court, then only one case need be opened. However, the CSR Handbook Sec. 6.4(b) gives an example in which a client with child support and child custody cases going in different courts would be two separate cases. I believe the rule of thumb was that if there are separate docket numbers, then there will need to be separate cases opened.

Here is the situation that I have found:

More than once, an OP gets filed first. I am already retained to do the divorce and am also willing to handle the OP. Initially, the OP and divorce are in separate courts. However, I know that more than likely the OP will get transferred to the divorce court.

Should I go ahead and open two cases and then close the OP when it is transferred to the divorce. Or can I just open the divorce case and handle everything under that case number?

Another situation that is similar:

I have a divorce client who already had the OP when she came to me for representation. Before we could get the divorce filed, the OP court had a review scheduled. I agreed to appear in that court because of child custody issues that were involved. However, I did not file anything and played a minimal part at the hearing. I was just there to make sure the judge did not drop the supervised visitation requirement.

Does that require a separate case number?

**Answer** – the rule that applies to case closing is: if there is one Civil Action Number, one case is reported, if there are two Civil Action Numbers, two cases are reported. As for opening cases, this is an administrative decision. It would seem that opening one case would be more efficient if you expect that the cases will be consolidated under one Civil Action Number. Should it happen that they end up being resolved under two Civil Action Numbers, then you would close two cases accordingly (even then, there is no obligation to maintain two separate case files – you should just make the proper notations in the case file to support the separate closing of the two cases and make sure the one file clearly indicates and supports the time charges for the different cases).

In your second scenario where the client already had an OP, the activity with regard to the OP case was ancillary to the divorce case, so that activity should not be reported as a separate case.

**Question 8** – A legal aid staff attorney assists a client by negotiating and drafting a Separation and Property Settlement Agreement that resolves issues of property, debts, support, and child custody. Upon completion of this settlement, the client is then referred to a pro bono attorney to file for a no fault divorce for the client. The pro bono attorney obtains an uncontested final decree of divorce which incorporates the PSA.

Should the program close the case at the conclusion of the negotiated settlement without litigation (the PSA) and open a new case for the pro bono attorney to obtain the uncontested no fault divorce? If not, how should the single case be closed?

**Answer** – While the Separation and Property Settlement Agreement would on its own be an F, Negotiated Settlement without Litigation, its incorporation into the no-fault divorce means that its provisions are made part of that legal process. Accordingly, it is one case and it should be closed under I (a), Uncontested Court Decision.

**Question 9** – We represent a victim of domestic violence in obtaining an emergency order of protection and the client decides to reconcile with the abuser. We close this case. The court action may have been dismissed, withdrawn, or the emergency order simply expired. Several months later, but within the same calendar year, the victim seeks legal help again related to abuse. The original court file has been closed and a new court record will need to be created to pursue the legal relief sought by the client. The problem code will be the same, the opposing party will be the same, the general facts may be the same, but there will be some new facts. It will require a new case filing. Is this the same case or a new case?

**Answer** – This is a new case. The governing rule of Section 6.4(b) is that if the court recognizes two cases – the specific test being the existence of different Civil Action Numbers – then two cases should be reported to LSC. This is a rule of decision which makes it unnecessary to determine just how similar the subject matter is in two instances of legal work done for the same client in the same calendar year.

**Question 10** – We represent a client in a divorce action. The Final Judgment is entered in early 2008 and the file is closed. In late 2008, the client returns for representation regarding enforcement and contempt issue for failure of the x-spouse to pay child support. The problem code for the enforcement issue would seem to be 38 rather than 32. Am I correct?

Same scenario but with visitation. The client returns several months after the entry of the Final Judgment of Divorce for contempt proceedings for visitation issues. The PC for enforcement/contempt would be 31 rather than the 32 for the divorce. New File or reopen the divorce file since custody and visitation were addressed in the divorce?

**Answer** – On their general merits, both would be judgment calls. However, §6.4(b) of the 2008 CSR Handbook provides a rule of decision that is applicable to these situations. If the local jurisdiction assigns the same Civil Action Number to the follow-up case, it must be reopened as the same case (provided the follow-up action is in the same calendar year). If it is under a different Civil Action Number, then it should be opened as a new case.

As to the assignment of Problem Codes if the follow-up case is opened as a new case, we agree with you. If the case is reopened, it should remain 32, Divorce, unless the part of the case after it is reopened becomes so extensive that the alternative Problem Code better represents the services rendered.

**Question 11** – In the CSR Handbook, LSC says that we must ensure that “cases involving the same client and same legal problem are not recorded and reported to LSC more than once.” Section 6.3 says it is a “single case when a program provides assistance more than once within the same calendar year to an eligible client who has returned to the program with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem.” Section 6.4(b) says to report “related legal problems of an eligible client as a single case when the program representing the client attempts to resolve the related legal issues simultaneously through a single legal process.” However, it goes on to say “For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported.”

We defended a client in an eviction action in which the judge entered an order concerning possession and an order for the amount of back rent and other damages that the client owed. We closed the case. Later the same year, the (former) landlord filed a garnishment against the client to collect on the judgment. Under Alabama procedure, the garnishment action bears the same civil action case number as the original eviction.

Language in section 6.4 seems to say that the use of a single civil action number makes both problems count as a single case. However, the legal problems are quite different, and there is none of the simultaneity that exists when someone seeks custody and child support in a divorce action.

When a consumer judgment leads to a garnishment in the same year, I am inclined to say it is one case. But in the situation where an eviction later leads to a garnishment, the vast differences in the substance of the legal problem makes me think that we should count the two legal problems for the client as two legal cases.

**Answer** – The same Civil Action rule prevails and both these situations should be reported as one case. This rule was adopted to provide a rule of decision in a wide variety of situations. While we have made rare exceptions to it, these were only in rare situations where a local peculiarity in court rules produced a manifestly unreasonable result (it was an artificial multiplication of cases in the recent instance). In the

circumstance of your eviction followed by a garnishment, while we might rule it two cases in the absence of the rule, there is a significant relationship between the two actions, so we do not find it sufficiently compelling to justify a departure from the one Civil Action – one case rule.

**Question 12** -- If someone comes to a VLP program and needs a will, a power of attorney, and an advance healthcare directive, does each count as a separate case, or do they count as one case since they're closely related? We've been telling staff that they should be counted as one. I can't see why you'd count a power of attorney as a second case if you did it when you were doing an advance directive for someone.

**Answer** – We have attempted to develop general rules to deal with the one case or more-than-one case issue when related issues are addressed for a client. While there is some flexibility in these rules, they do sometimes operate to cause an outcome, that, in isolation, might not be the outcome we would choose for a particular situation.

In the situation you describe, the governing rule is Section 6.4 of the 2008 CSR Handbook which reads in relevant part:

For cases involving related legal problems. . .

- (a) *For Counsel and Advice (CSR Closure Category A) cases only....*
- (b) *For all other cases (CSR Closure Categories B to L), programs shall report related legal problems of an eligible client as a single case when the program representing the client attempts to resolve the related legal problems simultaneously through a single legal process. For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported. If there are multiple Civil Action Numbers, then multiple cases are counted. . .*

This rule is clear for court cases and works well for B, Limited Action, cases where the program communicates with another party on behalf of its client. It is somewhat harder to apply to the type of B cases where the program prepares a legal document or documents for its client.

It is reasonably clear that two or more legal documents dealing with one issue, such as a contract and a later modification to that contract, would constitute one case. On the other hand, it is also clear that two legal documents dealing with clearly separate issues, such as a Will and a contract, would be two cases. The question is the status of multiple legal documents dealing with closely related issues that are legally distinct.

It is desirable to have a clear rule of decision that can be used to make this determination in situations such as the one in your question. We will therefore consider separate legal documents drafted to deal with separate, even if closely related, legal issues to be equivalent to separate legal processes within the definition of Section 6.4(b) as quoted

above. Accordingly, the preparation of a Will, a Power of Attorney, and an Advance Medical Directive for a client should count as, and be reported as, three separate B, Limited Service, cases.

**Question 13** -- Pursuant to the CSR Handbook section 6.4, cases involving related legal problems should be reported as one case unless they meet one of the four exceptions listed on page 16. My question relates to exception (iv), in section 6.4(a), legal issues that relate to substantially different underlying facts.

It is probably best to give examples:

Our program does a significant amount of landlord/tenant cases. In many instances, we represent a client in a non-payment of rent case and are able to enter into a stipulation of settlement that includes various terms. For example: Tenant to pay \$500.00 by March 25, 2011, tenant to apply to OCBBS by March 25, 2011 for emergency assistance, landlord to cooperate with the Board of Social Services so that they can facilitate payment. The case is immediately closed as a G. A month later, the tenant calls back and says that a warrant of removal has been issued but they do not know why because they have complied with the settlement and/or the landlord is refusing to cooperate with the Board of Social Services. In this case, we would have to file a request for a hardship stay and the matter is scheduled for a hearing before the judge. For this hearing, we are obligated to investigate the facts and possibly review the Board of Social Services file or speak to them to find out if the landlord has in fact cooperated. The issue for trial this time is whether or not the landlord or the tenant breached the terms of the settlement. It is the same docket number but the legal standard and the facts are different from the original non-payment case. Can we open a new file, or would the LSC find that to be a duplicate case?

The same issue arises in the family law context. For example, our program represents a client in a custody/visitation matter. We obtain an order granting our client custody and setting up a visitation schedule for the adversary/noncustodial parent. Months later, (but within the same year) the client calls because they were served with a motion to enforce the visitation order. The allegations are that our client is not complying with the prior order by refusing to allow the adversary to see the children. Client insists that it is not true and has phone messages, texts or e-mail confirming compliance. We agree to file opposition to the motion. In the initial court action, the legal standard for custody and visitation would be the best interest of the child. In the post judgment motion, we are seeking to prove that the client has substantially complied with the prior order. The docket number on the post-judgment action is the same as the original docket number but the facts at issue are different from those in the original case. In this instance, can we open a new file, or would this be considered a duplicate case by the LSC?

**Answer** -- For the circumstances in your questions, the applicable section is Section 6.4(b), since Section 6.4 (a) (iv) refers only to Counsel and Advice cases, as stated in its heading:

For Counsel and Advice (CSR Closure Category A) cases only

Accordingly, exception iv is inapplicable to the cases discussed in your question, because they are not Counsel and Advice cases. The section applicable to your cases is Section 6.4(b), which includes clear language regarding court cases:

***For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported. If there are multiple Civil Action Numbers, then multiple cases are counted.***

The Civil Action Number rule was adopted to provide a clear rule of decision as to how many cases are counted when related legal problems are resolved for a client. It clearly requires that each of your examples should be closed as only one case. Note that if a case is closed in one year and the client returns and the case is reopened in a subsequent calendar year, then you should open and count a new case, irrespective of the degree of difference in the underlying facts.

**Question 14** – I have been informed that the representation that our program provided on behalf of eight clients should have been only one reportable case, since there was a single lawsuit with a single case number. I believe that we properly reported eight cases.

I start with the CSR Handbook language and then address the reasons why I think the particular representation of the eight individuals constituted eight cases.

Section 3.2 of the CSR Handbook is entitled "Single Recording of Cases." It states that "programs shall ensure that cases involving the same client and same legal problem are not recorded and reported to LSC more than once, referencing sections 6.1 through 6.5. The only type of duplication mentioned in section 3.2 is "where two or more open and/or closed cases involve the same client and legal problem."

Section 6.1 does not discuss duplicate cases in any detail. Sections 6.2, 6.3, 6.4(a) and 6.5 discuss duplicates only in terms of repeated service to a single client. Section 6.4(b) starts by saying that "programs shall report related legal problems of an eligible client as a single case when the program representing the client attempts to resolve the related legal problems simultaneously through a single legal process." The next sentence says "For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported." Some may read that sentence to mean that for court cases with a single civil action number, there is only one case, regardless of the number of clients. However, such an interpretation ignores that the words "the legal problems," which relate back to the single client's "related legal problems." The balance of subsection (b) talks only of court cases for a single individual.

Our office had eight individuals request representation when the Housing Authority was terminating their section 8 vouchers. Our lawyers requested hearings for several of the individuals and obtained hearing decisions. Other clients came to our program after they

had obtained hearing decisions. The lawyers had to decide whether to file eight lawsuits or to file a single lawsuit. Had we filed eight lawsuits, the court would have consolidated them for hearing, but they would have kept their separate civil case action numbers. However, the court sees it as administratively easier for it to deal with a single case and eight plaintiffs than to deal with eight consolidated cases.

Once the lawsuit was filed, our lawyers had to establish each individual plaintiff's entitlement to relief. The court conducted a single preliminary injunction hearing, but it required each plaintiff to prove her own entitlement to preliminary injunctive relief. Indeed, the court granted seven plaintiffs preliminary injunctive relief, but denied it to one. Each plaintiff was individually deposed. Six of the cases settled for one amount of money, one for another amount.

If our lawyers had not filed the lawsuit, we would have been able to close more than one file with extended service. We did additional work, providing separate but partly consolidated work under a single case number, for the court's administrative ease. Under these circumstances, we ask that LSC consider each plaintiff's case to be reportable.

**Answer** -- The Civil Action Number test is intended as a clear rule of decision to easily determine the issue of how many cases to count when related legal problems are resolved for a client. However, the circumstances and arguments you set forth make a good case that this rule does not apply to the situation set forth in your question.

Section 6.4(b) includes the following language regarding court cases:

*Programs shall report related legal problems of an eligible client as a single case when the program representing the client attempts to resolve the related legal problems simultaneously through a single legal process. For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported. If there are multiple Civil Action Numbers, then multiple cases are counted.*

Thus the Civil Action Number rule explicitly applies to the related legal problems of “an eligible client.” As there are multiple clients in this situation, the Civil Action Number rule does not apply.

Accordingly, we find that your program correctly counted eight cases under the circumstances detailed in your question, because there are multiple clients and the Civil Action Number rule therefore, by its terms, does not apply, leaving you free to count each client's case separately.

## **Section 6.5 – Cases Involving Appeals**

**Question 1** – It is my understanding that if we lose a case at trial level and take an appeal, the appeal is a new, reportable case. One question is what to do with the

underlying trial court case. Do we close it and report it to LSC and, if so, do we re-open it if we are successful on the appeal? Or do we keep the trial court case open and close it after final determination of the appeal? A similar question arises if we win at trial and opposing party appeals. Finally, if we or the opposing party appeals an appellate decision to the Supreme Court, I assume your answers would apply to such higher appeals too. Thanks.

**Answer** – Your understanding is correct. Under Section 6.5 of the 2008 CSR Handbook, if you lose a case at the trial level and take an appeal to an appellate court (this is an appeal as defined in 45 CFR 1605.2 and 1605.3), the appeal is a new, reportable case. You close the trial court case as I(b) Contested Court Decision and open a new appeal case. Then if the case is remanded back to the trial court, you close the appeal as I(c) Appeal and open a third case for the litigation after remand. You are also correct that the same answer applies if you win a case and the opposing party appeals. Finally, the same answers apply to a Supreme Court appeal; it would be another, separate case.

**Question 2** – If an administrative case is appealed to federal district court and is then remanded from the court to the administrative law judge, is a new case opened at the point of remand, or are all proceedings considered one case?

**Answer** – An “appeal” of an administrative case to the Federal District court is not an appeal to an appellate court as defined in 45 CFR 1605 and as discussed in Section 6.5 of the 2008 CSR Handbook. Accordingly, all proceedings in this sequence of events are considered one case.

**Question 3** -- The CSR Handbook refers to the 1605 definitions of appeals.

In Louisiana, appeals from a justice of peace are to our district court, which is designated as the appellate court by Louisiana law in such cases. The “appeal” is actually a trial de novo. The justice of peace court is not a lower level of the district court. It is independent from the district court. But it is a trial court as is the district court.

Does the appeal to the district court need to be counted as a separate CSR. Under the definitions of 1605, it would seem that they are “appeals” and must be counted as a second case. However, footnote 35 in the CSR Handbook (the part about appeals from lower level trial court to a higher level trial court) give me concern (and confusion).

How should we count these cases.

**Answer** – This sequence of events is only one case, because the “appeal” is not an “appeal to an appellate court”, but an “appeal” to another higher-level trial court. Indeed, as indicated in your submission, the “appeal” procedure is a trial de novo in the Louisiana District Court. Accordingly only one case should be counted and reported to LSC in the fact situation you have described. You also referred to Footnote 35 of the 2008 CSR

Handbook. It was placed there exactly to indicate that situations such as the one you describe are not “appeals” within the definition of the 2008 CSR Handbook.

**Question 4** – Our program helped a client with two pro se appeals of an eviction within the same year. The parties are the same in both cases, but they have different court case numbers and the appeals were 2 months apart. Would this be two cases, or just one?

**Answer** – This would be two cases. Section 6.4(b) of the 2008 CSR Handbook contains a rule of decision on this situation:

*For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported. If there are multiple Civil Action Numbers, then multiple cases are counted.*

Although these cases, being pro se, would not be closed under Court Decision (but probably under L, Extensive Service, or B, Limited Action, depending on the extent of the work done for the client), we are still dealing with cases that are in court. Accordingly, the rule of decision should be applied and under it, the two court case numbers (equivalent to two Civil Action Numbers) should cause two separate cases to be reported.

Note – in the event that the services rendered were limited to A, Counsel & Advice, then Section 6.4(a), rather than Section 6.4(b), applies. Under its criteria, only one Counsel and Advice case should be reported. And if the services under one of these two cases were limited to A, Counsel & Advice, while legal assistance in the other case extended to B or L, then, again, only one case should be reported and it should be reported under Closing Code B or L.

**Question 5** -- Let’s assume two different cases. Case #1 is a food stamp appeal in front of an administrative law judge. Case #2 is a divorce hearing in front of a trial court. Under Indiana law, the appeal of a negative administrative decision is first to the highest level of the administrative agency and then to the trial court on judicial review. The appeal in the divorce case would be to the Indiana Court of Appeals. Here are my questions.

In Case #1, if I represented the client at the hearing level, at what point do I open a new case - at the filing of a request for judicial review to the trial court or only if I lose at the trial court and take it up on appeal to the court of appeals? Does the answer in Case #1 change if my first stage of service to the client is when we file for review by the highest level of the admin agency, a typically pro forma event that is merely a necessary precursor to the complaint for judicial review.

Similarly, in Case #2, I assume that if I represented the person in the divorce and then decide to appeal a negative decision to the Indiana Court of Appeals, I open a new case

for the appeal. However, what if I did not represent at the hearing level but did file a Motion to Correct Errors with the court in response to the negative decision

**Answer** – In Case #1, you open a new case only if you lose in the trial court (or win and the adverse party appeals) and take the case to the Indiana Court of Appeals. This answer is the same irrespective of when your program entered the case at the administrative agency level.

In Case #2, you are right that you open a new case for the appeal. This remains true even if you did not represent your client at the hearing level. You would then report your Motion to Correct Errors at the trial court level as one case and the appeal as a second case.

## **CHAPTER VII – Referrals**

No current questions.

## **CHAPTER VIII – Case Definitions and Closure Categories**

### **Sections 8.2 and 8.3 – Limited and Extended Service Case Categories (Closing Codes A-L)**

**Question 1** – Some states now allow attorneys to limit the scope of their representation in court proceedings. For example, in a case where a *pro se* divorce client was served with a motion to dismiss based on an allegation that he was not competent, program counsel was allowed to enter an appearance for the limited purpose of resisting the motion. If the court issues an order on the motion and the program is not representing the client on anything further, should the case be closed as I, Court Decision, or L, Extensive Service?

**Answer:** If the court decides an issue in litigation (rather than taking a technical action such as accepting a settlement, granting a voluntary dismissal or allowing counsel to withdraw from a case), the case should be closed as a Court Decision. The selection of I, Court Decision, is appropriate even though the program is counsel of record only for this one, limited legal issue. As noted in the second sentence of Footnote 51, this scenario is most similar to a case closed after a TRO. In addition, based on the above facts, I(b) would be the appropriate code since it is a contested case.

**Question 2** – What if the other party withdraws the motion after program counsel files its opposition and the issue is never ruled on by the court? This would seem to be an L, Extensive Service.

**Answer** – Yes, assuming there was no settlement reached between the parties that resulted in the opposing party withdrawing the motion, L would be the appropriate closing category, because there is representation in court but no actual court decision or settlement with litigation. Pursuant to the last sentence of Closing Category L, this is a case "closed after litigation is initiated in which the program appears as counsel of record that do(es) not result in a negotiated settlement, administrative agency or court decision...".

**Question 3** – In reference to Closing Categories B and L, how should a program close a case when an inexperienced attorney, new to the program, has to undertake a significant amount of legal research that takes a significant amount of time?

What if the same case, as handled by an experienced attorney, does not require any research and takes very little time?

**Answer** – Both scenarios should be closed as B, Limited Action, because neither one meets the criteria for L, Extensive Service.

Pursuant to Footnote 54, time taken is not a controlling factor. The intention of the footnote guidance is to measure the level of service to the client. In particular, the scenarios described above fail to meet factors 1, 2, and 3 in the footnote. Additionally, factor 4 does not apply since an experienced attorney would need to do no research (and would not even need to take much time to render the legal assistance).

**Question 4** – If the parties in a court case come up with a settlement but the judge requires the parties to appear to argue/discuss why the settlement should be accepted by the court, should such a case be closed as I, Court Decision or G, Settlement with Litigation? For clarity, this is separate from the situation in which the court simply accepts the settlement.

**Answer** – The case should be closed as G, Settlement with Litigation. The situation as described -- the judge is presented with a settlement and, after an appearance and discussion by both parties, accepts it -- is, on the face of it, a "negotiated settlement with litigation." The parties were in litigation and reached a settlement. As such, if the settlement between the parties is accepted by the court or is entered as a court order or judgment, the case is G, Settled with Litigation, even if the judge does hold a hearing and/or conduct a substantive review before approving the settlement or incorporating it into a court order or judgment.

**Question 5** – In reference to the distinction between I, Court Decision and L, Extensive Service, consider the following scenario: a program attorney represents a client in divorce

litigation during which there are a number of contested hearings which result in rulings by the court on various issues (e.g., child custody, child support, spousal support). All of these decisions were part of a single court proceeding with a single Civil Action Number. Then, while there were still additional issues to litigate in the divorce (e.g., the equitable division of property), the client disappeared (or won the lottery or became incarcerated for what is expected to be more than a month) and the court enters an order allowing the program attorney to withdraw from representation. Can the program attorney count this case as I(b), Contested Court Decision or must it be codes as L, Extensive Service?

**Answer** – This is best closed as a Contested Court Decision I(b). The program obtained substantive court rulings on significant issues. The circumstance that the program’s attorney ultimately had to withdraw because the client had withdrawn/disappeared does not change the fact that these substantive court rulings were obtained. Your question arises because of the language of the last sentence of Section 8.3 L which reads:

*In addition, cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, or in which an order of withdrawal or voluntary dismissal is entered should be closed in this category.*

While an order of withdrawal is entered in the scenario presented, the intent of this provision is to find a place for, and a description of service in, cases where litigation has been commenced but could not be followed through to a conclusion in court because of a client’s withdrawal. While that description does apply to this scenario insofar as there are remaining issues in litigation that could not be concluded in court, there were significant, substantive rulings obtained for the client before his/her withdrawal. The choice of Category I(b) better describes the service rendered to the client; furthermore, Category L is intended for cases “not resulting in court or administrative action” (*see* caption to Closing Category L). Accordingly I(b), Contested Court Decision should be chosen in this instance.

**Question 6** – Is a Chapter 7 bankruptcy proceeding an Uncontested Court Decision I(a) or a Contested Court Decision I(b)?

**Answer** – If no creditors file an opposition, no creditors appear at the Creditors Meeting, and the Trustee does not oppose the proceedings or the debtor’s discharge, it is I(a), Uncontested Court Decision. If creditors do file an opposition and/or appear at the Creditors Meeting, or the Trustee opposes discharge or other aspects of the proceeding, it is I(b), Contested Court Decision.

**Question 7** – Are Chapter 11 bankruptcy cases to be closed as contested or uncontested Court Decisions?

**Answer** – Chapter 11 bankruptcy can be either contested or uncontested, depending on whether creditors or the Trustee oppose the Reorganization Plan. The most likely ways this may happen is if creditors contest the Disclosure Statement, formally oppose the actual Reorganization Plan, or form a creditors committee and ask for the appointment of a receiver. If neither the creditors nor the Trustee take any action to oppose the Reorganization Plan, it is an Uncontested Court Decision under I(a); if they do take such action, it is a Contested Court Decision under I(b).

**Question 8** – We understand that LSC has decided that bankruptcy cases are considered uncontested Court Decisions unless a creditor appears or contests the filing. Our program does quite a bit of bankruptcy work. In our experience it is just as common, if not more common, to have the trustee as an adversary as it to have a creditor as the adversary. We regularly litigate against trustees who have filed objections to Chapter 13 plans, or who have filed motions to dismiss or to convert cases. These cases are MUCH MORE complicated and time consuming than almost any other uncontested case that we might handle. A simple uncontested divorce might take an hour or less of attorney time. A Chapter 13 bankruptcy case, even without the appearance or contest by a creditor, might easily take ten, fifteen, or twenty hours or more -- these cases take years. Can LSC change this position, at least as to Chapter 13 bankruptcy cases?

**Answer** – LSC initially made decisions regarding Chapter 7 and 11 bankruptcies along the lines you have indicated. We have reexamined these decisions to include the possibility of the Trustee as effectively an adverse party (see questions 6 and 7 above). We agree that the Chapter 13 bankruptcy process is much more involved than Chapter 7 and that the Trustee is often effectively an adverse party, even if no creditor specifically contests the filing. According to our revised logic concerning bankruptcy cases, Chapter 13 cases may be closed as I(b), contested, if any creditor or the Trustee contests any aspect of the plan at any stage of the case, even if the plan is initially accepted. If neither creditors nor the Trustee contests the plan in whole or in part at any stage of the proceeding, then it should be closed as I(a), uncontested.

**Question 9** – Under the Extended Service Case Category, can a case still be counted for CSR purposes even if the retainer agreement or the 1636 client statement of facts is missing from the case file. Is this because neither the retainer nor the 1636 client statements of facts are expressly mentioned in Chapter V: Documentation Requirements of the 2008 CSR Handbook?

**Answer** – The critical conditions for including a case in the CSR are client and case type eligibility, the documentation of such, and the documentation of the legal assistance provided to the client. However, the need for retainer agreements and 1636 statements remains a regulatory requirement and their absence is a regulatory violation. For CSR purposes, though, it does not affect the critical considerations of documentation and eligibility, and, consequently, noncompliance with these regulatory requirements does not bar reporting such cases. See Footnote 7 of the 2008 CSR Handbook which explicitly

states that cases may be reported irrespective of compliance with the Retainer Agreement and the Statement of Facts requirements.

**Question 10** – For 2008 CSR Handbook, Closing Category E, Client Withdrew, is no longer available as a closing code. If a client abandons a case but the program previously had obtained a court order in its favor, should this case be closed under Category I - Court Decision or should it be de-selected as described in Section 3.5 of the 2008 Handbook?

**Answer** – If the program rendered any legal assistance to the client before the client's withdrawal, the case should not be de-selected. De-selection of a case should occur if the client withdraws before any legal assistance has been rendered to the client. A case that would have been reported in the past as E, Client Withdrew or did not Return, should now be reported under the closing category that best describes the services the program rendered to the client. In this instance, that appropriate case closing category is either I(a), Uncontested Court Decision, or I(b), Contested Court Decision, depending on the whether the case was contested or uncontested.

**Question 11** – With regard to the distinction between Court Decision and Extensive Service, I raised the following hypothetical: a legal services attorney represents a client in litigation, for example, in a divorce, during the course of which there are a number of lengthy, contested hearings which result in rulings by the court on various issues, e.g., child custody, child support, spousal support. (All of these were part of a single court proceeding, with a single Civil Action Number.) Then, while there were still additional issues to litigate in the divorce suit, for example, equitable distribution or grounds for divorce, the client won the lottery (or disappeared from the face of the earth or became incarcerated for what is expected to be more than a month) and the court enters an order allowing the legal services attorney to withdraw from representation. Can the legal services attorney count this as a contested court decision, or must he/she code it as an extensive service case?

**Answer** – This is best closed as a contested Court Decision I(b). The program obtained substantive court rulings on significant issues. The circumstance that the program's attorney ultimately had to withdraw because the client had withdrawn/disappeared does not change the fact that these substantive court rulings were obtained. Your question arises because of the language of the last sentence of Section 8.3 L which reads:

*In addition, cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, or in which an order of withdrawal or voluntary dismissal is entered should be closed in this category [Category L].*

While an order of withdrawal is entered in the scenario presented, the intent of this provision is to find a place for and a description of service in cases where a court case has been commenced that could not be followed through to a result in court because of a

client's withdrawal. While that description does apply to this scenario insofar as there are remaining issues in litigation that could not be concluded in court, there were significant, substantive rulings obtained for the client before his/her withdrawal. The choice of Category I(b) better describes the service rendered to the client and Category L is intended for cases "not resulting in court or administrative action" (see caption to Section 8.3 L). Accordingly Category I(b) should be chosen in this instance.

**Question 12** – Here's a scenario we've come across and will probably have additional files closed under the same circumstances. We have a summons and complaint for eviction against our client. We negotiate a settlement agreement with the housing authority which includes the **Voluntary Dismissal** of the Complaint. Do we close it as an L (Voluntary Dismissal) or G (Settlement with Litigation)?

**Answer** – Assuming that your program is counsel of record, it is a G. If your program is not counsel of record, but the circumstances fit within the limited exception (2) set forth in the second paragraph of Section 8.3, G -- that the program intended to enter an appearance and the settlement was reached prior to the program's entry as counsel of record -- it is also closed as a G, Settlement with Litigation. However, if your program is not counsel of record and the circumstances do not fit the limited exception discussed above, then the case should be closed as L, Extensive Service.

**Question 13** – I have two scenarios requiring some guidance regarding which closure code is appropriate. Queries to other programs on how they are dealing with the issue are resulting in conflicting opinions.

a) We represent a client at a Protection from Abuse hearing and obtain a continuance as a witness wasn't available. The client then failed to appear for the final hearing and the case was dismissed by the court.

Do we close the case as "L" extended service or would it be considered "I(a)" an uncontested court decision (since we could not oppose the motion to dismiss) or "I(b)" contested since it is the adverse party moving for the dismissal? My confusion stems from footnote 51 on page 22 of the CSR which indicates that voluntary dismissals should not be closed in the "I" category. One could argue that a client's failure to proceed or respond to a motion would be a "voluntary dismissal" albeit not one which was affirmatively sought, in which case, "L" would appear to be the appropriate response.

b) We represent a client in filing and obtaining approval of a Chapter 13 Bankruptcy Plan. The client falls behind in payments, the U.S. Trustee files a Motion to Dismiss which we do not respond to as the client fails to contact us resulting in dismissal of the Bankruptcy.

Do we close the case as "L" extended service or would it be considered "I(a)" an uncontested court decision (since we didn't oppose the dismissal) or "I(b)" contested

court decision since the Trustee is an adverse party who is moving to dismiss the Bankruptcy? My confusion stems from footnote 51 on page 22 of the CSR which indicates that voluntary dismissals should not be closed in the “I” category. One could argue that a client’s failure to proceed or respond to a motion would be a “voluntary dismissal” albeit not one which was affirmatively sought, in which case, “L” would appear to be the appropriate response.

**Answer** Scenario a – This case should be closed as L, Extended Service. You are correct that Footnote 51 states that voluntary dismissals should not be closed as Case Closure Category I, but even more clearly to the point is the final sentence of Section 8.3, Case Closure Category L which reads:

*In addition, cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, or in which an order of withdrawal or voluntary dismissal is entered should be closed in this category.*

**Answer** Scenario b – This case should be closed as an I(b) litigated case, because you did obtain a court order (the Chapter 13 Bankruptcy Plan). When a case cannot be continued because the client is no longer in contact with you or does not want to pursue the case any further, the case should be closed as a court decision, Category I, if a court order on the merits has already been obtained (see Footnote 54 stating that even an interim order, such as a TRO, may qualify a case to be closed as a court decision). The further question is whether it should be I(a) or I(b). It should be I(b) based on a prior Frequently Asked Question (2-20-08 FAQ, Chapter 8, Question 8) which stated that Chapter 13 Bankruptcies qualify as I(b) Contested if any party or the Trustee contests any part of the plan at any stage of the case.

**Question 14** – What is the correct way to close a case in which the client becomes ineligible for services, but the program is required by the court to continue representation in court? Should we close it with the highest level of service provided before the client became ineligible?

**Answer** – This is a question that did not previously arise as such cases were closed under “Change in Eligibility.” Since this Case Closing Category has been eliminated because it did not provide information as to the services received by the client, the choice is between reporting the highest level of service provided before the client became ineligible or the highest level of service provided during the whole of the program’s representation. As the program is appropriately in the case, pursuant to court order, the case should be reported at the highest level of service during the whole of the program’s representation, just like any other case.

Note 1 -- it is required that a program have documentation in the case file that it tried to withdraw and that the court would not allow it to withdraw after its client became ineligible.

Note 2 -- if the client was ineligible from the beginning of the case and was served in error or because of false information supplied to the program, the case should not be reported at all and the program should use Category X or the equivalent to deselect the case as laid out in Section 3.5 of the 2008 CSR Handbook.

**Question 15** – In many cases there are contested court proceedings, with court rulings, but then the case ends up as a negotiated settlement. Should these be closed as G-Negotiated Settlement with Litigation, or I-b, Contested Court Decision?

**Answer** – Since the event that resulted in the closing of the case and was case dispositive is the settlement, such cases should be closed as G-Negotiated Settlement with Litigation. It is true that Footnote 51 allows a case closed after a TRO or similar interim order to be closed as a Court Decision, but only if the litigation is not further pursued. In such situations, there is no other case dispositive event, while in this situation, the settlement is the case dispositive event.

**Question 16** – Can a case be closed under Category B-Limited Action in the following situation?

Client comes in with landlord tenant case. The Legal Aid Attorney meets with the client and determines that the Landlord is acting illegally. The Legal Aid Attorney calls the Landlord and explains to the Landlord that his actions are illegal. The Landlord then agrees to comply with the law. The Legal Aid Attorney provides no other legal service.

**Answer** – Yes, this is an appropriate Category B – Limited Action case. If there was actual negotiation with the landlord and a settlement was reached and can be documented (see Footnote 48 of the 2008 CSR Handbook), then it would be Category F, Negotiated Settlement Without Litigation.

**Question 17** – What is the correct way to close the following case in which the client became ineligible for services? Client was eligible when she first came to us, but became financially ineligible (\$700 over guidelines) due to our assistance in getting her income from a life insurance policy.

Client's younger sister (of whom client has custody), is the beneficiary of the policy, and the proceeds are in trust for the sister, paid out monthly to client. The case involves probating the grandmother's will, and was contested. Because our program had been representing the client in this complicated probate case for over two years, and because it would have taken a private attorney too much time to understand the case in relation to the small amount of time needed to close it out, a decision was made that it was our professional responsibility to continue representation. Should it be closed as a Contested

Court Decision (which it was)? Or should we close it showing the level of service before the client became ineligible? Or should we de-select the case altogether?

Answer – This is a question that did not previously arise as such cases were closed under “Change in Eligibility.” Since this Case Closing Category has been eliminated because it did not provide information as to the services received by the client, the choice is between reporting the highest level of service provided before the client became ineligible or the highest level of service provided during the whole of the program’s representation. As the program is appropriately in the case, pursuant to a decision that it is the professional responsibility of the program to continue representation under the specific circumstances at the time the client became ineligible, the case should be reported at the highest level of service during the whole of the program’s representation, just like any other case – in this case Contested Court Decision I(b).

Note -- it is required that a program have documentation in the case file of the reasons why it was the professional responsibility of the program to complete the case pursuant to the provisions of 45 CFR 1611.8(a). (The reasons laid out in your question clearly qualify as such documentation).

**Question 18** – Our office needs some guidance regarding the proper closure coding for the following fact situation:

Question a -- Children and Youth Services (CYS) files a dependency petition alleging that a child is dependant. Our attorney gets appointed as the Guardian Ad Litem (GAL) for the children. The parents are also given separate counsel. There is a “master” who “always” takes some testimony as he/she doesn’t have to accept CYS’s recommendation and wants to hear everyone’s position on the issue (even if everyone is in agreement). Sometimes CYS comes to the hearing and indicates that they are withdrawing the Petition. The Master usually accepts that decision (after testimony) as does everyone else and then recommends to the Court that an Order of Dismissal be entered. The Court generally accepts the master’s recommendation and dismisses the action. There are no negotiations so “negotiated settlement” would not seem to be the correct option.

In looking for guidance in the Frequently Asked questions (FAQ)... LSC indicates in one FAQ that “if the court decides an issue in litigation (rather than taking a technical action such as accepting a settlement, granting a voluntary dismissal or allowing counsel to withdraw for a case), the case should be closed as a Court Decision. There’s also a FAQ that says that even if a judge holds a hearing and/or conducts a substantive review before approving a settlement or incorporating a settlement into an Order, the case is a negotiated settlement, NOT a court decision.

Query ...how should these be closed...I(a) (uncontested court decision), I (b) contested court decision, or L (extensive services for voluntary dismissals)?

Question b -- I would think that if CYS chose to proceed and the parents contested the case, any decision would then be considered a 1(b) contested court decision, even if our attorney agreed with CYS's position to proceed. Correct?

**Answer to Question a** – the main issue presented is how to count a voluntary dismissal initiated by CYS in the circumstances set out in your question. Most often, voluntary dismissal by another party than the program's client comes as a result of a settlement agreement, but in these circumstances that is not the situation. This is a close case and it is particularly so because the GAL context is very different from normal litigation.

In this limited GAL context, we do not consider I(b) Contested Court Decision to be the appropriate category, since the CYS is choosing voluntarily to dismiss at the outset of the court proceeding. In choosing between I(a) and L, we note that 2008 CSR Handbook Note 51 was intended primarily to refer to cases in which the program voluntarily dismisses a case. This interpretation is reinforced by the wording of the last sentence of Section 8.3, Case Closure Category L which reads:

In addition, cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, *or in which an order of withdrawal or voluntary dismissal is entered* should be closed in this category. (Emphasis supplied)

The placement of the phrase “order of withdrawal” next to “voluntary dismissal” in this sentence further indicates that the voluntary dismissal being discussed in this sentence is in the context of an action by the program to get out of or close out a case.

Accordingly, we conclude that Uncontested Court Decision I(a) is the appropriate case closing code for the circumstances described above.

**Answer to Question b** -- We agree that Contested Court Decision I(b) is the appropriate closing code if CYS does proceed with the case, irrespective of which position the program is taking -- except that I(a) may be appropriate if no party opposes the dependency petition and it is granted.

**Question 19** – Can you please tell me whether this is a B or an L?

Issue is a welfare termination or denial.

We speak with client on the phone numerous times, including the initial client interview. A few calls are made to Social Services on client's behalf.

Fair hearing requested. (sometimes the client has already requested it)

Minimal legal research is done because the issue is fairly routine and not a lot of research or preparation is necessary to work up the case once you have appeared on many of these cases.

We attend the fair hearing. Client does not show or call. We can't reach client via telephone.

We send client a follow up letter, no response.

OR client responds but did not have a valid excuse for failure to attend.  
OR client decided not to proceed.

Sometimes the fair hearings are 20 minutes away, other times the fair hearings are scheduled 1 hour away (one-way.)

The legal analysis of this type of case can be so routine that the amount of work put into it is not "extensive," however, a court appearance that takes up an entire morning is often involved. An hour to get there, an hour to wait for the client before the Judge will dismiss the attorney, and an hour back to the office.

Does this type of situation fall under your last sentence of the Category L description, which states that "... cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, or in which an order of withdrawal or voluntary dismissal is entered should be closed in this category." -?

Please advise. The consensus here is that this falls under category B, but I wonder whether a court appearance is more than a brief service. Thanks very much!

**Answer** – Actual attendance at a hearing in which the program had agreed to represent the client, whether an administrative hearing, as in your case, or a court hearing, is sufficient to support closing a case as L, Extensive Service (when, as in your fact situation, that case does not qualify to be closed as in the G, H or I categories, because there is no settlement or court or administrative agency decision). The court or administrative agency appearance is sufficient under the last sentence of L, even in the rare case where the appearance did not in fact require extensive work.

**Question 20** – Can you please provide some guidance as to whether the services provided below are Matters or CSR reportable cases; and if they are cases are they both A's or can the case involving a custody issue be closed as a B.

Item a -- Client calls hotline for advice re divorce. Client is screened, referred to attorney, and accepted. Attorney obtains the relevant facts from the client and "advises them of the required period of separation before they can file for a divorce based on their specific facts." In cases where there are no children involved the client is then sent a letter summarizing the advice and a copy of the appropriate standard form.

Item b -- In cases where children are involved and custody is an issue the attorney sends a letter and a copy of the appropriate form which includes "sections that have been specifically drafted to reflect their case."

**Answer** – As to item a, it is an A, Counsel and Advice case as you said, provided that the client was advised when he or she could actually file, because an attorney reviewed the client's particular facts and provided legal advice to the client based on these facts. If the

attorney only told the client that how long the required waiting period is and did not specify when the particular client could file for divorce, then it is not clear whether there was application of the law to the client's specific facts and, absent further information confirming the provision of legal advice related to the client's specific facts, it may be only "legal information" and may qualify only as an "Other Service" (formerly Matter).

Item b is a close call between A, Counsel and Advice, and B, Limited Action. The program's work in creating sections of a standard form "that have been specifically drafted to reflect [the client's] case", is similar to the element of the last sentence of the description of B – Limited Action in Section 8.2 of the 2008 CSR Handbook which reads:

*or legal assistance to a pro se client<sup>46</sup> that involves assistance with preparation of court or other legal documents. And footnote 46 reads:*

*Provided it meets the definition of a "case" legal assistance to pro se clients may be closed as CSR Closure Categories A – Advice and Counsel, B – Limited Action, or L Extensive Service, depending on the level of assistance provided to the client.*

When sections of a letter are actually drafted by, rather than just reviewed by, an attorney, the level of the assistance is appropriately closed as B, Limited Action.

**Question 21** – I was hoping you could clarify a closing code issue. We have a program at the courthouse called "Lawyer for a Day". It is an unbundled service for LSC eligible pro per litigants going to trial on their unlawful detainer cases, as defendants sued for eviction by their landlord.

A staff attorney, or a volunteer attorney, will execute a retainer with the pro per solely to represent the client in pretrial negotiations, instigated by the parties, or in some cases, by the Judge who is conducting the trial. We have found that much better settlements can be obtained for the clients by being in the courthouse and conducting "hallway negotiations" with opposing party and counsel on behalf of our client. These negotiations can take 15 minutes to over an hour, depending on the facts, willingness of the parties to negotiate, etc.

Our attorneys do not enter an appearance before the Court, however the Judge does note on the record that the client was assisted by the "Attorney for the Day" program. The attorney is actually representing the client for purposes of the settlement negotiations, and retainers, attestations, signed applications for services are all prepared, executed and placed in the client file. The settlement documentation is placed in the file. Thus the program negotiates and reaches an actual settlement on behalf of a client while the court action is pending. Our program lawyers actually represent the client in the settlement negotiations, via the retainer agreement. The attorney conducts the negotiations, not the pro per client with coaching from a lawyer.

These activities, when there is a successful settlement, would seem to fall within Case Closure Category G (scenario 2, as set out in the definition). But that scenario, "prior to the program's entry as counsel of record", could (I am not sure here), be a requirement that the program has to subsequently make an entry on the record. In that case, this would not be the appropriate code.

Since LASSD attorneys in this particular program are not representing the client from filing to judgment, and only spend about an hour per client, it could also be seen as Closure Category B, Limited Action. Additionally, we have four attorneys who do full landlord-tenant court representation, and they settle many cases the same way, at the courthouse, after pleading, doing discovery, and preparing for trial. They are attorney of record, and have made an appearance (although that is only required, evidently, under scenario 1). Using code G, there would be no distinction between the two types of settlements.

**Answer** – You are correct in your analysis that the scenario you present with the “Attorney for the Day” is a Settlement with Litigation, Closing Code G. The requirements for what you refer to as “scenario 2” in the description of Closing Code G are met<sup>2</sup> – provided that there is a copy of the settlement agreement or written confirmation of the settlement agreement with the opposing party in the case file. Even though only limited time has been spent on the case, the result is a settlement agreement after litigation has been filed and that settlement agreement was negotiated by the “Attorney for the Day” representing that client. This meets all the conditions for G, Settlement with Litigation.

(If the settlement negotiations fail and the “Attorney for the Day” does not represent the client in the further litigation -- as we would assume from your fact statement), then the case would be B, Limited Action).

We note the difference you mentioned between a negotiated settlement with litigation where the program represented the client from the beginning of the case through the settlement and this situation, where the program negotiated on behalf of the client as an unbundled service. However the result in both situations is still a settlement for the client, and the Closing Code G includes both of these situations.

**Question 22** – We have a question about the appropriate case closing code for our pro se divorce clinic clients. We are debating between code B and code L. These are clinics for people with children. At the clinic the participant receives all forms/pleadings to complete a divorce, comprehensive instruction on completing the forms, which they do during the clinic, and instruction on how to file and finalize the divorce. In addition, our

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<sup>2</sup> Where a program attorney negotiates a settlement in a litigated case prior to the program's entry of an appearance as counsel of record, the element of “appearance before a court or administrative agency as counsel of record” is not required.

staff complete the very complicated child support worksheets for the client in advance of the clinic. The clinics last approximately four hours. Once the client leaves the clinic they are on their own to complete their divorce, although they are invited to call us back at any time that they may have questions during the process.

Our question is would the divorce clinic cases be closed as code B or code L. We feel that there was extensive service since the client was not simply provided a packet of forms with limited instruction and sent on their way. We also, as noted above, complete for them a complicated child support worksheet, without which they could not file their divorce.

**Answer** – This is a judgment call depending on the extent and complexity of the legal work done for the client. “Extensive on-going assistance to clients who are proceeding *pro se*” is one of the types of case that may be closed in Category L. Guidance as to the factors to be considered in whether a case is closed as L are set forth in footnote 54 of the 2008 CSR Handbook:

*Factors that favor selection of CSR Closure Category L include but are not limited to: (1) a high level of factual complexity; (2) a highly sophisticated legal analysis; (3) drafting of non-routine original pleadings or legal documents; and (4) significant legal research. Although not controlling, programs may also consider whether a substantial amount of time was charged to the case as evidence of extensive services.*

The assignment of B or L code should be determined on a case-by-case basis. It is quite likely that some of these cases would qualify only as code B, while others at the same clinic would qualify as code L, because their fact situation is more complex, or requires more analysis or more complex analysis, or requires more follow up with the client.

**Question 23** – I recently attended a CSR training with LSC going over the new CSR requirements for 2008. I asked the following question to one of the trainers, who asked me to email this question in: What constitutes a “third party contact” in order to close a case under the B closure code? During the training, the third party contact was addressed as contact with the adverse party. The closure category is silent on the significance of the third party contact. I have always been trained that the third party contact had to be significant. A telephone call to the Clerk of Court’s office and/or a social service agency getting general information in order to pass it on to the client would not count as “third party” contact sufficient enough for me to close a case under the closure code of B. However, I have not been able to find any written requirement concerning the types of third party contact that would or would not allow me to close a case under the B closure code.

**Answer** – There is no limitation in the 2008 CSR Handbook as to the type of third-party contact needed to qualify a case as B, Limited Action. Thus, any third party contact that is needed to enable your program to serve the client is sufficient. It is, of course, necessary that the service rendered to the client is sufficient to meet the definition of legal assistance in Section 2.2 of the Handbook. If you make third party contact and merely

pass along legal information to the client, this would not qualify as any type of CSR case, either A or B, but if other legal assistance is also rendered, you may then close the case as B, Limited Action, rather than A, Counsel and Advice.

**Question 24** – At a training, I asked a question regarding the appropriate case closing code in a certain type of proceeding employed in the context of evictions of tenants in public housing and section 8 voucher programs and I was asked to submit the question via email. A redacted example of the decision resulting from such a proceeding is attached.

The question is whether this is an administrative agency decision or a negotiated settlement without litigation.

Per CFRs applicable to HUD, evictions from public and subsidized housing generally follow a 3-step procedure, which begins with a notice going to the tenant stating that assistance is terminated. Note that it does not say they are considering termination, but that it is in fact terminated. If the tenant does nothing, the Housing Authority will cancel the section 8 voucher assistance payment and/or file an eviction action in court. If the tenant so requests, they can receive an “informal conference” which may seem from the regulations to appear to be a settlement conference. In practice locally, however, it often feels much more like an argument to an administrative official followed by a decision than it does like alternative dispute resolution, as the attached example illustrates. When the decisions favor our clients, they usually are like this one, and look like formal decisions which basically find that while the decision to terminate was justifiable the agency will use its discretion and not evict.

Note that the informal conference is held by a person within the same Housing Authority but who did not make the decision to terminate assistance. Also, witnesses are usually called and evidence presented. This makes it begin to feel like a tribunal, I think.

If the tenant is unsatisfied by the outcome of the “informal” proceeding, then they get a “formal” hearing conducted by an official from a different housing authority supposedly to ensure more neutrality. And then finally, if that too goes against the tenant, an eviction complaint is filed in court. It is true that the administrative decision is not supposed to receive any deference from the court.

My position is that the formal hearings are definitely administrative decisions, and of course the court proceedings are litigation. The “informal” proceedings, however, seem to be of varying character. I believe that, at minimum, when a decision such as this is in the file, we should close these files as administrative agency decision. Whether a given informal process is a settlement between the client & the housing authority, or an administrative decision by the housing authority, should be decided on a case-by-case basis depending on the character of the resolution reached. Sometimes, the informal conference results in proposed alternatives to eviction which the housing authority

accepts. Other times, it simply results in the decision not to evict. In the former case, I believe it is a settlement, and in the latter, an administrative decision.

**Answer** – Even though the Housing Authority hearing is denominated an informal proceeding, if it produces an issuance in the format of an agency decision, as in the attached, we concur with you that it should be closed as H, Agency Decision. The fact that the client could proceed to a formal agency hearing if he/she was not satisfied with the decision does not change its classification.

We also agree with you that there are a variety of kinds of informal proceedings and that the result of some of them should be classified as G, Settlement with Litigation and others as H, Agency Decision. In instances in which there is a written settlement agreement, or even a verbal settlement agreement, accepted by the client and the Housing Authority, it is G, Settlement with Litigation. In instances in which the hearing officer issues a decision, it is H, Agency Decision.

We would expect most of these informal proceedings will fall to one side or the other of this line. For any that do not, we cannot better your formulation which we adopt: *Whether a given informal process is a settlement between the client and the housing authority, or an administrative decision by the housing authority, should be decided on a case-by-case basis depending on the character of the resolution reached.*

**Question 25** -- We are seeing an increase in family law clients becoming ineligible after the representation has begun. This is brought to our attention once litigation has commenced or is about to commence and the income of the client has to be verified with the court for purposes of the *in forma pauperis* statute. We provided limited legal assistance when the client was LSC eligible but since then, withdrew in accordance with 45 CFR 1611.8. I did not find any answers in the July 2010 CSR Q&A's.

Query: For CSR purposes, can this case be counted?

We did provide permissible legal assistance to “an eligible client with a legal problem.” We stopped providing legal services after the client became ineligible. The closure category would be limited to the point where the client became ineligible? It would be a shame not to get credit for the expenditure of permitted LSC resources.

**Answer** -- This is a question that did not previously arise as such cases were closed under “Change in Eligibility.” Since this Category has been eliminated, the choice is between reporting the highest level of service provided before the client became ineligible or the highest level of service provided during the whole of the program's representation. When the client was clearly eligible at the beginning of the case and subsequently becomes ineligible, you should report the case at the highest level of service provided during the whole of the program's representation (as the program was appropriately in the case, until withdrawal could be accomplished pursuant to the provisions of 45 CFR 1611.8).

However, if the client is discovered never to have been eligible, whether owing to incorrect information provided by the client or other error, and was ineligible from the beginning of the case, the case should be deselected as laid out in Section 3.5 of the 2008 CSR Handbook, and not reported to LSC as a CSR case.

In the example provided, if a motion to withdraw was the main court action activity, the case should be closed as an "L". If however, uncontested or contested hearings and rulings had occurred prior to the program's withdrawal, then the case could be closed as a Court Decision, I(a) or I(b), respectively.

**Question 26** -- A common scenario in a family law case would be (1) a consent judgment on custody and (2) an uncontested court judgment on divorce.

Normally, the custody part takes much more work than the divorce. In the FAQs, you seem to say that such a case should be closed as an I instead of a G because I is higher in the alphabet.

But, the custody was really the bulk of the work, and it was concluded by a consent or stipulated judgment.

The problem goes the other way, too, you may get a contested court decision on a protective order, but later settle the custody. Again, the case would probably be classified as a custody if it (as normal) involved more work than the protective order. Does the case get closed as an I or a G?

**Answer** – The determination of the problem code is done based on what best characterizes the case which would usually be what was the bulk of the work or the most significant part of the case. As a rule of decision, the determination of the closing code when two or more closing codes are possibly applicable goes to the highest applicable code in the alphabet (with the exception of K and L, which apply only if another code does not apply).

Accordingly, you should close a case in which there was an uncontested court judgment on divorce and a consent judgment on custody as Ia, Uncontested Court Decision, even though the bulk of the work was done on the Custody issues which were settled; however, you should still assign the problem code as Custody. Similarly, if you have a contested court decision on a Protective Order and later a settlement on custody, you should close the case as 1b, Contested Court Decision, but you should use your judgment as to whether the custody is the most significant part of the case and choose the Problem Code accordingly.

While much more often than not, the higher letter will involve the larger share of the work, as you point out, this is not always the case, especially in Family Law cases. Nevertheless, we believe that there are benefits of uniform use of this rule of decision for case closing codes in making it easy to assign case closing codes and in uniformity of usage among grantees and we believe that these benefits outweigh any situations in

which more of the work is done in the part of the case that is under the case closing code not selected.

**Question 27** -- We are doing a lot of limited representation (LAR) work here as LAR is now permitted in many of the courts where our clients appear. I have been taking the view that unless the case is resolved by the entering of a judgment or negotiated with (or without) litigation, I close the case as either advice or brief service. The staff have been suggesting that this is underreporting our work and that we should consider using the code of 111 (L), Extensive Service. I have reviewed the definition of that section and do not believe it would be applicable. Nor do I believe closing the cases as a Court decision or Negotiated Settlement would be appropriate. Let me give some example of how this comes up. In the family law context, an attorney can negotiate with the opposing side and try to negotiate a child support amount or go before the judge on a Motion for Child Support and achieve the entry of a child support award as an interim order. The case would not be complete at that stage. In the consumer area, the attorney could argue a Motion to Vacate Judgment. In other cases, the attorney could attempt mediation but not ultimately succeed. I see us doing more of this work and I am anxious to not undercount these cases which is why I would appreciate your guidance.

**Answer** – The appropriate Closing Code for a case is determined by the amount and type of services actually rendered to the client, not by whether those services were limited by the terms of the retainer agreement or other definition of the scope of representation. Accordingly, cases that do not result in a court or administrative agency decision or a settlement agreement, can be closed appropriately under any of Codes A, Counsel and Advice, B, Limited Action, and L, Extensive Service, depending on the level and type of service rendered. There is nothing in the definition of L, Extensive Service, that supports the exclusion of LAR cases from this category, if the level and amount of services rendered to the client otherwise meets the definition of Extensive Service. Furthermore, as described in your question, some of the LAR services provided would meet the closing code definition of L, Extensive Service, and would be underreported if closed as a “B” Brief Service.

Please note that 45 CFR Part 1611 requires a retainer agreement for all cases closed at the level of “L.” Furthermore, to comply with Part 1611, that retainer agreement should accurately reflect the subject matter and scope of the services to be provided by the program.

**Question 28** -- I am writing to follow up with a question in the CSR webinar training. My question was how to close an immigration case. I have two general categories of immigration cases, those that go in front of an immigration judge and those that do not. For the former, I would clearly close the case as an "H." The debate is over the latter.

After reading and re-reading the closing codes numerous times, I have concluded that "H" is the appropriate category, but other attorneys within the organization disagree. Here is why I believe "H" is correct. An immigration case, unlike many other applications

made to administrative agencies, is a complex and formal process requiring months of evidence gathering and the preparation of a legal brief. I spend more time per immigration case than most attorneys spend on any other type of case they have aside from complex litigation matters. The immigration application is dealt with by USCIS in one of two ways. First, for non-domestic violence cases (and here, for domestic violence cases, I am including U Visas and T Visas as well as VAWA Self-petitions), the case usually goes before a local immigration officer for an interview, and a decision is made after the interview. As an attorney, I have the right to monitor the interview and object to inappropriate questions. The process for the other cases is just as formal, it's just that USCIS has determined that no interview is necessary for adjudication.

Category "H" covers "case-dispositive decision[s] by the administrative agency or body, after a hearing or *other formal administrative process*." It is not resolved informally through brief contacts, as would require a closing code of B or F. This is contrasted with "L," which is appropriate for extensive research, preparation of legal documents, or advising pro se clients, among other things. Preparing a will or contract is nothing like preparing an immigration application. With an immigration application, I am basically putting on paper the evidence and arguments that I would otherwise make in front of a court. I submit affidavits from witnesses and photocopies of other relevant evidence. I use this evidence in support of the legal argument I am making, which is that the client qualifies for X benefit because he/she satisfies each element as put forth in the statute. A will, contract, or other similar document will not go before any sort of adjudicative officer (judge, jury, administrative employee) for review. L to me seems to be best for cases where extensive work is conducted but with no formal decision from an officer or court. This is not what happens in an immigration case.

**Answer** – In general, we agree with your analysis of these immigration cases. If you represent a client before USCIS (United States Citizenship and Immigration Service) in an immigration case leading to a decision to grant or retain a particular immigration status, it is an administrative agency decision, even if there is no actual hearing before an immigration officer. This argument applies to all the examples you give in your question, even though some of these statuses may be temporary.

We distinguish these more complex cases from those involving assistance to a client in making a routine application to USCIS, such as a visa for a relative to visit, that USCIS granted, which would more properly be closed as a "B" or a "L."

**Question 29** -- The client in the case was a victim of domestic abuse. The program opened two cases on her behalf to abate the situation, the first one against her husband or partner and a second one against her husband's sister. In both cases they filed different Petitions asking for temporary restraining orders. In the case against her husband's sister, the Court denied the issuance of the requested ex parte order and set the case for a hearing. At that instance the client moved for a voluntary dismissal of her Petition against her husband's sister. That motion for voluntary dismissal was granted by the Court. As

stated above, since the request for the ex parte restraining order was denied by the Court, the program closed the case as an **Ia**.

But, since, after the denial of the ex parte order, the case was set for hearing and it was the client who moved voluntarily for its dismissal, should the correct Closing Code for this case be an L?

**Answer** – the decision whether this case is closed as L or Ia is governed by footnote 51 of the 2008 CSR Handbook which reads as follows:

*This {closing as case as I, Court Decision} does not include settlements made during the course of litigation approved by the administrative agency or court, voluntary dismissals or the grant of a motion to withdraw as counsel. However, although it may not be technically case dispositive, a case closed after a TRO or similar interim order made on the merits has been entered, may be closed in this category when the litigation is not pursued further.*

The most usual application of this footnote is when a TRO is granted and the client later voluntarily dismisses the case. In this situation, an ex parte order was denied and the case was later voluntarily dismissed. We can see arguments for the denial of a TRO or similar interim order being counted as either Ia or L when the case is subsequently voluntarily dismissed. In the interests of consistency with the practice that the outcome of a case, favorable or unfavorable, does not change its classification as to Reason for Closure, we include this situation where a TRO or similar interim order is denied and the client subsequently chooses a voluntary dismissal within the exception under footnote 51 to the more general rule of counting voluntary dismissals as L, Extensive Service. Accordingly, we agree with the Ia classification given this case by the grantee.

**Question 30** -- Should a matter (Other Service), as well as a case, be reported in a situation where a program accepts a case and renders some service (at least Counsel & Advice) to an eligible client and then also refers the client for further or additional service.

**Answer** – No, only a case should be reported. Footnote 43 in the 2008 CSR Handbook directly addresses this issue:

*CSR Closure Categories A and B include cases in which a referral has been made after the legal assistance was provided. Referrals without the provision of legal assistance should be reported as Other Services under the OSR system. Cases in which a referral is made after the provision of legal assistance may not be reported as both a CSR case and a matter.*

**Question 31** -- Recently, I became aware that the following fact pattern was being considered as a “G” by some. As this was not intended by the Handbook working group to qualify as a “G”, I seek clarification.

*Client being evicted, program calls the other party to negotiate. Other party already filed a case. Program negotiates a settlement, but had no intent to file as counsel of record.*

The exception of “prior to the entry as counsel of record” does not appear to apply in this instance, as the program was never going to file. As such, this could be an “F” if it meets other “F” requirements. Is it correct that G is only for counsel of record, unless the case is resolved before the program has had a chance to file as counsel of record. In training conducted by LSC, this has been referred to as the “courthouse steps” exception. The example was used that program attorneys do settle cases through negotiation when the other party sees the existence of opposing counsel (the LSC program attorney). With settlement in hand, there was no need to file as formal counsel. However, without the program having been willing to or about to file as counsel, the settlement would likely not have occurred

**Answer** – upon careful consideration we agree that “intent” to file as counsel of record is required to count a case that is settled prior to a program filing an appearance as G, Settled with Litigation. Consequently, if a program represents a client who is sued and the program settles the case for the client without filing or intending to file in court, the case should be reported as F, Settled without Litigation, even though the adverse party did file in court.

This issue is clear when the program is the one taking the initiative – a case is F if the program does not file a case and G if the program does file. If the program is defending, and does not file an appearance, it is obviously F. If a case is filed and the program defends in court, it is obviously G or higher. The area worth discussion is if the client is sued, the program represents the client, and the program settles without actually filing in court.

The relevant text of the 2008 CSR Handbook is paragraph 2 of Section 8.3 G which reads:

*This category includes only: (1) cases in which an appearance has been entered before a court or administrative agency as counsel of record; or (2) cases in which the settlement was reached prior to the program’s entry as counsel of record, provided that the program was actually representing the client in the negotiations (not assisting a pro se client) and provided that there is documentation of the settlement in the case file – preferably a copy of the actual settlement agreement, written confirmation of the settlement with the opposing party, or, if neither of these are available, a copy of a communication to the client outlining the terms of the settlement.*

The two clear conditions of alternative two are: (1) that a settlement was reached prior to the program's entry as counsel of record (provided the program was representing the client and not assisting a pro se client), and (2) there is documentation of the settlement in the case file (this second element shares commonality with closing code "F"). The question at issue here is whether the program has to have "intent" to file as counsel of record to allow a case to be closed as G, Settlement with Litigation. There is no clear textual basis requiring either result.

Nevertheless, our conclusion is that such intent is required. This conclusion is based on both policy and prior intent of the CSR working group.

On a policy basis, if "intent" to file is not required, a program could close any case filed against its client as G, Settled with Litigation based on a telephone call to the opposing attorney and evidence of a settlement. This would be an undesirable result, allowing very "light" G cases that are not at all comparable with what a G case was meant to represent. It is a better interpretation, which we adopt, that the "with litigation" element of G means that the **program** engaged in, or was imminently about to engage in, litigation which led to a settlement.

The prior intent of the CSR Committee, although not unambiguously set forth in the language of the Paragraph 2 of G quoted above, was that it applies to situations in which a settlement stemmed from litigation activities, although technically the program may not yet have had time to file an appearance.

Thus, as stated above, this case and any like it should be closed as F, Settled without Litigation – unless there is not sufficient evidence of a settlement agreement to support either F or G under the requirements of Section 8.3 G as quoted above -- in which case it should be closed as L, Extensive Service.

**Question 32** – In the process of closing a family law case in my office, a question arose that I could not find addressed in the FAQs. I hope you may be able to resolve this matter. Here's my question:

Staff attorneys in the family law unit who work with survivors of domestic abuse draft several documents per case for filing in court. These documents include a petition setting forth allegations and the relief sought, a financial statement that includes the client's income and all expenses, and a property statement that lists all of the client's property and debt. To prepare these documents, the attorney must review a 24 page questionnaire from the client and discuss the issues with the client. Sometimes, after preparing the documents but before the documents are filed, the client chooses not to proceed. Are these pleadings considered "complex legal documents?" If so, should the closing code be L because the work involved the "preparation of complex legal documents?" Or, does closing code A or B apply?

**Answer** -- Under the facts you set forth, including that you reviewed these documents with the client (or the client otherwise received them), the case should be closed as

L, Extensive Service. We come to this conclusion based primarily on the overall extent of the service provided, even if none of the particular documents prepared is, individually taken, a “complex legal document.” See 2008 CSR Handbook Footnote 54 which indicates that the judgment call as to whether a case qualifies as L depends on whether the amount of assistance provided “clearly exceeds the amount of work that would be performed for CSR Case Closure Categories A – Counsel and Advice – or B -- Limited Action...” When you prepare several documents, they may cumulatively qualify a case as L rather than B, even if none of them, taken individually, would do so.

We also note that, in close cases, it is a judgment call whether a given legal document has a sufficient level of complexity to qualify for L. The decision will be left to the professional judgment of the program, provided that the judgment exercised is reasonable.

## **CHAPTER IX – Legal Problem Code Categories and Codes**

**Question 1** – Are zoning/land use problems considered Municipal Legal Needs?

**Answer** – The intention of this category was to capture issues concerning municipal services, such as failure to pick up garbage. Depending on the exact problem, we would expect a zoning/land use issue pertaining to a client’s home or land to more likely be 62, Homeownership/Real Property.

**Question 2** – Does LSC want us to use the problem code 91 - Legal Assistance to Non-Profit Organization or Group for every group case, regardless of the type of case it is? For example, if we represent a group client on a contract issue should we use 91 rather than 03?

**Answer** – No, a case with a group client should still be closed under the Problem Code that best describes the subject matter of the legal assistance provided, in this case Code 3. Code 91 will be used only occasionally when the subject matter of the case is organizational in nature, such as Incorporation of an organization.

**Question 3** – We are uncertain about what sorts of law problems would be classified under new Health category 57 - State & Local Health and how it is different from some of the other categories.

**Answer** – Code 57 is intended to capture any legal work done to get state and local health services for eligible clients or to assert their rights once they are receiving such services, if these services do not fall under one of the other Codes, such as Medicaid or CHIPS.

**Question 4** – Our health team managing attorney notes that the home and community based care cases we have had have virtually all been Medicaid. Since there were no explanations given for the new case classifications, we are not clear whether we should use the new code 54 even though the cases are part of Medicaid, or whether those cases should be classified as 51-Medicaid.

**Answer** – If a case is Medicaid, it should be closed as Medicaid. The new category was suggested by field representatives and is intended to encompass any home and community based care cases that are not Medicaid (or Medicare).

**Question 5** – What is the official definition of the legal problem code “Public Housing?” Does this just mean public housing that does not receive any federal subsidies? Or does it include conventional public housing as defined by HUD rules?

**Answer** – There is no change in Code 64, except that we changed the caption from “Other Public Housing” to “Public Housing” because we thought the word “Other” was unnecessary. Therefore, you should continue to close the same type of cases under Code 64 that you have heretofore done. Code 61, Federally Subsidized Housing, refers to programs such as Section 8 housing.

**Question 6** – In our state, conservatorship/guardianships go through Probate Court, not Family Court. May we code conservatorships/guardianships as 99 (other miscellaneous) instead of the new family code 33?

**Answer** – these cases are still family law matters, even if they do not go through family court. Our Problem Codes are descriptive and need not follow the structure of your state courts. Accordingly, we recommend you code these cases in Code 33.

**Question 7** – We would like to track pension rights cases since this is an emerging new problem of significance. There does not seem to be a code for this problem in the new CSR system. Do you have any suggestions as to what we should use, 25 for employee rights (but a lot of pension holders are no longer employees) or other employment?

**Answer** – We agree with using Code 25, Employee Rights, for pension rights cases. Even though many of the clients may no longer be employees, their pension rights are rights vesting in them on the basis of their status as (former) employees. This is more descriptive than using Code 29, Other Employment.

**Question 8** – I would like a current opinion on how to report certain domestic cases. Way back.....1986/87....LSC issued a notification that they were changing to a 3 digit

legal code and expanding 320-Divorce/Separation/Annulment. New legal codes would be added, 321-Divorce with Abuse, 322-Divorce with Custody and 323-Divorce with Abuse and Custody. We were in the process at that very time of having a database program written for case management and we implemented the new legal codes. LSC decided not to implement the proposed changes. We have continued to utilize the additional divorce codes and several years ago expanded our codes to allow us to distinguish cases with or without abuse in custody and paternity actions as well.

Historically, all divorce actions with or without abuse have been reported to LSC as legal code 32, all custody issues with or without abuse as 31 and all paternity actions with or without abuse as 36. Legal code 37 has been used to report protection from abuse (PFA) orders. In most situations the protection from abuse is filed separately from the divorce, custody or paternity action and we would be reporting a divorce and a domestic abuse in the CSR. However many times the client has already filed and obtained the PFA. We will open that case as our code 321-Divorce with Abuse.

With the implementation of the revised CSR Handbook, what is the current opinion on which legal code you prefer we use when reporting divorce, custody and paternity actions involving abuse.

**Answer** – The general rule is to use the problem code that best describes the case. Thus, if the major portion of the case is securing a divorce, the proper code would be 32, if the major portion of the case is securing Custody, then the correct code would be 31, if the major portion of the case is establishing Paternity, then 36, and if the major portion of the case is Domestic Abuse, then it would be 37. This is a judgment call at the program level.

Since there is great interest in Domestic Abuse, in situations where the case contains relatively equal portions of legal work that fall into two or more of these Problem Codes, you should consider using 37, Domestic Abuse. Of course, as you mentioned, if the Protection from Abuse is a separate court action, it should be reported as a separate case – and if the client has already gotten a PFA order and the major portion of the program’s case is obtaining custody, obtaining a divorce or establishing paternity, then the case is rightly coded as 31, 32, or 36, respectively.

**Question 9** – We have a grant from the courts in San Diego to provide civil harassment restraining order assistance to eligible clients. The cases fall into several relationship categories, including the following:

1. Interfamilial, such as brother/sister; grandparent/grandchild; etc.
2. Complainant's exspouse's new boyfriend/girlfriend harassing complainant.
3. Roommate or exroommate disputes (with no familial relationship present or past).
4. Neighbor disputes.
5. Coworker disputes.
6. Stalkers.

What problem code should we use for these cases, and would it be different, depending on the relationship involved? In the past we have used either 37 (for family members) or 39 (for nonfamily members), but realized that technically these are not family cases (at least where there is no familial relationship). We have also thought about 89 (other individual rights) for non familial relationship cases or simply 99.

**Answer** – We agree with your classification of the first type of cases as 37 – Domestic Abuse. This would also be a reasonable classification for instances of #2 or #3 in which the parties to the dispute are living together or were living together when the conduct in question occurred. For all of #4, #5, and #6 and for those instances of #2 and #3 in which the parties were not living together at the time of the conduct in question, 89 – Other Individual Rights is the most reasonable choice.

**Question 10** – We had a question on the CSR Legal Problem Codes under Housing, and specifically 65 – Mobile Homes. What do we report under this problem code? Our discussion in training our staff on the CSR changes for 2008 is that we really don't know what LSC wants us to report here.

Many of the staff indicate that if an individual lives in a mobile home but the problem is eviction and/or a landlord/tenant problem, we need to report it under that problem code and not mobile home. The other is, if the individual owns the mobile and it is being repossessed or there are other contractual problems with the mobile home, then it becomes either Foreclosure, Collections and/or Contract issue.

So, our question is what types of cases do we report under “mobile home – category 65”? If you can give us some information, it would be greatly appreciated it. Thank you.

**Answer** – First, as a general observation, it is not unusual to have a case to which more than one Legal Problem Code can reasonably be applied. This would apply to some of the examples you have given.

As a general guideline, when the situation is peculiar to mobile homes, such as mobile home park closings, zoning, or evictions from a mobile home park (not from the mobile home itself) the case should be coded as 65, mobile home. Most jurisdictions have special legislation for mobile home parks or other governmental requirements applicable to mobile homes. When the case involves application of such laws, code 65 should be used.

**Question 11** – I would like a current opinion on how to report certain domestic cases. Way back.....1986/87....LSC issued a notification that they were changing to a 3 digit legal code and expanding 320-Divorce/Separation/Annulment. New legal codes would be added, 321-Divorce with Abuse, 322-Divorce with Custody and 323-Divorce with Abuse and Custody. My program was in the process at that very time of having a database program written for case management and we implemented the new legal codes. LSC decided not to implement the proposed changes. We have continued to

utilize the additional divorce codes and several years ago expanded our codes to allow us to distinguish cases with or without abuse in custody and paternity actions as well.

Historically, all divorce actions with or without abuse have been reported to LSC as legal code 32, all custody issues with or without abuse as 31 and all paternity actions with or without abuse as 36. Legal code 37 has been used to report protection from abuse (PFA) orders. In most situations the protection from abuse is filed separately from the divorce, custody or paternity action and we would be reporting a divorce and a domestic abuse in the CSR. However many times the client has already filed and obtained the PFA. We will open that case as our code 321-Divorce with Abuse. Our program experienced a CSR review back in 1998 and the team at that time was fine with the way we were reporting them.

I thought with the implementation of the revised CSR Handbook and the fact that our program is scheduled to undergo a CSR review later this year, it might be a good idea to ask for a current opinion on which legal code you prefer we use when reporting divorce, custody and paternity actions involving abuse.

**Answer** – The general rule is to use the problem code that best describes the case. Thus, if the major portion of the case is securing a divorce, the proper code would be 32, if the major portion of the case is securing Custody, then the correct code would be 31, if the major portion of the case is establishing Paternity, then 36, and if the major portion of the case is Domestic Abuse, then it would be 37. This is a judgment call at the program level.

Since there is great interest in Domestic Abuse, in situations where the case contains relatively equal portions of legal work that fall into two or more of these Problem Codes, you should consider using 37, Domestic Abuse. Of course, as you mentioned, if the Protection from Abuse is a separate court action, it should be reported as a separate case – and if the client has already gotten a PFA order and the major portion of the program's case is obtaining custody, obtaining a divorce or establishing paternity, then the case is rightly coded as 31, 32, or 36, respectively.

**Question 12** – I've been noticing more and more that we've been getting inquiries on problems with identity theft. The issue I'm having is with how to code these cases. Many of the clients have trouble with obtaining credit as a result. This is not the only problem that develops from identity theft. I can't find anything in the CSR or the CSR FAQs that deal with this. Can you help?

**Answer** – Identity theft is a consumer issue that does not fall within the eight specific Consumer categories listed in Section 9 of the 2008 CSR Handbook. Accordingly, it should be reported under Case Type Code 9, Other Consumer/Finance.

**Question 13** – How should arrest record expungements be coded? There seem to be several choices, 89 other individual rights for adults, or if it is a juvenile record, perhaps 41 or 49?

On the other hand, the primary reason for doing arrest record expungements is often an immediate need to remove a barrier to employment at an available job, and perhaps 29 would be the most appropriate code?

**Answer** – Arrest record expungements should be reported as Case Type Code 89, Other Individual Rights. Admittedly, they may often be related to employment, but this is the category that best describes what is actually done for the client. Also, even where the client is still a Juvenile, the Code 89 is still preferable. The Juvenile Case Type categories other than 29, Other Juvenile, deal with specific issues related to Juvenile status; and 49, Other Juvenile is in our view less descriptive of the legal problem than 89, Other Individual Rights.

## **CHAPTER X– Private Attorney Involvement Cases**

### **Section 10.1 – Definition of a Private Attorney Involvement Case**

**Question 1** – Does the definition of a private attorney involvement case exclude corporate attorneys or government attorneys who accept referrals of cases?

**Answer** – No, they are not excluded. PAI includes corporate or government attorneys who accept PAI-qualified cases.

**Question 2** – If a program has a contract with private attorneys to do cases, can such private attorneys work out of a program’s office? Some private attorneys working on contract prefer to meet clients and/or make client telephone calls in program offices. Can a program do this and still count all of it as PAI time?

**Answer** – There is no rule that a PAI attorney must work out of his or her own office. Giving PAI attorneys support by letting them work out of a program’s office is a completely appropriate PAI activity. And, accordingly, the funds used to provide that support, including support staff time, are properly charged to PAI.

**Question 3** – Volunteer attorneys staff intake clinics and interview applicants for services. Many of these applicants will ultimately be represented by staff in the office. The case is therefore considered a staff case. When we do this, there is no way to record

the work of the volunteer attorney. Based on the CSR rules we think this is the only way to operate, but the emphasis on expanding pro bono work led us to question whether we were under-reporting the work of volunteers.

**Answer** – your reading of the CSR Handbook is correct. Such cases are primarily staff cases and should be closed as such. Conversely, when a staff case handler does intake and even renders Limited Service to a client before the client is referred to a PAI component, the case is closed as a PAI case (provided the PAI referral is successful) and the staff work is included in the PAI case closing. It is not appropriate to close cases as PAI in which the volunteers do the initial intake and interview work but program staff represent the client. Only if (1) these volunteers provide Limited Service to the client **and** (2) program staff do not provide further legal assistance, then such a case should be closed as PAI.

**Question 4** – Under 45 CFR 1614, the Puerto Rico Legal Services, Inc. PAI commitment is distributed between a compensated practice component and a volunteer (pro bono) alternative. The latter consist of a subgrant agreement with PRO BONO, INC., a non profit entity created by Puerto Rico Bar Association. PRO BONO, INC. has six (6) regional offices located in different cities of our island. They are supposed to provide services to eligible clients, referring them to volunteer private attorneys. They also has staff attorneys in each of their regional offices who makes the referrals, but in many instances provide direct legal assistance to the clients, specially in the advice and counsel and the limited actions categories. Although most of their PRO BONO staff are employed in a full time capacity, some of them are on a part time contract. In addition, the vast majority of the staff are paid with LSC funds, but some are not, since PRO BONO, INC., also receives non-LSC funds.

We understand that according to the CSR 2008 Edition, Section 10.1 (b) (i) those cases in which the legal assistance is provided by an staff attorney of PRO BONO, INC., can't be reported as a PAI case. Still under Section 10.1 (b) (ii) those cases can be closed as CSR cases. How and where in the CSR and the Grant Activity Report can those cases be reported?

**Answer** – Any case under a subgrant that meets the eligibility criteria of Chapter 2 and requirements of Section 4.4 of the 2008 CSR Handbook can be reported. Section 10.1(b)(ii) applies to cases in which the PAI referral is unsuccessful **and** program staff has not provided any legal assistance to the client. The cases in question are ones in which the program, through a subgrant, **did** provide legal assistance, so Section 10.1(b)(ii) is not applicable to this situation. Accordingly, consonant with Section 10.1(b)(i), such cases as do not qualify as PAI should be reported as staff cases, provided that they are supported in whole or in part by LSC funds.

**Question 5** – At a PAI meeting among staff, we were discussing closing codes for pro se divorce cases and the following scenario was raised:

At our pro se divorce clinics pro bono attorney instructs a group of clients on filling out uncontested divorce packet; he also provides individual advice to each client. After clinic, clients often require further assistance with their paperwork, and a legal aid staff attorney or paralegal may assist them over a period of several weeks or months, answering questions and reviewing their paperwork.

When the client receives their divorce decree and the case is ready to be closed, what are the appropriate funding and closing codes.

Should they be closed as PAI-extended service

LSC-extended service

PAI-advice & counsel

**Answer** – The decision between PAI and staff is fact-specific, depending on which is deemed to provided the highest level of legal assistance in the case (see §10.1(b)(iv) of the 2008 CSR Handbook). If both provided the same level of assistance (i.e. B, Limited Service), then it should be whichever provided the majority of the legal assistance (and this is a judgment call that would not be questioned if the assignment is within reason).

Whether the cases should be closed as A, Counsel and Advice, B, Limited Service, or L, Extensive Service, is also fact-specific, depending on the type and amount of legal assistance rendered to the client in each case.

**Question 6** – We have some part time staff attorneys that provide legal advice to clients at our Pro Bono Legal Advice Clinics outside of their work hours. They meet with clients on a one on one basis and then confirm their advice to the clients using CLSMF letterhead. Can we count their legal advice clinic cases as PAI cases or must they be counted as Staff cases?

**Answer** – No, these cases should be counted as staff cases. Unless your part time staff attorneys have other employment such that the income from your program is not more than one half of their respective professional incomes, such part time attorneys fall under the definition of “staff attorney” in 45 CFR 1600. Any cases in which the legal assistance is provided by “staff attorneys” can never be counted as PAI cases, so any cases closed by such staff attorneys, even if they are only part-time employees, must be counted as staff cases.

If some of these part-time staff attorneys do not strictly fall under the “staff attorney” definition, it may be technically possible to count their cases as PAI. It may, however, be inadvisable in practice to do so, as it may not be clear whether a part-time staff attorney is actually a “staff attorney” under the 45 CFR 1600 definition until after the end of the calendar year. The reason for this uncertainty is that the status of being a “staff attorney” under this definition depends on the amount of professional income that attorney receives over the calendar year from sources other than LSC funds.

**Question 7** – Client comes in wanting a guardianship of his grandson. He meets eligibility requirements. The court requires a GAL be appointed for the child as dad is missing and apparently cannot be found.

If we represent client and appoint a GAL for the child w/ PAI funds do we open 2 cases? One for client and one for child?

If we only open 1 case for the client then do we count this as PAI even though the PAI money was spent to represent the child?

**Answer** – We have real concerns about a situation where a program is representing a client seeking a guardianship and also representing the child, because the child's interests can be opposite to the client, in this case the grandfather, so there appears to be a conflict issue. Also, since the court usually appoints a Guardian ad Litem from a list, it would be a best practice for the program to decline the appointment if the program is representing a party to the case, even if the program intends to refer the case to a PAI attorney.

**Question 8** – I am doing some final reviews of our data. There are a couple of cases that started with pro bono attorneys who provided the bulk of the representation but then withdrew leaving us to finish the case. I think we should be changing these cases to non-PAI cases, because staff completed them, but I wanted to check. In one case the volunteer had put in 58 hours prior to having us take it back.

**Answer** – Section 10.1 (b) (iv) addresses the question of cases where both a PAI attorney and a staff attorney have provided legal assistance. It reads:

*In cases in which both program staff and a private attorney provide legal assistance, but have not co-counseled the case, the program should close the case as a staff or a PAI case depending on whether the staff or private attorney provided the highest level of legal assistance. For example, if a private attorney gave some advice and counsel and staff obtained a court order, the case should be closed as a staff case.*

Based on this subsection, if the private attorney did a lot of work but the staff attorney initiated a higher level of legal assistance (e.g., the private attorney did a lot of work and was negotiating, but the staff attorney actually filed the case in court), then it should be a staff case. However, if the private attorney did file in court (or did most of a negotiation) and the staff attorney completed the case, then we would say it can be closed either as a PAI case or a staff case, depending on whether, in the judgment of the program, the PAI attorney or the program did the majority of the work.

Thus the case need not be closed as a staff case just because the PAI attorney was unable to finish it; such a case may still be closed as PAI but only in those circumstances where the PAI attorney did the majority of the work and took the case to the level of legal assistance at which it was ultimately closed (for a Court Decision, if the PAI attorney

filed the case in court, we would consider that to qualify as reaching the Court Decision level, even though it isn't actually a Court Decision until the court decides it).

**Question 9** -- A recipient's PAI program includes a panel of pro bono attorneys that will accept bankruptcies. In a couple of files, the situation revealed as follows: the client receives staff advice to determine if they are appropriate candidates for bankruptcy, the client is referred to a PAI attorney for the bankruptcy (after completing the credit counseling), the client meets with the private attorney, the private attorney gives additional advice and prepares the filing but the client is never again found to come back and sign the document. After attempts to locate the client the program closes the case as a B. The "B" level of service is never "provided to the client." Could this be a PAI case, following the logic of the FAQ regarding a returned advice letter? Or are PAI cases treated differently in this regard?

**Answer** -- A case can **never** be closed at a level of service the client did not receive. This rule applies to any case in which the client withdraws or otherwise does not return. Thus, no matter how much work has been done, only the service actually rendered to the client can be reported. Accordingly, PAI or no, the case must be closed as A, Counsel and Advice.

Since both the staff and the PAI attorney provided Counsel and Advice, you are free to close it as either staff or PAI, depending on your judgment as to which one did more work on the case. If staff or PAI delivered the "higher" level of service, then the case must be closed as a case by the one that delivered the "higher" level of service (see Section 10(b)(iv) of the 2008 CSR Handbook).

### **Section 10.3 – Timely Closing of PAI Cases**

**Question 1** – In some cases, programs hold a PAI case open until final payment has been made to the PAI attorney. There have been times when the request for payment has not arrived on a very timely basis but the program has considered the payment request as the last activity in the case. Is this acceptable under the new CSR Handbook?

**Answer** – No. A program needs to change these procedures in order to close the case when the legal work is completed. The CSR case closing requirement relates to when all legal work on behalf of the client is completed. The payment issue is between the PAI attorney and the program and should not affect the closing of a case where service to the client is completed.

**Question 2** – CSR 2008 Handbook Page 30 Section 10.3 Timely closing of PAI cases states: A program shall report such PAI cases as closed no later than a year after the calendar year in which assistance ceased.

We understand that if we are aware that a case was concluded more than a year prior to reporting, that we should give the case a closing date for the year in which services were actually concluded and these cases should not be reported to LSC. However, there are many pro bono cases that are open because the attorney will not respond to letters or calls for information and our efforts to reach the client or find data through the circuit clerk's office are not productive. Do we close cases when we cannot determine their status? How do we determine when the attorney actually concluded his/her services when we are lucky to get them just to tell us how they completed the case and the approximate hours they provided. Many rural attorneys believe they should not be contacted by us once they have accepted the referral. Do we just set up a policy if we don't know the date when services were completed by the attorney and the case was opened more than two or three years ago to exclude it from reporting?

Answer – First, you can **never** report a CSR case when you do not know its outcome. Any such cases fall under §3.5 of the 2008 CSR Handbook and must be “de-selected” as provided in that section and not reported to LSC.

Your main question is if you do know the case outcome (e.g. court granted divorce), but do not know whether legal assistance in the case ceased no later than the calendar year prior to the year in which you are considering reporting it, are you permitted to report the case? The answer is that you need to have the information required in §10.5 of the 2008 CSR Handbook anyway if you are to count it as a CSR case. If you cannot get this information from the pro bono attorney, Footnote 58 sets out other acceptable ways to obtain it:

*There must be sufficient information in the file or in the case management system to support the closing code selected to close the case. In the absence of closing information from the PAI attorney's office, information obtained from the court or other reliable source is sufficient.*

If you have obtained all the information required in §10.5 to close the case from sources other than the pro bono attorney, but do not have a date at which assistance was completed, you should still have a court decision or settlement agreement or other information that evidences a date at which service was still in process. You should take the latest such date you do have – most usually a court decision – and count it as the date of completion of service. For example, if the court shows a divorce granted in December, 2007, then you could close the case in 2007 or 2008, but not in 2009; similarly if the client tells you that my case was settled in July, 2007, then you could close the case in 2007 or 2008, but not in 2009. Note -- for old Limited Service cases, it is highly unlikely that they can be closed without a report from the pro bono attorney.

Thus, the bottom line is that these old pro bono cases must be de-selected under the procedures of §3.5, unless (1) a time at which legal assistance was not yet completed can be established, based on the other information that is acceptable for documentation of the

requirements of §10.5 **and** (2) the case is within the timely case closing requirements of §10.3, based on this information.

### **Section 10.5 – PAI Case Documentation**

**Question 1** – We always request a copy of the final order from private attorneys when we close PAI cases but, as I’m sure you know, actually getting those final orders can be like pulling teeth. Our volunteer attorneys are, however, very good about returning the closing form we provide to them when they accept a referral from us. The closing form asks them to select from a list of closing codes, indicate whether the outcome was favorable for the client or not, includes an area for them to write a brief description of what occurred and has a place for them to sign and date at the bottom. If anything is ever unclear, someone in our PAI department will call the attorney’s office for clarification and add their notes to the form.

Is this closing form adequate documentation under the new CSRs? If not, what else would be acceptable in the absence of a copy of the final order?

**Answer** – Your closing form is adequate to elicit information from the private attorney. There is no requirement for getting an actual final order from the PAI attorney, although this is desirable when possible. Your closing form as described contains sufficient inquiries to elicit closing information from the private attorney. However, it is the program’s responsibility to select the closing code for the case, based on the information provided on the form, any other information the program has on the case, and, if necessary a followup call to the PAI attorney’s office. PAI attorneys are not usually trained in LSC case closing codes and often do not have an adequate understanding of them. The program should base the closing code on the description of work done in the case and not on the PAI attorney's selection of a closing code.

## **TRANSITIONAL QUESTIONS**

As we consider the transition to the 2008 CSR Handbook to be completed, this section will be omitted from this and subsequent editions of the CSR Frequently Asked Questions (FAQ). If you should still need to find LSC answers to transition questions, please go to the June, 2009 FAQ edition which can be found under [www.newrin.lsc.gov](http://www.newrin.lsc.gov), Bulletin Board, Archives, CSR.