



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Services of North Florida, Inc.
Case Service Report/Case Management System Review
January 31 – February 4, 2011

Recipient No. 610044

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that LSNF's automated case management system (ACMS) is insufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: LSNF's intake procedures and case management system generally support the program's compliance related requirements.

Finding 3: Sampled cases evidenced that LSNF maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).

Finding 4: Sampled cases evidenced that LSNF maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of Citizenship).

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

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

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced that LSNF's application of the CSR case closure categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, revealed that LSNF is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: A limited review of LSNF fiscal documentation between 2008 and November 2010 and interviews with program management indicated the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed to ensure Corporation funds will be used to provide high quality legal assistance and not to support or promote political activities or interests.

Finding 15: Interviews with LSNF management and a limited review of the program's fiscal documentation indicated it is in compliance with 45 CFR Part 1609 which is designed, in part, to ensure that programs do not use scarce legal services resources when a private attorney is available to provide effective legal representation.

Finding 16: LSNF provides written notification to its individual contributors of \$250 and over of the prohibitions and conditions which apply to the funds received from sources other than LSC; however, LSNF does not routinely provide this notification to other non-LSC funding sources from which it receives grant support pursuant to 45 CFR § 1610.5. Additional information is needed to assess LSNF's compliance with 45 CFR § 1610.8 regarding program integrity from entities engaging in LSC restricted activities.

Finding 17: LSNF is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; compliance is noted with 45 CFR Part 1614 (Private attorney involvement) in that LSNF has created a PAI Plan, PAI expenses are adequately supported, and the program's PAI expenditures exceeded the 12.5% regulatory requirement for each year during the review period.

Finding 18: LSNF is in compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) in that the program does not operate any LSC funded subgrants and the program is not paying prohibited membership fees or dues with LSC funds.

Finding 19: LSNF is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 20: Interviews with LSNF management and a limited review of the program's fiscal documentation indicated compliance with 45 CFR Part 1642 – Attorneys' Fees during the review period in that the program did not seek, and was not awarded, attorneys' fees.

Finding 21: Review of LSNF financial documentation and interviews with its management indicated the program is in compliance with the requirements of 45 CFR Part 1612 in that LSNF has complied with its policies which restrict lobbying and certain other restricted activities.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 30: Based upon a limited review of LSNF's policies and procedures, fiscal documentation, and interviews with its staff and management, the program has evidenced general compliance with the requirements of LSC Grant Assurances to comply with the LSC Audit Guide for Recipients and Auditors and the 2010 edition of the Accounting Guide for LSC Recipients (AGLSCR).

Finding 31: LSNF is in compliance with 45 CFR § 1628.3 for each year during the review period in that the program's retained LSC fund balances did not exceed 10% of the annual LSC funding received.

Finding 32: A limited review of LSNF's accounting records determined that the program is in compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures).

II. BACKGROUND OF REVIEW

On January 31- February 4, 2011, the Legal Services Corporation's (LSC) Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review on-site visit at the Legal Services of North Florida (LSNF). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of three (3) LSC attorneys, one (1) LSC temporary employee, and one (1) LSC fiscal analyst.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that LSNF has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LSNF for compliance with regulatory requirements of: 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees);² 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LSNF's upper and middle management, staff attorneys and support staff. LSNF's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through November 30, 2010. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 584 case files.

LSNF is an LSC recipient that operates a main office in Tallahassee and branch offices in Quincy, Panama City, Ft. Walton Beach, and Pensacola. LSNF received a grant award from LSC in the amount of \$1,454,000 for 2008; \$1,595,110 for 2009; and 1,678,421 for 2010.

¹ In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 23, 2010. During the instant visit, LSC's review and enforcement of this regulation was, therefore, only for the period prior to December 16, 2009.

For 2009, LSNF reported 4,385 closed cases in its CSR data. LSNF's 2009 self-inspection report indicated a 3.3% error rate with exceptions noted in five (5) files out of 150 reviewed. For 2008, LSNF reported 3,996 closed cases in its CSR data. LSNF's 2008 self-inspection report indicated an 8.7% error rate with exceptions noted in 13 files out of the 150 cases reviewed.

By letter dated November 29, 2010, OCE requested that LSNF provide a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases closed between January 1, 2010 and November 30, 2010 ("closed 2010 cases"), and a list of all cases which remained open as of November 30, 2010 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LSNF staff and the other for cases handled through LSNF's PAI component. LSNF was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12 and the LSC *Access to Records* (January 5, 2004) protocol. LSNF was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2008, 2009, and 2010 closed cases and open cases, as well as a proportionate distribution of cases from LSNF's offices. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LSNF agreement of January 6, 2011, LSNF and LSC used unique client identifiers, client's first name and birth date, during case review. LSNF staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.³ LSNF's management and staff cooperated fully in the course of the review process. As discussed more fully below, LSNF was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review; as well as Managing Attorneys in the branch offices and the Executive Director in the main office.

On February 4, 2011, OCE conducted an exit conference during which LSNF was provided with OCE's initial findings. LSNF was advised that they would receive a Draft Report (DR) that would include all of OCE's findings and they would have 30 days to submit comments.

³ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

By letter dated April 11, 2011, OCE issued a DR detailing its findings, recommendations, and required corrective actions regarding the January 31 – February 4, 2011 CSR/CMS visit. LSNF was asked to review the DR and provide written comments. By letter dated May 11, 2011 LSNF submitted its comments to the DR. OCE has carefully considered LSNF's comments and made such revisions as it deems warranted. LSNF's comments are reflected in this Final Report and have been attached as an appendix hereto.

III. FINDINGS

Finding 1: Sampled cases evidenced that LSNF's automated case management system (ACMS) is insufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Recipients are required to utilize automated case management system (ACMS) and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

LSNF utilizes Legal Server as its ACMS. Legal Server is a web-based system which allows staff access from any location with an internet connection. There were no defaults in essential compliance categories identified. The case handlers are capable of generating lists of cases open in their name and management is capable of generating lists for each of their offices. The ACMS has a field which allows staff to deselect cases from being reported to LSC. Additionally, LSNF uses dual funding codes for its non-LSC funded cases to differentiate between eligible non-LSC funded cases and ineligible non-LSC funded cases. For example, VAWA has two funding codes, VAWA eligible and VAWA ineligible. The non-LSC funded cases coded as ineligible are excluded from CSRs and the non-LSC funded eligible cases are reported to LSC as required by the CSR Handbook (2008 Ed.).

In the State of Florida, the Florida Bar Foundation (FBF) is responsible for the technical support of Legal Server. Following a study in 2006, the FBF funded the selection and implementation of a statewide ACMS to improve the efficiency and effectiveness of delivery and help its grantees, both LSC-funded and non-LSC funded, reduce reliance on paper. Most issues regarding the ACMS must be referred to the FBF; however, LSNF's Paralegal/Grant Administrator is the program's liaison with the FBF and is authorized and capable of providing some technical support to LSNF staff as needed. The Paralegal/Grant Administrator is responsible for generating monthly reports to non-LSC funding sources and the annual LSC CSRs. Twice per year, and prior to the Self-Inspection, she generates a variety of error reports to identify potential data errors.

There were 40 cases reviewed from the sample where the information in the file was inconsistent with that in the ACMS. Many of the inconsistencies appear to be data migration errors resulting from LSNF's transition from its former case management system to its current system. For example, there were approximately 20 errors in the sampled files in which the ACMS listed the

household size as “0” whereas the files reflected the actual numbers of household members. *See* Case No. 07-03-04000884, Case No.04-03-04000302, Case No. 08-03-04000169, Case No. 08-03-04000063, Case No. 05-03-04000756, Case No. 08-031-04000552, Case No. 08-3-04000112, Case No. 08-03-04000408, Case No. 08-03-04000259, Case No. 08-03-04000511, Case No. 08-03-04000176, Case No. 08-03-04000117, Case No. 08-03-04000225, Case No. 04-03-04000690, Case No. 07-03-04000993, Case No. 08-06-09000519, Case No. 08-06-9000459, Case No. 08-06-9000032, Case No. 08-06-9000440, and Case No. 08-06-9000506. Furthermore, there were approximately 15 errors in the sampled files in which the date in the ACMS was different to the date listed in the case file. For example, Case No. 08-0101687, which is a Tallahassee case with an opening dated in the file of August 13, 2008; however, the date opened in the ACMS was October 4, 2005. Additionally the number in household listed on the ACMS was one (1) and the case file indicated the number in household was five (5). *See also* Case No. 08-0104057, which is a Tallahassee case with an opening date on the ACMS of January 8, 2008, however, the date opened in the case file was November 17, 2008. *See also* Case No. 08-0102022, which is a Tallahassee case with an opening date on the ACMS of May 14, 2008, however, the opening date in the case file was August 27, 2008. *See also* Case No. 09-0106906, which is a Tallahassee with an opening date in the ACMS of March 31, 2007, however, the opening date in the case file was March, 31, 2009. *See also* Case No. 10-0116184, which is a Quincy case with an opening date in the ACMS of October 2010, however, the opening date in the case file was April 6, 2010. According to the intermediary the case was closed and then reopened in October, 2010, and the ACMS automatically input the new opening date into the system. *See also* Case No. 09-0113600, which is a Tallahassee case with an opening date of January 18, 2010 in the ACMS, however, the opening date was December 21, 2009 in the case file. *See also* Case No. 10-0122024, which is an open Pensacola PAI case with an opening date in the case file of November 30, 2010, however opening date on ACMS was December 10, 2010. *See also* Case No. 10-0114578, which is an open Pensacola PAI case with an opening date on the case report of February 26, 2010, however, the ACMS indicates the case was open on February 26, 2011. Additionally in five (5) case files reviewed, the client’s income in the ACMS was different then what was listed in the case file. *See* Case No. 10-0116516, which is a closed Quincy case in which the client’s application indicates the household income at \$5520.00, however, the ACMS has the individual’s household income at \$0.00. *See also* Case No. 05-03-04000757, a case in which the case file reflected the client’s monthly income for household of 3 was \$1,427, however the client’s monthly income listed on the ACMS was \$1,678, *See also* Case No. 05-03-04000147, a case in which the case file reflected the client’s monthly income for household of 5 was \$1,610, however the client’s monthly income in the ACMS was \$2,355; *See also* Case No. 08-03-04000202, a case in which the case file reflected the client’s monthly income for household of 2 was \$1112, however, the client’s monthly income listed on the ACMS was \$1,458. *See also* Case No. 08-06-9000109, a 2008 case in which the file reflected the client’s monthly income for household of three (3) was \$1,359 which was below 125% of FPG; however the client’s month income listed in the ACMS was \$2,583.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LSNF’s ACMS is insufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded. Corrective Action must include a review of network performance. This should include an assessment of 2008 data

migration from Time to Legal Server to ensure that functionality is retained and data is not lost or corrupted.

According to LSNF, they were unaware that a data migration issue existed with regard to household size. LSNF indicates that they have confirmed that Legal Server did not import household size from the previous ACMS. LSNF states that its representative at the Florida Bar Foundation believes the migration of that data can be accomplished to resolve the issue. LSNF indicates that it will continue to work with her; however, if the Florida Bar Foundation is unable to correct the problem, LSNF will individually input that data in all the open files.

In relation to dates not being consistent between the files and the ACMS, LSNF indicates that a review of the examples in the DR leads to several conclusions: (a) there were some data input errors; (b) there were some cases where files were reopened by staff and the Case Management System automatically changed the open date to the reopen date; and (c) where there were discrepancies between intake dates in the case files and open dates on the ACMS. As to inputting errors, LSNF indicates it will remind staff of the importance of accurate input of data. With regards to the reopening of files, LSNF indicates it has changed its practice by requiring staff to go through their lead secretaries, who must work through LSNF's paralegal/grant administrator, who will ensure the open date in the ACMS is not modified when a file is reopened, rather than staff individually being able to reopen a case. As to discrepancy in dates between case files and the ACMS, LSNF indicates it does not include in its file a place to record an official opening date. According to LSNF, in several of the cases cited, the file opening date was actually the intake date (which matched the intake but not the open date on the ACMS). According to LSNF, within its system, once the intake is received, the application is taken through a weekly case acceptance meeting. If it is a case which requires no retainer, the case is opened after a determination at case acceptance; in cases where retainers are required, it is not opened officially on the computer until a retainer is returned. As such, intake dates will not match open dates.

According to LSNF, five (5) cases listed in the DR where income information was found to be inconsistent between the file and the ACMS were unable to be confirmed with the information presented. LSNF indicates it can only speculate that any errors that might have been noted were corrected during the visit. Since this occurred in only five (5) files reviewed, LSNF states it will remind staff of the importance of carefully recording information from the paper files correctly to the ACMS. According to LSNF, another factor that could sometimes have a bearing on this issue is a change in the information provided by a client after the case is opened. In at least one (1) of the cases the client was accepted based on the information in the file demonstrating a household income of zero; however, during the course of the representation the attorney determined that the client had obtained employment and was considerably outside the guidelines, at which point the attorney discontinued representation. LSNF indicates it will advise staff about the need to document in the notes section instances in which they modify the ACMS information as a result of changes such as these.

Finding 2: LSNF’s intake procedures and case management system generally support the program’s compliance related requirements.

Each of LSNF's branch offices conduct intake Monday through Thursday, during office hours of 8:30am -5:30pm. LSNF's offices are officially closed on Friday, though attorneys often are at the offices and will conduct intake if necessary.

Intake was reviewed in the main office and all branch offices. Support staff, staff attorneys and Managing Attorneys were interviewed, and written and electronic documents were reviewed for compliance. Although intake is decentralized, the intake process is standardized, screening of essential compliance elements is consistent, and LSNF's intake procedures and case management system generally support the program’s compliance-related requirements.

The first step of the application process is the applicant provides information for an automated program-wide conflict check, either in-person, by telephone, or over the website. In-person applicants complete a conflict card, callers verbally provide the information to the receptionist, and website users complete an automated form. Once it is determined that no conflict exists, applicants complete a written intake packet. Applicants contacting the program by telephone or website are mailed the packet to complete and return. The packet consists of completion directions and the following forms: Client Intake Information, Intake Fact Sheet, Client Questionnaire to determine whether the applicant has been or is the victim of domestic or sexual violence, BrAIVE Grant Questionnaire regarding military service, and a Gulf Oil Spill Questionnaire. Applicants with social security, bankruptcy, divorce, immigration, or estate planning issues also complete problem specific questionnaires.

The Client Intake Information form contained in the application packet captures the applicant's contact information, financial eligibility information, and citizenship status. There were minor screening issues identified. The form collects information regarding prospective income; however, there is no corresponding field on the ACMS to enter this information. LSNF utilizes a “spend down” method in determining income eligibility. If an applicant’s gross annual income exceeds 125% but is below 200% of the FPG, LSNF deducts specific applicant expenses in an attempt at spending down their income to at or below 125% of the FPG. LSNF’s eligibility policy lists one (1) such expense as “child care expenses”, though the regulation allows the expense only as necessary for employment, job training, or educational activities in preparation for employment. Further, the Fixed Debt/Obligations expenses are not entered into the ACMS which may affect the accuracy of the documentation of the spend-down.

The Executive Director agreed to review and revise LSNF’s Client Eligibility Guidelines. Once LSNF’s policy is revised, the Client Intake Information form must also be revised to ensure consistency between the policy and form.

Once the Client Intake Information form is obtained, the receptionists are responsible for ensuring that the form is complete. They do not assess eligibility. All cases are reviewed for eligibility and merit during weekly office case acceptance meetings attended by attorneys, paralegals, and interns. The Managing Attorney has ultimate responsibility in determining the

acceptance or rejection of a case. Interviews reveal that the Managing Attorneys are well trained on LSC regulations, CSR Handbook (2008 Ed.), and the ACMS.

At the case acceptance meeting, cases are determined to be either rejected, require advice only, require extended representation by staff, or require referral to the Director of Development/Pro Bono for extended representation by a private attorney. Cases accepted for advice only are referred to the hotline which is staffed by pro bono attorneys who call the clients and provide counsel and advice. If after several attempts hotline staff cannot reach the client, the application is returned to the Managing Attorney who drafts an advice letter which is sent to the client. A client accepted for extended representation is generally advised by letter which includes a Retainer Agreement. Over-income applicants with family law issues are referred to the Family Law Assistance Program (FLAP), which is a legal information program for pro se family litigants. A sample of rejection, acceptance, and advice letters from the offices was reviewed. There was a rejection letter in Tallahassee which stated, "that because the applicant does not meet program financial eligibility guidelines, assistance cannot be provided". The next paragraph states, "Nevertheless, we wish to offer you the following advice: We suggest you contact attorney or the Tallahassee Bar Lawyer Referral Service...." Even though no advice is provided in the letter, it should be revised to not include the language "we wish to offer you the following advice" to prevent any confusion.

According to LSNF, it will modify the rejection letters as recommended.

The Managing Attorneys usually generate open case reports by advocate usually on a monthly basis. They also conduct closed case reviews twice a year.

Once a case is ready to be closed, LSNF uses a standardized Case Closure Form which captures closing information and serves as a compliance checklist. Procedures require the case handler to complete a form for each case, select the closure code and, close the case in the ACMS. Managing Attorneys review all cases closed in their respective office and the Director of Litigation reviews the Managing Attorneys' cases.

In addition to the intake process described above, LSNF also receives direct referrals from several different entities. Except for the group cases which are reviewed by the LSNF Executive Director, the remaining referred cases are reviewed during case acceptance meetings and follow the same procedures as described above.

It appears that LSNF may be underreporting Guardian Ad Litem funded cases as several sampled files met LSC eligibility requirements and were not reported in the CSR data submission. *See* Case No. 10-0121039, Case No. 09-01122307, Case No.06-09000981, Case No. 09-0111331, and Case No. 09-0105076; these files all contained birth certificates or fell within a Part 1626 exceptions and contained eligibility determinations. These files were not reported to LSC in the CSR data submission. LSNF must report in the CSR data submission all LSC eligible cases.

According to LSNF, it does not obtain information in these cases about the client's income and assets. CSR Handbook (2008 Ed.), ¶ 4.3 indicates that cases without eligibility determinations may not be reported to LSC. LSNF does not believe a corrective action is warranted. LSC

agrees with LSNF's interpretation of CSR Handbook (2008 Ed.), ¶ 4.3, but must reiterate that those GAL, and other non-LSC funded, cases that contain evidence of 45 CFR Parts 1611 and 1626 eligibility information must be reported in CSR data if the file meets the requirements of a reportable case.

Finding 3: Sampled cases evidenced that LSNF maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁴ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines ("FPG") and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

LSNF's Client Eligibility Guidelines was most recently adopted by the Board of Directors in August 2010. The policy sets forth eligibility requirements for each of its funding sources: LSC, IOTA (Interest On Trust Accounts), Older Americans Act Title III, VAWA (Violence Against Women Act), VOCA (Victim of Crime Act), and LITC (The IRS Low Income Tax Clinic). LSNF's income guidelines comply with 45 CFR Part 1611, however, the policy could lead to misinterpretation in its current form. For example, the program's policy requires that an applicant's income must be spent down to at or below 125% of the FPG if their income is

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

between 125% and 187.5% of the FPG, however, still allows case handlers the flexibility to request approval from the Executive Director. The Executive Director agreed to clarify this section, as well as to review the remainder of the policy for other revisions.

According to LSNF, it has made the revisions requested by LSC and is awaiting its Board's approval.

The factors as written in the policy do not match exactly those authorized by 45 CFR § 1611.5(a)(4). One factor, child care, is incorrectly stated and may lead to a misapplication of the regulation. The program's policy and written intake form list child care/child support together, though the regulation, 45 CFR § 1611.5(a)(4)(iv), allows consideration of dependent care only as necessary for employment, job training, or education activities in preparation for employment. It is recommended that the child care expense be revised in the policy and written intake form to ensure the expense is not more broadly applied.

LSNF indicates it will present to its Board a modification to clarify that child care expenses must be related to employment, training, or education.

The review determined that the fixed debts/obligations question on the written intake form is not entered into the ACMS because there is no corresponding field. It is recommended that LSNF create a fixed debts/obligation field in its ACMS to correspond with the intake form. Further, it is recommended that the LSNF review its definition of fixed debts. Discussion in the Preamble to the regulation defines fixed debt more broadly than the LSNF policy. While the discussion only provides guidance and programs are permitted to define fixed debts more narrowly in their policies, LSNF should review the guidance to ensure they have considered all definitions.

LSNF does not consider all factors listed in 45 CFR § 1611.5(a)(4) when an applicant's income exceeds 125% but is below 187.5% of the FPG. While LSC recipients are not required to consider all factors, a review of is recommended to improve clarity and evaluate other expenses that the program may want to consider.

It is recommended that the program send a draft of the revised policy to OCE for review by LSC's Office of Legal Affairs.

LSNF's Revitalize Our Communities Project's group case eligibility screening process does not meet LSC requirements. In Tallahassee a component of their case load was representing community development groups. Intake responsibility for these group cases is conducted by one (1) attorney. The group representative is required to complete a Group, Corporation, or Association Representation Retainer Eligibility Questionnaire for Group Representation. The attorney indicated that the eligibility determination is based primarily on the signing of this document. LSNF's group form states, "We as representatives of the above named group, corporation or association declare that it is primarily composed of persons eligible for legal assistance under the Legal Services Corporation (LSC) Act and/or its primary function or activity is the furtherance of interests that benefit persons financially eligible under these guidelines." LSNF does not distinguish or indicate which group eligibility criteria it is using when determining group eligibility. The eligibility requirements under 45 CFR § 1611.6 are

different depending on whether the group is primarily composed of individuals who would be financially eligible for LSC funded legal services or if the primary function or activity is the furtherance of interests that benefit persons financially eligible under these guidelines. Furthermore LSNF fails to document the resources available to the group, such as the group's income and income prospects, assets and obligations as is required by 45 CFR § 1611.7. At the time of the CSR/CMS review, LSC was notified that much of LSNF's group representation would be ending due to lack of funding. Currently the open cases are being closed and no additional group cases are being accepted.

LSNF indicates it does not anticipate it will open any future group files with LSC funding. However, LSNF has modified its retainer form in the event that a group client case is opened with LSC funds.

LSNF is in substantial compliance with LSC's income eligibility requirements. Eleven (11) sampled cases were not in compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. *See* Case No. 08-02-02000345, Case No. 08-02-02000910, and Case No. 08-02-02001248. These are LSC reported closed 2008 PAI Hotline cases in which the clients' incomes were over the LSC income guidelines, however, the files did not contain evidence of a spend-down or the Executive Director's approval. *See also* Case No. 08-02-02001069, which was a 2008 PAI Hotline case where the client's income exceeded 200% of the FPG. *See also* Case No. 10-0118423, which is a 2010 PAI Hotline case in which the client's income exceeded 200% of the FPG. During the review this case was deselected by LSNF's Director of Development/PAI since the 2010 cases had not been reported to LSC at the time of the CSR/CMS review. A majority of the PAI cases that were found non-compliant with 45 CFR § 1611.4 and LSNF's income policy were non-LSC Title III and IOLA funded cases which were used to support some pro bono attorney involvement. These cases were not intended to be included in the CSRs. According to the PAI coordinator, the four (4) 2008 cases were examples of coding errors which led to the inclusion in CSRs. The 2009 and 2010 closed and open samples demonstrated improvements in coding procedures, apart from the one (1) 2010 case. Prior to the end of the review, the Director of Development/PAI conducted a search on the ACMS to identify over-income 2010 PAI cases coded for inclusion in CSRs, reviewed the case coding, and deselected them as appropriate. Accordingly, no further action is required; *See also* Case No. 10-0116516, which is a 2010 closed Quincy case in which the client's application indicates the client's monthly income for a household of 2 is \$5520.00 which far exceeds 200% of the FPG. The ACMS has the individual's household income at \$0.00. There is no reference in the file stating the basis for the difference in income. *See also* Case No. 10-0122103, an open case where the gross household income was 267.43 % of FPG. *See also* Case No. 09-011279, a 2009 closed case where the gross household income was 232% of FPG. *See also* Case No. 10-0118944, an open case where the client's adjusted gross income was 150.89% of FPG. There was no documentation in the file that LSNF spent down the client's income to at or below 125% of the FPG, as was required by its eligibility policy.

Finding 4: Sampled cases evidenced that LSNF maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁵ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

The Client Eligibility Guidelines approved by the LSNF Board of Directors in August 2010 establishes the asset ceiling at \$10,000 for an individual applicant with an additional \$3,000 for each additional family member. Exempt from consideration is the applicant's homestead property used as the principal place of residence; vehicles which are necessary for household transportation and employment; personal and household effects; trust for medical expenses; value of farm land essential to employment or self employment; work related equipment needed for employment; cash value of IRAs, TSAs or KEOUGH Plans; assets excluded under the Food Stamp, TANF, and SSI programs; educational grants and loans to pay for tuitions and fees; assets which are not easily convertible to cash or which are not legally or practically available to the individual or family unit; incentive allowances under any federal or state training program; any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937; any assistance received on account of major disaster; and jointly held assets when establishing the eligibility of a victim of domestic violence.

An interview with the Executive Director reveal that two (2) of the exclusions are not authorized by 45 CFR § 1611.3(d)(1), incentive allowances under any federal or state training program and any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937. The exclusions allowed by the regulation are all inclusive and recipients are prohibited from excluding additional categories of assets unless they are exempt from attachment under State or

⁵ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

Federal law. After some research, the Executive Director advised that neither of the above-mentioned assets were exempt from attachment under State or Federal law. In addition personal and household effects are not wholly exempt under State or Federal law as in the LSNF policy. The Executive Director stated that the policy will be revised to remove all three categories of assets from the list of excluded assets. In addition, it was recommended that LSNF reorganize certain aspects of the asset policy for clarity and to better trace the language of the regulation.

According to LSNF, it has made the revisions requested by LSC and is awaiting its Board's approval.

Sampled case files reviewed revealed that LSNF is in substantial compliance with 45 CFR § 1611.6, revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. One (1) exception was identified. *See* Case No. 09-0106255, a PAI file which documented \$45,000 cash in the bank. This client was a senior citizen and, accordingly, the file should have been coded with a Title III funding code and excluded from PAI CSRs. Similar to the over-income 2008 PAI cases identified in Finding 3, this case was improperly coded.

Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of Citizenship).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁶ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual

⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

assault or trafficking, or who qualify for a “U” visa. LSC recipients are now allowed to include these cases in their CSRs.

LSNF is in non-compliance with the documentation requirements of 45 CFR Part 1626. Twenty-four (24) cases reviewed had citizen attestations that did not comply with the requirements of CSR Handbook (2008 Ed.), § 5.5. *See* Case No. 09-0105246, which is a 2009 closed case that contained a Spanish language version of the intake form which was missing a date line. This was found program-wide on LSNF’s Spanish intake form. It is noted, however, because the attestation is on the written intake form, the date is assumed to be prior to the office's receipt of the form as evidenced by the date stamp. Prior to the end of review, the Executive Director assigned a staff attorney to revise the form to comply with the current LSC requirements. *See also* Case No. 06-05-03000109, Case No. 07-05-03000750, Case No. 07-03004000884, Case No. 10-0116274, Case No. 08-04-07000267, Case No. 08-06-09000519, Case No. 08-0101300, Case No. 08-06-09000109, Case No. 08-06-09000009, Case No. 08-06-09000032, Case No. 08-06-09000440, Case No. 09-0107120, Case No. 08-03-04000202, Case No. 07-04-07001285, Case No. 05-04-07001188, Case No. 06-06-0900061, Case No. 08-06-09000374, Case No. 04-06-09000101, and Case No. 05-06-09000384. These are cases which contained a citizen attestation that did not comply with the format requirements established by the CSR Handbook (2008 Ed.) which requires that the citizenship attestation contain the following statement on a separate document or a separate signature line: “I am a citizen of the United States: *Signature of applicant* Date:_____.” *See* CSR Handbook (2008 Ed.), § 5.5. Although these cases contained citizen attestation forms, as of January 1, 2009, all cases reported to LSC must comply fully with the new handbook, regardless of when they were opened. *See* August 3, 2007 letter from LSC President Helaine Barnett to LSC recipients. It is recommended that LSNF review all open cases that were opened under the prior requirements and either execute new documentation or deselect them from CSRs. *See also* Case No. 10-0121968, Case No. 10-0121449, Case No. 06-04-07000767, Case No. 07-04-07000383, and Case No. 08-04-07000021. These are cases where the citizenship attestations were signed, but not dated.

LSNF indicates it will follow LSC’s instruction to either obtain new forms that are in the required format or deselect cases from the CSR that do not have the required format. According to LSNF, it will continue to advise staff that all new cases need to have the required documentation in the required format (unless they fall within an exception). LSNF indicates it will collect outdated forms from Clerks’ offices and social service organizations and replace them with new forms, and instruct staff to review all citizenship attestations received from community partners to ensure that the attestations are in a compliant form.

Pursuant to a grant from the Florida Bar Foundation, LSNF receives case referrals for children ages 12-20 from a Team Child social worker at the 2nd Circuit Public Defender's office. LSNF provides assistance to the troubled youths on a variety of civil legal issues. In some instances the parents are available and not adversarial and therefore can sign the citizenship attestation for the minor, but in most instances the minors sign the attestations. Clearly this is acceptable for clients over 18 years of age but the team questioned the practice for clients under the age of 18. There was no documentation of citizenship or eligible alien status screening in one (1) sampled minor case. *See* Case No. 08-010400, which is a 2010 closed Panama City case in which citizenship or eligible alien status was not obtained because the minor was a ward of the court and the state

declined to provide this documentation. The intermediary reported that his office frequently was unable to obtain citizenship or eligible alien status documentation for minors LSNF represented and/or provided extensive services to in problem code “42, Neglected/Abused/Dependent” cases because the minors were wards of the state and the state was not willing to provide the citizenship or eligible alien status documentation. He stated, as these cases were non-LSC funded and not reported, he did not believe this documentation was required.

LSNF is obligated to meet LSC’s “citizenship or eligible alien verification” and “signed written retainer agreement” requirements in each of its extended service cases. *See* 45 CFR Parts 1611 and 1626. There is no exception to the rule for minors or other legally incompetent persons who cannot legally attest. In cases involving a client who is a minor and purports to be a U.S. citizen, the citizenship attestation has traditionally been made by a parent, legal guardian, or other legal representative of the minor; however, in the alternative, the minor’s citizenship can be established by one of the methods set forth in section 1626.6(b). Section 1626.6(b)’s list of methods include having the recipient review a copy of the minor’s birth certificate, baptismal certificate, or other authoritative document from a court or governmental agency, or having the recipient obtain a notarized statement by a third party attesting to the citizenship of the minor applicant. Accordingly, a court order or other authoritative document from the court which includes a court provided statement evidencing the minor’s U.S. citizenship can serve as independent proof of a minor’s citizenship status in satisfaction of this regulatory requirement. LSNF may obtain and rely on such a written declaration of the court to establish the U.S. citizenship of the minor client LSNF seeks to represent. *See* External Opinion # EX-2008-1003 (September 10, 2008). Additionally, LSNF may determine that the minor falls within LSC’s alien eligibility requirements and exceptions, including an exception in §1626.4 for non-LSC funded representation in some situations involving domestic violence in a family. Congress has created additional exceptions not referenced in Part 1626, pursuant to the Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, as amended by the Trafficking Victims Reauthorization Act of 2003; and the Violence Against Women Act (VAWA) 2006 Amendments, Pub. L. 103-322. *See also* Program Letters 05-2 (re: TVPA) and 06-2 (re: VAWA 2006 Amendments). LSNF is not required by law or regulation to inquire about the citizenship or eligible alien status of a person whose legal issues fall within those categories described above because Congress has determined that individuals with those legal problems may be served by LSC grantees regardless of their citizenship or eligible alien status. *See* Advisory Opinion #AO-2009-1008 (December 4, 2008) and CSR Handbook (2008 Ed.), § 5.5, Frequently Asked Question #1, Revised Answer (September 2010).

In response to the DR, LSNF indicates it has interpreted the regulation to allow children to sign citizenship attestations in appropriate cases. LSNF indicates it will seek a formal opinion from LSC’s Office of Legal Affairs (OLA). Section 1626.6(b) requires verification “when a recipient has reason to doubt that an applicant is a citizen.” According to LSNF, this language is similar to the language for determining financial eligibility Section 1611.7(c), which requires recipients to verify information if there is reason to doubt the accuracy of the information provided. According to External Opinion # EX-2008-1003, the OLA allowed the program requesting an opinion to accept financial information from minors when reasonable. The opinion noted, “The reasonableness of the inquiry made will depend on all of the surrounding circumstances, including but not limited to the minor’s age and ability to understand and adequately respond to

the intake questions asked; the minor client's apparent familiarity with the income and assets of his or her household members; the nature, logic and consistency of the minor client's responses to a recipient's intake questions; and the minor client's mannerisms and disposition for purposes of making a credibility determination." In that case, OLA noted that citizenship attestations for minors have traditionally been done by a parent, legal guardian or other legal representative of the minor, but alternatively, could be done by alternative methods established in Section 1626.6(b). According to LSNF, the question was not squarely presented regarding a minor's ability to sign an attestation. As allowed in determining financial eligibility, LSNF believes a reasonableness standard should be applied, taking into consideration the same factors listed above. According to LSNF, it would seem more likely that a child would know his/her place of birth than household income. LSNF indicates that this issue is particularly important for children who are estranged from their families, are in the dependency system, and have no birth certificate documentation available but need assistance quickly, as often happens when they are being sheltered.

Furthermore, interviews reveal that LSNF also has had difficulty obtaining citizenship attestations for Adult Guardianship cases. These cases are referred to LSNF pursuant to a subcontract, under the terms of which the program is paid \$400 per case. The clients are incapacitated adults and cannot sign citizenship attestations. Further, no other relative or legal representative is usually available, thereby the impetus for the referral to LSNF, and in most cases no birth certificate or alternative documentation is available. LSNF handles few such cases and they are not reported to LSC in CSRs, however, all cases must satisfy the requirements of 45 CFR Part 1626 regardless of funding source and reporting status. No Adult Guardianship cases were selected for review. It was recommended to the Executive Director that in such instances LSNF obtains a statement from a knowledgeable third party in which the party first attests that they themselves are a U.S. citizen and second certifies that the incapacitated adult is also a U.S. citizen. Such a statement should include dual-signature lines, one for each attestation, and the signatory must explain how they are aware of the potential client's citizenship. The Executive Director stated that in some circumstances it may be possible to obtain a third-party statement but believes that in other circumstances, in which the incapacitated adult has no remaining family or friends, this may not be possible. She emphasized that in these circumstances LSNF is the individual's last resort because if family or friends were available LSNF's involvement would not be required. The Executive Director stated that she would review this issue to determine whether it will be possible to obtain third party statements or if the program will have to cease accepting such cases.

According to LSNF, it has drafted an affidavit and will seek to obtain the signature of a third party.

LSNF is in non-compliance with 45 CFR Part 1626. LSNF must obtain documentation of citizenship or eligible alien status for each client unless such case falls within a regulatory exception for all cases regardless of funding source or whether the case is reported to LSC in the CSR data submission. LSNF must ensure that all case files contain citizenship attestations, where appropriate, and that all attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LSNF is in substantial compliance as one (1) case reviewed from the sample contained an insufficient retainer agreement. *See* Case No. 07-04-07000987, which is a 2008 closed case that was opened on August 9, 2007. A staff attorney entered his/her appearance on September 25, 2007. Legal documents were drafted and the case was subsequently closed on May 13, 2008. The retainer agreement is dated May 13, 2008, the same date the case was closed. According to 45 CFR §§ 1611.9(a) and (c), the retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

Case files reviewed indicated that LSNF is in compliance with the requirements of 45 CFR Part 1636.

⁷ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

In response to the DR, LSNF offered no comments with respect to this Finding.

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

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

LSNF's 2010 priorities, as submitted to LSC, were supporting family relations, preserving the home, maintaining economic stability, enhancing safety, stability and health, reaching out to special populations, and improve the ability of LSNF's staff to delivery high quality legal services.

LSNF is in compliance with 45 CFR Part 1620. All sampled files reviewed were within LSNF's priorities.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

LSC regulations specifically define "case" as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a "case", reportable in the CSR data, depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise. If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

LSNF is in substantial compliance as there were six (6) cases reviewed from the sample that failed to contain a description of the legal assistance provided. *See* Case No. 10-0118279, which is a 2010 closed case in which the documentation in the file indicates that the applicant was advised regarding dissolution of marriage. There is no indication that the legal assistance

provided to the client was specific to his/her circumstance. *See also* Case No. 09-0110478, which is a 2009 closed case in which the notes in the file indicate the client was provided general bankruptcy information. A correspondence was sent to the applicant requesting additional information, however the applicant never responded. The case was closed using closing code “K”, other. There is no documentation in the file that legal assistance provided to the client was specific to his/her circumstances. *See also* Case No. 09-0109367, which is a 2009 closed case in which the client did not return after the initial appointment. The case file was closed using closing code “K”, other. There is no documented legal advice in the case file. *See also* Case No. 09-01019139, which is a 2009 Tallahassee staff case that was closed utilizing the closing code “K”, however, there was no legal advice documented in the file. *See also* Case No. 09-0106454, which is an open Panama City PAI case that was opened on April 21, 2009. There were quarterly updates sent to the PAI attorney, however, it appears he did not respond. There is no documented legal advice in the case file. *See also* 08-02-02000345, which is a 2008 closed PAI hotline case where the volunteer attorney recorded time to the case but he did not document the advice provided.

According to LSNF, it will conduct additional training for case handlers on documenting legal assistance.

Finding 10: Sampled cases evidenced that LSNF’s application of the CSR case closure categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated that LSNF’ application of the CSR case closing categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). The CSR Handbook requires that cases be closed in the category that best reflects the level of service provided and if a descriptive closure category is applicable

There were fourteen instances where the closing code “K”, other, was utilized where there was a more applicable closing code that reflected the level of service provided. *See* Case No. 09-0105600, which is a 2010 closed case that was closed utilizing the closing code “K”, other. This was a foreclosure case where documents were reviewed, and there were several unsuccessful attempts to settle. Furthermore, a Motion to Dismiss for Lack of Jurisdiction was subsequently filed on June 7, 2010. Unfortunately the client passed away. Based on the level of service provided in this case “L”, extensive service, is the applicable closing code. *See also* Case No. 07-04-07000383, which is a 2009 closed case that was closed utilizing the closing code “K”, other. This was a divorce case in which divorce papers were drafted on the client’s behalf but not filed. The client reconciled with her husband and no additional work was required. The applicable closing code in this case is either a “B”, limited action, or “L”, extensive service, depending on the complexity of the divorce paperwork drafted by the attorney. *See also* Case

No. 08-04-07000547, which is a 2008 closed case that was closed utilizing the closing code “K”, other. According to the documentation in the file, the attorney advised the client on the process of filing for a domestic violence injunction. Closing code “A”, counsel and advice, is the applicable closing code in this case. *See also* Case No. 09-0106568, which is a 2009 closed case that was closed utilizing the closing code “K”, other. The level of work in the file reflected the applicable closing code in the case is “A”, counsel and advice. *See also* 09-0108293, which is a closed 2009 case that was closed utilizing the closing code “K”, other. According to the notes in the file this case should have been rejected. *See also* 09-0109272, which is a 2009 closed case which was closed utilizing the closing code “K”, other. The attorney drafted a complex will for the client. The applicable closing code in this case is “L”, extensive service. *See also* Case No.07-04-07001141, which is a 2010 closed case in the notes in file reflect that the client withdrew before legal services were provided. This case should have been deselected. *See also* Case No. 09-0109336, which is a 2010 case that was closed utilizing the closing category “K”, other, however the notes in the file indicate that the attorney reviewed the client’s financial circumstances and provided bankruptcy advice, therefore; closing category “A”, counsel and advice is the applicable closing category. *See also* Case No. 07-03-04000884, which is a 2010 case that was closed utilizing the closing category “K”, other. The notes in the file indicate that the client reconciled with her spouse after LSNF engaged in contested litigation but before a final judgment could be obtained, therefore; closing category “L”, extensive service, is the applicable closing category. *See also* Case No. 08-02-02000128, which is a 2008 closed Tallahassee case that was closed utilizing the closing code “K”, other. The attorney drafted divorce paperwork for the client but the client decided not to follow through with the divorce. This case should be closed with the closing code that designates the highest level of service provided to the client. If no legal assistance was provided to the client this case should not have been reported to LSC. *See also* Case No. 08-0100592, which is a 2009 Tallahassee case that was closed utilizing the closing code “K”, other, however the closing code “L”, extensive service, is the applicable closing category. The attorney assisted the client in obtaining tax refunds from years 2005 and 2007. *See also* Case No. 09-0106963, which is a 2009 Tallahassee case that was closed with the closing code “K”, other, however, closure category “B”, limited action, is the applicable closing code. The attorney provided the client with tax law advice and contacted the Internal Revenue Service on the client’s behalf. *See also* Case No. 07-02-02003392, which is a 2009 Tallahassee case that was closed utilizing the closing code “K”, other. The attorney reviewed the client’s medical records, in addition too, drafting paperwork for an administrative hearing. This case should be closed with the closing code that designates the highest level of service provided to the client. If no legal assistance was provided to the client this case should not have been reported to LSC. The attorney made several attempts to contact client without success. *See also* Case No. 09-0106030, which is a 2009 Tallahassee case that was closed utilizing the closure category “K”, other, however, “B”, limited action, is the applicable closure category.

There were nine (9) additional case closing errors identified during the case review. *See* Case No. 07-02-02000088, which is a 2009 Tallahassee case that was closed utilizing the closure category “F”, negotiated settlement without litigation, however, closure category “G”, negotiated settlement with litigation, is the applicable closing category. This case was in litigation at the time the case was settled and the settlement agreement was included in the final order. *See also* Case No. 06-02-02001599, which is a closed 2009 Tallahassee case that was closed utilizing the

closing category “I(A)”, uncontested court decision, however, “G”, negotiated settlement with litigation is the applicable closure category. This was a divorce case in which a settlement was reached. The settlement agreement was part of the final order. *See also* Case No. 09-0111715, which is a 2011 Quincy PAI case that was closed utilizing the closing code “I(A)”, uncontested court decision, however, “I(B)”, contested court decision, is the applicable closure category. The client was the respondent in the case. A petition was filed and the attorney for the client contested the case by filing a petition. The petitioner decided to not move forward with the case. *See also* Case No. 09-0112051, which is a 2011 Quincy PAI case that was closed utilizing the closing code “X”, deselected case. The attorney conducted a title search and drafted a deed for the client. The client failed to return which was the basis for deselecting. This case should be closed with the closing code that designates the highest level of work provided to the client. If no legal assistance was provided to the client this case should not be reported to LSC. *See also* Case Nos. 07-02-020002430 and 07-02-02001896, which are 2010 Tallahassee group cases that were closed utilizing the closing code “B”, limited action. The attorney did extensive work over a 3 year period assisting the groups in obtaining a grant. Based on the level of service provided by the attorney these cases should be closed utilizing the closing code “L”, extensive service. *See also* Case No. 09-0108719, which is a 2009 case that was closed utilizing the closing code “I(b)”, contested court decision, however, the notes in the file reflect that LSNF obtained a negotiated stipulated order during the course of litigation, therefore, the case should have been closed utilizing the closing code “G”, negotiated settlement with litigation. *See also* Case No. 06-04-07000767, which is a 2009 case that was closed utilizing closing code “I”. The case file indicates that this was a custody matter in there was a hearing. The applicable closing code is “I(b)”, Contested Court Decision. Closing code “I” no longer exists. *See also* Case No. 10-0118998, which is a 2010 case that was closed utilizing the closing code “A”, counsel and advice”. The case file indicates that this was a payment dispute issue in which the client was seeking a refund for housing that was paid in full in advance. The staff attorney communicated with a third party and was successful in obtaining a refund of payment for the client. The applicable closing code is “B”, limited action.

LSNF must conduct training to ensure proper application of the CSR case closure categories.

According to LSNF, during the course of the review, staff was reminded about the proper use of closing codes, including the “K” closure code. LSNF indicates it will continue to train staff on closing codes emphasizing that only in rare instances may a “K” closure be appropriate.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, limited action, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, limited action, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁸ There is,

⁸ The time limitation of the 2001 Handbook that a limited action case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject

however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

LSNF is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as there were nine files reviewed that were not closed in a timely manner. *See*, for example, Case No. 07-02-02001819, which is a 2010 closed Tallahassee case that was opened in 2007. The only documented work in the file was in the year 2007. This case should have been closed and reported to LSC in year 2008. *See also* Case No. 08-0102539, which is a 2010 Tallahassee case that was closed on January 27, 2010. A closing letter was sent to the client in September, 2009. There is no further information in the file, therefore this case should have been closed and reported in year 2009. *See also* Case No. 07-04-07001141, which is a 2010 case that was closed on January 24, 2010, however; there was no legal activity indicated in the file after 2008. The file did not contain a memo or other entry stating why the file should have been held open during 2009 or 2010. LSNF agreed to exclude this file from the 2010 LSC CSR data submission. *See also* Case No. 07-04-07001045, which is a case that was open in 2009. There was no legal activity indicated in the file. The files did not contain a memo or other entry stating why the files should have been held open during 2009, 2010 or 2011. The case was deselected on January 2, 2011. *See also* Case No. 04-04-07000492, which is a closed 2009 case that was opened April 7, 2004 and closed January 23, 2009. There was legal activity documented in the file through April, 2004. There was no subsequent activity documented in the case file.

LSNF indicates it will conduct additional training for case handlers on documenting legal assistance and timely closing of cases. According to LSNF, a program-wide staff meeting is scheduled for the end of May, at which time all of the issues identified in this document will be reviewed.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and

to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

reported to LSC more than once. *See* CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

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

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

LSNF implemented procedures to reduce the potential of duplicate cases. During the conflict check performed prior to the initiation of an intake, staff determines whether an applicant is a current or prior client of the program. If a case is identified for the applicant that is either currently open or a closed case with the same problem code during the same calendar year, the receptionist opens a new case on the ACMS and indicates the old case number on the written intake form. Managing Attorneys are responsible for determining if the case is a duplicate during case review meetings and rejecting and/or reopening the appropriate case. In addition, the Paralegal/Grants Administrator runs error reports twice a year identifying potential duplicate cases. The program's procedures appear to be effective as no duplicates were identified.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 13: Review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, revealed that LSNF is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Based on the review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, LSNF is in compliance with the requirements of 45 CFR Part 1604.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 14: A limited review of LSNF fiscal documentation between 2008 and November 2010 and interviews with program management indicated the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed to ensure Corporation funds will be used to provide high quality legal assistance and not to support or promote political activities or interests.

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

The Program has established written policies to ensure its employees are aware of and comply with LSC requirements. LSNF's Personnel Policies and Procedures section entitled Political Activities details the LSC regulations regarding political activities as set forth in 45 CFR Part 1608 and imposes similar restrictions on the program's employees. A copy of LSNF's Personnel Policy and Procedures is provided to program employees, and new employees sign an acknowledgement they have received this information.

A limited review of fiscal records reflected in LSNF's Chart of Accounts, including cash disbursements, provided no indication that the program was involved in any prohibited political activity during the review period. In discussions with the CFO, she also confirmed that LSNF and its staff were not involved in any restricted political activities.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 15: Interviews with LSNF management and a limited review of the program's fiscal documentation indicated it is in compliance with 45 CFR Part 1609 which is designed, in part, to ensure that programs do not use scarce legal services resources when a private attorney is available to provide effective legal representation.

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or by two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking Social Security or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

Effective March 15, 2010, LSC issued an interim final rule which eliminated the former regulatory restriction (45 CFR Part 1642) on claiming, collecting and retaining attorneys' fees. *See* 75 Federal Register 6816 (February 11, 2010). The rule became final effective April 26, 2010.

It should be noted the requirement for the accounting of attorneys' fees received remains. Attorneys' fees received by a recipient for representation supported in whole or in part with LSC funds shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the LSC funds expended bears to the total amount expended to support the representation. Further, attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other applicable law at the time the money is received. *See* 45 CFR § 1609.4.

45 CFR § 1609.6 requires each recipient to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part. LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

Due to regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases in Program Letters 09-3 *Compliance Guidance and Interim Guidance on Attorney Fees* and 10-01 *Supplemental Guidance on Attorneys' Fees*. LSC will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. As previously stated, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

In discussions with LSNF's CFO, she confirmed that LSNF was not involved in any fee-generating case during the review period. None of the fiscal documents reviewed involved legal assistance case or matter with the possibility of receiving a fee. Furthermore, no fee-generating cases were identified during case review.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 16: LSNF provides written notification to its individual contributors of \$250 and over of the prohibitions and conditions which apply to the funds received from sources other than LSC; however, LSNF does not routinely provide this notification to other non-LSC funding sources from which it receives grant support pursuant to 45 CFR § 1610.5. Additional information is needed to assess LSNF's compliance with 45 CFR § 1610.8 regarding program integrity from entities engaging in LSC restricted activities.

LSC regulation 45 CFR § 1610.5 (Notification) states:

- a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.
- b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

Refer also to LSC Program Letter 96-3 – *Notification of Other Funders* which provides further clarification regarding notifications required when a program accepts non-LSC funds. It states, in part, that a program should notify funders of the application of the restrictions to their funding during the course of soliciting funds or applying for a grant or contract and also for contracts and grants already awarded but for which further payments are contemplated.

LSNF has established a process to provide written notification to its individual contributors of \$250 or more. A limited review was conducted of five (5) donor letters for 2009 contributions and five (5) for 2010. The letters LSNF sent to these donors comply with the requirements of 45 CFR § 1610.5 (Notification). However, a review of a sample selected of three (3) non-LSC grant funding sources determined that the program had not provided the notification required under 45 CFR § 1610.5. For two (2) of the grant funding sources reviewed the notification had not been provided timely and in the third grant funding source reviewed the program could not demonstrate that the funding source had been provided with the notification at any point. The program must revise its procedures to ensure that notification of the prohibitions and conditions which apply to the funds received is provided to all its non-LSC funding sources of \$250 and over.

According to LSNF, it was unaware that notification had to be provided to its grant sources every time a new application was done or renewed. However, LSNF indicates it has prepared a letter of notification that will be mailed to all grant sources. According to LSNF, it will ensure the notification is given each time a renewal or new application is submitted.

45 CFR § 1610.8 requires that LSC recipients maintain program integrity from entities that engage in LSC restricted activities by maintaining objective integrity and independence from such organizations.

The CSR/CMS on-site review confirmed that LSNF has a relationship with the North Florida Center for Equal Justice, Inc. (NFCEJ), a non-profit organization that provides assistance to low-income persons and conducts activities prohibited by LSC regulations. This relationship

includes the following; The NFCEJ Articles of Incorporation lists LSNF as the sole member of the Corporation; LSNF and NFCEJ boards of directors maintain identical membership but hold separate board meetings; and, LSNF rents office space in its Tallahassee office building to NFCEJ. After assessing the information gathered during the on-site review, it was determined that additional information is needed before a finding can be made regarding LSNF's compliance with 45 CFR § 1610.8. LSC will be contacting LSNF in order to obtain additional information and documents required to complete its assessment.

Finding 17: LSNF is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; compliance is noted with 45 CFR Part 1614 (Private attorney involvement) in that LSNF has created a PAI Plan, PAI expenses are adequately supported, and the program's PAI expenditures exceeded the 12.5% regulatory requirement for each year during the review period.

LSNF's PAI program is managed by the Director of Development/PAI, with the assistance of a full-time and part-time assistant, all based in Tallahassee. According to the 2010 PAI Plan and several interviews with the Director of Development/Private Attorney Involvement, LSNF utilizes private attorneys in the direct delivery of legal assistance in three ways: to provide extended representation for direct referrals, to staff the Legal Advice Hotline, and to conduct intake and advice clinics. All attorney participation is on a pro bono basis. The Director estimates that approximately 300 volunteer attorneys are active in LSNF's PAI program.

Direct Referrals

Cases are referred to the Director of Development/PAI from the Managing Attorneys of all branch offices except for Panama City cases which are referred to the First Saturday Legal Clinic. These cases have been reviewed for eligibility and merit during case acceptance meetings. The majority of the cases referred for placement are family law related, with some bankruptcy and other consumer issues.

Upon receipt of a referral, the Director sends a letter to the applicant advising them that their case was accepted for referral to a private attorney. The applicant is asked to sign and return a retainer agreement with a description of services to be provided inserted by LSNF. The applicant is advised that LSNF has no obligation to represent the applicant until an attorney is located and the attorney signs and dates the agreement. Once the agreement is returned by the applicant, the Director matches the applicant to a volunteer attorney. The application is sealed in an envelope and sent to the attorney with a letter asking that they check for conflicts prior to opening the envelope. A generic Memorandum of Understanding between the volunteer and LSNF is enclosed as well as a Final Case Disposition Form. The attorney is asked to advise the program within five (5) days whether they will accept the placement.

After agreeing to accept a case, a letter with the attorney's name and contact information is sent to the client. The client is advised to contact the attorney within 10 days. In the event an attorney is cannot be located, the applicant is sent a rejection letter.

The Director stated that he rarely receives the Final Case Disposition Form from the attorney. Rather, he relies upon quarterly time reports for case oversight. A form requesting the number of hours spent on the case during each quarter and a status update is sent to each attorney for each open case.

The volunteer attorney selects the case closure category if they return the Final Case Disposition Form. If closure information is communicated on the quarterly time report, the Director selects the code. Once cases are closed on the ACMS by the Director, the Tallahassee office Managing Attorney reviews cases from its office's service area and the Director of Litigation reviews cases from the outlying office areas.

Legal Advice Hotline

The Legal Advice Hotline is available to applicants residing in the 12 counties served by the LSNF Tallahassee, Quincy, and Panama City offices. The hotline phone number is widely advertised and individuals can call it directly. In such instances, the full-time or part-time PAI assistants answer the phone and conduct a telephone eligibility screening. If they are unavailable, callers may leave a message for a return call. Once a telephone screening is completed, eligible callers are either transferred directly to an attorney through to the hotline, if available, or given a general time to expect a callback.

Two (2) attorneys per day staff the hotline answering calls that are transferred by the PAI assistants and return calls to applicants in the callback queue. Attorneys interview the client and provide advice, as appropriate. Advice is handwritten and later typed and posted to the ACMS record by a PAI assistant. The Director reviews cases for advice and closes the cases in the ACMS with the appropriate closing code. Questions regarding the sufficiency or accuracy of legal advice are answered by Tallahassee Managing Attorney or the Director of Litigation.

Clinics

Volunteer attorneys conduct intake and provide advice at a number of clinics held throughout the service areas. In addition to the Homeless, Night, Senior Citizen and Wakulla County advice clinics previously discussed, volunteer attorneys also staff a small claims matters clinics. The Panama City office operates the First Saturday Legal Clinic in association with the Bar. The Bar recruits volunteer attorneys to meet with the client, provide advice, and consider extended representation if deemed appropriate. A member of the Tallahassee PAI staff contacts the recruited attorneys and matches them with an applicant. The applicant is advised by letter of the attorney's name and told to call the attorney to set up an appointment. The First Saturday Legal Clinic Retainer Agreement, with a description of services to be provided inserted by LSNF staff, is sent to the client with the letter. The attorney receives a letter with a copy of the Retainer Agreement, letter to the client, and a Memorandum of Understanding.

Oversight

Given that a large percentage of PAI cases are closed with advice delivered on the hotline or at a clinic, most cases are not held open and therefore oversight concerns were not identified. With respect to oversight of the direct referrals, case review reveals that the quarterly time report

provides sufficient status information. Attorneys in the State of Florida have an incentive to return these forms to LSNF to earn credit for time spent on pro bono, as the State of Florida strongly encourages every attorney to donate 20 hours of time or \$350.

Family Law Assistance Program (FLAP)

LSNF operates FLAP, a self-help program designed for pro se litigants with family law problems. Volunteer attorneys participate in procedural reviews of the forms but are prevented from providing legal assistance according to the Administrative Order creating the FLAP program. Accordingly, FLAP activities are reported to LSC as matters.

45 CFR § 1614.1(a) states that this part is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. It requires an LSC recipient to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement. The term "private attorney" is defined as an attorney who was not a staff attorney for any portion of the previous two (2) years as defined in § 1600.1 of the regulations. *See* 45 CFR § 1614.1(d).

Under 45 CFR § 1614.3, the regulation contemplates a range of activities that a recipient may undertake to involve private attorneys in the delivery of legal assistance to eligible clients. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. In 45 CFR § 1614.3(e) it states that the recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort, including non-personnel costs. The regulation at 45 CFR § 1614.3(e)(2) requires that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. Also, 45 CFR § 1614.3(e)(3) requires that in private attorney models, attorneys may be reimbursed for actual fees and expenses; however, attorney's fees paid may not exceed 50 percent of the local prevailing market rate for that type of service. Further, 45 CFR § 1614.4 is designed to ensure that recipients of LSC funds develop and present a PAI Plan on an annual basis and that the plan is presented to its local bar associations.

In its 2009 Audited Financial Statements (AFS), LSNF reported PAI expenditures of \$215,662 which represents 13.9% of its LSC basic field award (PAI ratio). Review of its unaudited financial statements for 2010 indicates that the program achieved an 18% PAI ratio during 2010.

LSNF prepares an annual PAI Plan as required under 45 CFR § 1614.4. A review of LSNF's 2010 PAI plan indicates that it meets the outlined requirements. The CFO also prepares an annual PAI Report which details both direct and indirect PAI expenses for the year. Indirect PAI salaries are calculated by applying a ratio of the direct PAI salary to total program-wide salary. Non-personnel indirect costs (overhead) are likewise calculated using the similar methodology. This methodology addresses the requirements under 45 CFR § 1614.3(e)(1)(i) as described in the

Accounting Guide For LSC Recipients under Chapter 3 which discusses Fundamental Criteria and Internal Controls.

Based upon interviews and the review referral cases, it is concluded that LSNF is in compliance with 45 CFR Part 1614.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 18: LSNF is in compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) in that the program does not operate any LSC funded subgrants and the program is not paying prohibited membership fees or dues with LSC funds.

LSC Regulation 45 CFR § 1627.2(b)(1) defines a subrecipient as an entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than \$25,000 shall be included. Furthermore, 45 CFR § 1627.2(b)(2) defines subgrant to mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition in paragraph (b)(1) of this section. 45 CFR § 1627.3 outlines requirements for all subgrants including the mandate in (a)(1) of that section which states that all subgrants must be submitted in writing to the Corporation for prior, written approval.

Review of LSNF's fiscal records and discussions with its CFO confirmed that the program had no LSC funded subgrants in effect for the review period.

LSC regulation 45 CFR § 1627.4(a) requires that:

- (a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- (b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

A limited review of accounting records and detailed general ledger during the review period and discussions with the CFO disclosed compliance with 45 CFR § 1627.4(a); the program pays for all dues and fees with non-LSC funds.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 19: LSNF is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635 is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Per 45 CFR § 1635.3(b) time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type as required under 45 CFR § 1635.3(c). Finally, 45 CFR § 1635.3(d) mandates that recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

As previously mentioned, LSNF attorneys and paralegals utilize the Legal Server timekeeping system to enter their time worked which is broken down by activities in as little as six (6) minute increments. The review of four (4) advocates timekeeping records selected for the pay periods ending July 31, 2009 and October 31, 2010 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c). Additionally all records selected confirmed that the employee had worked a minimum of 35 hours during the week, in compliance with the program's work week requirement.

However, in one (1) instance it was determined that an attorney's time spent working with the PAI hotline had not been entered contemporaneous. The staff attorney had spent half an hour on a case in June of 2010; however, that time was not entered into Legal Server until August 2010. The Director of Development advised that this was an uncommon event for a staff attorney to work with the PAI hotline; however, they may be occasionally requested to assist on a case. He advised that hours spent by hotline volunteers are sometimes inputted at a later date, which was what occurred in this instance. Since the time spent by staff attorneys and paralegals on hotline

activities must still be documented by time records and entered contemporaneous per the requirements of 45 CFR § 1635.3(b), the program should devise a policy or procedure which mandates that whenever an attorney or paralegal spends time working with the PAI hotline, they must enter their time contemporaneous, just as they would for their other activities.

Interview with the CFO disclosed that there are no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR §1635.3(d).

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 20: Interviews with LSNF management and a limited review of the program’s fiscal documentation indicated compliance with 45 CFR Part 1642 – Attorneys’ Fees during the review period in that the program did not seek, and was not awarded attorneys’ fees.

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys’ fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define “attorneys’ fees” as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client’s retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

Due to regulatory changes, LSC has also prescribed certain specific requirements for fee-generating cases in Program Letter 10-01 Supplemental Guidance on Attorneys’ Fees, LSC will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys’ fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys’ fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. The regulatory provisions regarding accounting for and use of attorneys’ fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

Examination of the General Ledger and discussions with the CFO confirmed that LSNF had not been involved in nor received attorneys’ fees during the review period.

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys’ fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define “attorneys’ fees” as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client’s retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

None of the sampled files reviewed contained a prayer for attorneys’ fees.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 21: Review of LSNF financial documentation and interviews with its management indicates the program is in compliance with the requirements of 45 CFR Part 1612 in that LSNF has complied with its policies which restrict lobbying and certain other restricted activities.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

LSNF's Personnel Policy and Procedures incorporates the restrictions imposed by 45 CFR Part 1612 and is provided to all new employees. None of the sampled fiscal files or documents reviewed evidenced any lobbying or other prohibited activities. The CFO confirmed that during the review period LSNF was not involved in any prohibited public rulemaking or lobbying activities.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule

23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).⁹

None of the sampled files reviewed involved initiation or participation in a class action.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Recipients may not make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

None of the sampled files reviewed revealed participation in litigation related to redistricting.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on

⁹ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁰ This restriction has been contained in all subsequent appropriations acts.¹¹ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity.

In response to the DR, LSNF offered no comments with respect to this Finding.

¹⁰ *See* Section 504(a)(18).

¹¹ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134, Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LSNF was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 30: Based upon a limited review of LSNF's policies and procedures, fiscal documentation and interviews with its staff and management, the program has evidenced general compliance with the requirements of LSC Grant Assurances to comply with the LSC Audit Guide for Recipients and Auditors and the 2010 edition of the Accounting Guide for LSC Recipients (AGLSCR).

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to AGLSCR (2010 Edition), the CSR Handbook, the LSC Property Manual, the Property Acquisition and

Management Manual (PAMM), and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. Refer to LSC Grant Assurances for Calendar Year 2010 Funding (Form C), *See Assurance 1*.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations.

The AGLSCR provides guidance on all aspects of fiscal operations and the 2010 revised edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur. Refer to AGLSCR (2010 Edition), Appendix VII – Accounting Procedures and Internal Control Checklist and LSC Program Letter 10-2, Appendix A - Embezzlement, Fraud, and the Critical Importance of Effective Internal Control.

Each recipient's governing body has a fiduciary responsibility to the program and must establish a financial oversight committee or committees. Refer to AGLSCR (2010 Edition), 1-7 – Responsibilities of the Financial Oversight Committee or Committees.

The financial oversight committee(s) should, at a minimum engage in all of the responsibilities described below. In the event a governing body does not have a separate audit committee, the audit committee's functions should be performed by the finance committee or another committee of the board.

The finance committee's role, subject to any requirements of state law:

1. Revises budget and makes recommendations to the full board of directors;
2. Reviews monthly management reports (including budgeted and actual income and expenses, variances, and a statement of cash on hand; see section 3-5.9) with chief financial officer, controller, and/or CPA;
3. Reviews accounting and control policies and makes recommendations for changes and improvements;
4. Reviews the audited financial statements, management letter, and senior staff's response with staff and auditor;
5. Regularly reviews and makes recommendations about investment policies; and
6. Coordinates board training on financial matters. Acts as liaison between full board and staff on fiscal matters.

The audit committee's role, subject to any requirements of state law:

1. Hiring the auditor;

2. Setting the compensation of the auditor;
3. Overseeing the auditor's activities;
4. Setting rules and processes for complaints concerning: a. Accounting practices and b. Internal Control Practices;
5. Reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing and providing assurances of compliance to the full board; and
6. Ensuring the recipient's operations are conducted and managed in a manner that emphasizes ethical and honest behavior, compliance with applicable laws, regulations and policies, effective management of the recipient's resources and risks, and accountability of persons within the organization.

While it is recognized that some boards, due to their small size and other considerations, will decide not to have a separate audit committee, nevertheless it generally is considered a best practice for governing bodies to have both a finance committee and a separate audit committee. The critical point is that all of the finance and audit committee duties listed immediately above must be performed by a financial oversight committee(s). It is also critical, and considered a best practice, that the financial oversight committee(s) have at least one (1) member who is a financial expert or for the board to have access to a financial expert. A financial expert has (1) an understanding of Generally Accepted Accounting Principles (GAAP) and financial statements; (2) the capacity to apply GAAP in connection with preparing and auditing financial statements; (3) familiarity with developing and implementing internal financial controls and procedures; and (4) the capacity to understand the implications of different interpretations of accounting rules.

According to LSNF, its Board recently considered dividing the financial oversight responsibilities, however, decided not to follow this recommendation.

LSNF Board Responsibilities

The LSNF Board has exhibited awareness of its financial responsibilities. The program has approved a Fiscal Manual which incorporates the program's policies for implementation of regulations issued by the LSC as well as internal controls and procedures. There is a Budget/Audit Committee of the Board which is charged with: 1) keeping the Board abreast of the program's financial position; 2) reviewing current budget and making recommendations to the Board for the upcoming budget year; 3) studying/evaluating the program's internal accounting control; 4) meeting with external auditors to review and evaluate the program's financial position; and 5) reviewing the Board's investment policy biannually. There are seven members on the Budget/Audit Committee for 2010. OCE recommends that the LSNF's Board give consideration to the idea of establishing both a finance committee and a separate audit committee, as previously described. In December 2010, members of the Budget/Audit Committee were presented with an Accounting Procedures and Internal Control Checklist which was an internal control assessment prepared by LSNF's CFO.

The full Board reviews and approves an updated program budget on an annual basis at its February meeting and each Board member receives an updated monthly e-mail which compares budgeted revenue and expense projections versus the actual year-to-date amounts. Additionally, the CFO prepares a Quarterly Report for Board members which includes a Financial Report, PAI

Update, Bank/Investment Balances reflecting cash readily available and in CDs, and an Endowment Pledge Update. The 2010 AGLSCR recommends that a cash flow statement or a statement of cash on hand should be submitted monthly to the Finance Committee of the Board of Directors and quarterly to all Board members. This recommendation should be fully implemented to further strengthen LSNF's internal control regarding the fiscal oversight of its Budget/Audit Committee. *See* AGLSCR, Appendix VII Section A-18.

According to LSNF, cash flow statements are being submitted monthly (as opposed to quarterly, as had previously been done).

Internal Fiscal Controls

LSNF's fiscal staff consists of its CFO, a HR Generalist with payroll and accounts payable responsibilities, and an employee with administrative responsibilities who assists the CFO on a half-time basis. Additional oversight and review is provided by the program's Executive Director. The accounting system is directly supervised by the CFO who is also responsible for the overall operations of the financial management system. The program utilizes Sage MIP Fund Accounting software, Legal Server for its case and time management software, and Sage Accpac for payroll.

The program has developed its Fiscal Manual to establish procedures to adequately account for, report on, and control the expenditure of its financial resources. These procedures encompass administrative and accounting control over its fundamental business activities. The Fiscal Manual contains detailed procedures which define the individual actions and responsibility to achieve effective internal control including Accounting Systems of LSNF, Expenditures and Receipts, Checking and Savings Accounts, Client Trust Accounts, Budgeting, Financial Reports and Fund Requests, Real Property Ownership, LSNF Policy on Recipient Fund Balances and Cost Standards and Procedures, and Employee Benefits.

Through a review of its responses to an LSC Internal Control Worksheet prepared during the on-site visit and interviews with LSNF's fiscal staff, it appears the program has established a segregation of duties to the extent practical based on its staffing level.

Bank Reconciliations

The program uses a number of bank accounts for various purposes including operating cash, client funds, and investments. The bank account reconciliation process is performed monthly by the CFO and is reviewed by the ED. A limited review of LSNF's bank reconciliations indicates that its bank statement receipt and reconciliation process is performed timely. However, upon review of the November 2010 bank statement for LSNF's main operating account it was determined that outstanding were seven (7) checks over six (6) months old. The program currently does not have a written policy/procedure covering stale checks. OCE recommends that LSNF develop a written policy and/or procedure which require that stale checks, over six (6) months old, be researched and resolved to the extent possible. It is noted that the CFO did send letters to holders of stale checks in November 2009 and as a result was able to close one of these items.

According to LSNF, it has implemented a procedure to review stale checks every six (6) months which will be added to the Fiscal Manual.

Salary and Travel Advances

The program does not regularly grant salary advances and the CFO advised that over the past two years there were no salary advances except in 2009 when LSNF had summer fellows (third year law students) through the Florida Bar Foundation (FBF) who needed money to help with their temporary living situations and could not wait until LSNF's monthly payroll. An advance was requested by the FBF and LSNF required a confirmation of hours worked prior to paying the advance.

LSNF's Personnel Policies and Procedures states that an advance travel allowance shall be paid only upon approval of the Executive Director and may not exceed \$300. The program does not regularly grant travel advances and through review of financial records and discussion with the CFO it was determined that over the past two years there has been only one travel advance. This \$150 advance was extended on March 26, 2009 and was repaid by the employee on April 7, 2009.

Annual Audit

The annual audit of LSNF's financial statements for calendar years 2008 and 2009 resulted in the issuance of unqualified reports and no questioned costs.

Credit Cards

The Program uses corporate credit cards controlled with eight authorized users including the Executive Director, Director of Litigation, and the senior attorney from each LSNF office. The cardholders are authorized to use the cards for business expenses and there is no feature for cash availability. Charges are divided by fund codes, as applicable. LSNF pays off the balance in full each month.

Limited testing found receipts associated with all charges and the supporting documentation adequately identifies the purpose of the expenditure. A review of six (6) months of statements revealed that the program paid off the balance in full each month and incurred no finance charges.

Cash Receipts from Clients

LSNF will sometimes accept cash from a client to cover anticipated fees in connection with their legal representation. The program has written procedures on this area which are contained in the Fund Receipts and Disbursements section of its Fiscal Manual. The procedure states, in part, that the heart of the client trust system is the pre-numbered, three-part client trust receipt form. The receptionist at each office is responsible for writing the receipts and disbursing copies of the receipts.

To strengthen a program's internal control with the goal of reducing opportunities for fraudulent activities to occur, LSC recommends that if a program chooses to accept cash from a client it should designate an employee(s) who is specifically authorized to receive the cash. Also, clients should be provided a notice about the program's cash receipts policy which states that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. *See* 2010 AGLSCR, Appendix VII Section H-9 and H-15 and Program Letter 10-2.

LSNF indicates that signs have already been displayed in each of the lobbies regarding cash receipts. According to LSNF, this issue was already identified by the Board prior to the LSC CSR/CMS visit.

Based on these LSC recommendations, the CFO distributed an Accounting Procedures and Internal Control Checklist in a packet of materials distributed to members of LSNF's Budget/Audit Committee in December 2010. In that packet Item Numbers H-8 through H-15 pertain to cash handling procedures and recommendations to strengthen its internal control. Of particular note, Item H-15 indicates that the program has discussed putting a sign in each of its lobbies that contains a notice to its clients of LSNF's cash policy including a statement that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. The program is encouraged to implement this recommendation as it provides a control to better inform its clients as deterrence to possible fraudulent activities.

Timekeeping and Payroll

LSNF requires that employees work a 35 hour work week and the program is open to the public Monday through Thursday. Staff may however come in on the other days as necessary to complete their mandatory 35 hours for the week. Attorneys and paralegals utilize the Legal Server timekeeping system to enter their time worked broken down by activities in as little as 6 minute increments.

LSNF's Personnel Policies and Procedures states that payroll is done monthly with the paychecks being distributed on the last working day of each month. Time and attendance records shall be kept on each employee and shall be verified by the employee's supervisor and approved by the Executive Director. These time records must be signed by the employee, supervisor, and Executive Director and paychecks will not be issued until time records are verified by the administrative office for that pay period. Payroll is administered through Sage Accpac and employees are paid via direct deposit.

Finding 31: LSNF is in compliance with 45 CFR § 1628.3 for each year during the review period in that the program's retained LSC fund balances did not exceed 10% of the annual LSC funding received.

Recipients are permitted to carry over an LSC fund balance of up to 10% of their LSC support from one year to the next. In special circumstances recipients may request a waiver to retain a fund balance up to 25% of their LSC support.

LSNF maintained no LSC fund balance at year-ends 2008 or 2009. This indicates that all support received from LSC was expended for those years.

In response to the DR, LSNF offered no comments with respect to this Finding.

Finding 32: A limited review of LSNF's accounting records determined that the program is in compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures).

Interviews with staff and management and LSNF documentation indicates general compliance with the requirements of 45 CFR Part 1630 which (in part) requires that costs be adequately and contemporaneously documented in business records accessible to the Corporation and any derivative income resulting from LSC funding is allocated to the fund in which the recipient's LSC grant is recorded. As previously discussed under Finding 4, while LSNF does rent office space at its Tallahassee office, that building was not purchased with LSC funds, therefore, the rent is not considered LSC derivative income.

Also, 45 CFR § 1630.3(b) (Reasonable costs) states, in part, that a cost is considered reasonable, if in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost.

As previously mentioned, a limited review of LSNF's credit card payments revealed the program has not incurred avoidable fees in the forms of finance charges or late fees and that records were maintained in support of its charges.

In response to the DR, LSNF offered no comments with respect to this Finding.

IV. RECOMMENDATIONS¹²

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

1. Review the language of rejection letters to ensure referrals are not stated to be advice;

According to LSNF, it will modify the rejection letters as recommended.

2. Review and revise its Board adopted Client Eligibility Guidelines;

According to LSNF, it has made the revisions requested by LSC and is awaiting its Board approval.

3. Explore options to check conflicts at homeless clinics prior to the provision of legal assistance;

LSNF indicates it has been in contact with the staff at the homeless clinic to continue to develop a procedure to check conflicts.

4. Use the correct acknowledgement form for attorneys conducting procedural reviews for FLAP;

According to LSNF, attorneys conducting reviews for FLAP are using the correct acknowledgment form and believe this was merely a misunderstanding during the visit.

5. Submit a cash flow statement or a statement of cash on hand monthly to members of its Budget/Audit Committee of the Board of Directors;

According to LSNF, cash flow statements are being submitted monthly (as opposed to quarterly, as had previously been done).

6. Develop a written policy and/or procedure which require that stale checks over six months old be researched and resolved, to the extent possible;

According to LSNF, it has implemented a procedure to review stale checks every six (6) months which will be added to the Fiscal Manual.

7. Give consideration to dividing the Board's financial oversight responsibilities by establishing a separate Finance Committee and Audit Committee;

¹² Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

According to LSNF, its Board recently considered dividing the financial oversight responsibilities, however, decided not to follow this recommendation.

8. Display a sign in each of lobby that contains a notice to clients of LSNF's cash policy, including a statement that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor;

LSNF indicates that signs have already been displayed in each of the lobbies regarding cash receipts. According to LSNF, this issue was already identified by the Board prior to the LSC CSR/CMS visit.

9. Create a field on the ACMS to enter fixed debts and obligations of the client;

In response to the DR, LSNF offered no comments with respect to this Finding.

10. Conduct additional training to ensure case handlers are documenting any legal assistance provided; and

According to LSNF, it will conduct additional training for case handlers on documenting legal assistance.

11. Provide additional training to staff regarding LSNF's case oversight procedures to ensure timely closing of cases.

According to LSNF, it will conduct additional training for case handlers to ensure timely closing of cases.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that the automated case management system is sufficient to record accurate and timely information regarding the case files in accordance with the CSR Handbook (2008 Ed.). Corrective Action must include a review of network performance. This should include an assessment of migration of data from the old case management system to the new case management system to ensure that functionality is retained and data is not lost or corrupted;

According to LSNF they were unaware that a data migration issue existed with regard to household size. LSNF indicates that they have confirmed that Legal Server did not import household size from the previous ACMS. LSNF states that its representative at the Florida Bar Foundation believes the migration of that data can be accomplished to resolve the issue. LSNF indicates that it will continue to work with Florida Bar Foundation; however, if they are unable to correct the problem, LSNF will individually input that data in all the open files.

2. Ensure that all case files contain citizenship attestations, where appropriate, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.) and that all written citizenship attestations used by LSNF are in the form as stated in the CSR Handbook (2008 Ed.) and all alien eligibility verifications are in compliance with 45 CFR Part 1626. As part of this corrective action, LSNF must collect and review all intake forms program wide and dispose of all non-compliant forms. LSNF must instruct its staff to review all citizenship attestations for every intake it receives by referral or that is distributed by a non-LSNF community partner to ensure that all attestations are in a compliant form;

LSNF indicates it will follow LSC's instruction to either obtain new forms that are in the required format or deselect cases from the CSR that do not have the required format. According to LSNF it will continue to advise staff that all new cases need to have the required documentation in the required format (unless they fall within an exception). LSNF indicates it will collect outdated forms from Clerks' offices and social service organizations and replace them with new forms, and instruct staff to review all citizenship attestations received from community partners to ensure that the attestations are in a compliant form.

3. Ensure that all staff are trained on the proper use of the closing code categories to comply with CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1; in addition, LSNF is required to review the use of "K", other, closing code use to ensure the proper use of this closing category;

According to LSNF, during the course of the review, staff was reminded about the proper use of closing codes, including the "K" closure code. LSNF indicates it will continue to train staff on closing codes emphasizing that only in rare instances may a "K" closure be

appropriate.

4. Ensure that all cases in which there has been a citizenship/eligible alien determination (or fall within a regulatory exception) and an income eligibility determination showing that the client meets LSC eligibility requirements are reported to LSC, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly reported pursuant to CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3;

According to LSNF it does not obtain information in these cases about the client's income and assets. CSR Handbook (2008 Ed.), ¶ 4.3 indicates that cases without eligibility determinations may not be reported to LSC. LSNF does not believe a corrective action is warranted. LSC agrees with LSNF's interpretation of CSR Handbook (2008 Ed.), ¶ 4.3, but must reiterate that those GAL, and other non-LSC funded, cases that contain evidence of 45 CFR Parts 1611 and 1626 eligibility information must be reported in CSR data if the file meets the requirements of a reportable case.

5. LSNF must change the Eligibility Form for Group Representation to reflect the requirements of 45 CFR § 1611.6 and ensure that the required eligibility information is collected for all group cases; and

LSNF indicates it does not anticipate it will open any future group files with LSC funding. However, LSNF has modified its retainer form in the event that a group client is opened with LSC funds.

6. Implement procedures to ensure that notification of the prohibitions and conditions which apply to the funds received is provided all non-LSC funding sources of \$250 and over as required under 45 CFR § 1610.5.

According to LSNF it was unaware that notification had to be provided to its grant sources every time a new application was done or renewed. However, LSNF indicates it has prepared a letter of notification that will be mailed to all grant sources in the next couple of weeks. According to LSNF it will ensure the notification is given each time a renewal or new application is submitted.



Legal Services
of NORTH FLORIDA
HOPE. JUSTICE. FOR ALL.



May 11, 2011

Danilo Cardona, Director
Office of Compliance & Enforcement
Legal Services Corporation
3333 K Street, N.W., 3rd Floor
Washington, D.C. 20007-3522

RE: CSR/CMS Visit, Recipient No. 610044

Dear Mr. Cardona:

The purpose of this letter is to comment on findings in the draft report for the CSR/CMS review that occurred January 31-February 4, 2011. We appreciated the careful thought and constructive comments of team members on-site and the identification of some issues that needed addressing. Taking the corrective actions as they were presented, we would offer the following:

1. ACMS— We were unaware that a data migration issue existed with regard to household size. However, we have confirmed that Legal Server did not import household size from our previous Case Management System. Our representative at the Florida Bar Foundation who is responsible for technical support believes the migration of that data can be accomplished to resolve that issue. We will continue to work with her and, if she is unable, will individually input that data into all open files. Although the majority of the problems cited in finding 1 were related to data migration issues, we carefully reviewed the other two issues cited.

In relation to dates not being consistent between the files and the CMS, a review of the examples leads to several conclusions: (a) some data input error, such as the file in which the open date was February 26, 2011 (but should have been February 26, 2010); (b) some cases where a file was reopened by staff and the Case Management System (unbeknownst to us) automatically changed the open date to the "reopen" date; and (c) discrepancy between intake dates in the case

HOME OFFICE

□ 2119 DELTA BOULEVARD
TALLAHASSEE, FL 32303-4220
850-385-9007 • FAX 850-385-7603
ADMINISTRATIVE FAX 850-205-6540
DEVELOPMENT FAX 850-385-5684

BRANCH OFFICES

□ 121 NORTH JACKSON STREET
QUINCY, FL 32351-2316
850-875-9881 • FAX 850-875-2008

□ 211 EAST 11TH STREET
PANAMA CITY, FL 32401-2938
850-769-3581 • FAX 850-785-2041

□ 133 STAFF DRIVE, SUITE B
FT. WALTON BEACH, FL 32548-5050
850-862-3279 • FAX 850-862-6327

□ 118 SOUTH BAYLEN STREET
PENSACOLA, FL 32502-5810
850-432-8222 • FAX 850-432-2329

files and open dates on the Case Management System. ¹As to inputting errors, we will remind staff of the importance of accurate input of data, and believe this is a relatively minor problem. In regards to reopening of files, we have changed our practice to prevent staff from having individual ability to reopen cases and instead now require them to go through their lead secretaries, who must work through our paralegal/grant administrator, who will ensure the open date in the Case Management System is not modified when a file is reopened. As to the discrepancy in dates between case files and the Case Management System, we do not include in our file a place to record an official open date. In several of the cases cited, the file open date was actually the intake date (which matched the intake but not the open date on the ACMS). Within our system, once the intake is received, the application is taken through a weekly case acceptance meeting. If it is a case which requires no retainer, the case is opened after a determination at case acceptance; in cases where retainers are required, it is not opened officially on the computer until a retainer is returned. As such, intake dates will not match open dates.

Finally, five examples were provided of income information being inconsistent between the file and the ACMS. We have been unable to confirm the information presented and can only speculate that any errors that might have been noted were corrected during the visit. Since this phenomena only occurred in five files reviewed, we will remind staff of the importance of carefully recording information from the paper files correctly to the Case Management System. Another factor that could sometimes have a bearing on this issue is a change in the information provided by a client after the case is opened. In at least one of the cases the client was accepted based on the information in the file demonstrating a household income of zero; however, during the course of the representation the attorney determined that the client had obtained employment and was considerably outside the guidelines, at which point the attorney discontinued representation. We will advise staff about the need to document in the notes section instances in which they modify the ACMS information as a result of changes such as these.

¹Please note some of the problems in the cited cases throughout the draft report couldn't be evaluated/confirmed because the information provided is not consistent with the current information available (possibly because it was corrected during the visit) or because the case numbers were a digit off. We understand with the number of files reviewed and the difficulty in protecting confidentiality through use of intermediaries that these types of issues will arise. Though we could not directly confirm all examples, we do not dispute the general findings.

Incidentally, it appears that the number of cases cited (20 related to household, 15 related to dates and five related to income) actually totaled 40 cases (as opposed to 50 referenced on p. 6 of your draft report) where information was inconsistent.

2. Citizenship – In cases opened prior to 2008 we will follow your instruction to either obtain new forms that are in the required format or deselect cases from the CSR that do not have the required format. We will continue to advise staff that all new cases need to have the required documentation in the required format (unless they fall within an exception). We will collect outdated forms from Clerks' offices and social service organizations and replace them with new forms, and instruct staff to review all citizenship attestations received from community partners to ensure that the attestations are in a compliant form.

As stated in the findings, we have interpreted the regulation to allow children to sign citizenship attestations in appropriate cases. We will seek a formal opinion from OLA. Section 1626.6(b) requires verification "when a recipient has reason to doubt that an applicant is a citizen." This language is similar to the language for determining financial eligibility – Section 1611.7(c) requires recipients to verify information if there is reason to doubt the accuracy of the information provided. In External Opinion No. EX-2008-1003, the OLA allowed the program requesting an opinion to accept financial information from minors when reasonable. The opinion noted, "The reasonableness of the inquiry made will depend on all of the surrounding circumstances, including but not limited to the minor's age and ability to understand and adequately respond to the intake questions asked; the minor client's apparent familiarity with the income and assets of his or her household members; the nature, logic and consistency of the minor client's responses to a recipient's intake questions; and the minor client's mannerisms and disposition for purposes of making a credibility determination." In that case, OLA noted that citizenship attestations for minors have traditionally been done by a parent, legal guardian or other legal representative of the minor, but alternatively, could be done by alternative methods established in Section 1626.6(b). The question was not squarely presented regarding a minor's ability to sign an attestation. As allowed in determining financial eligibility, a reasonableness standard should be applied taking into consideration the same factors listed above. Indeed, it would seem more likely that a child would know his/her place of birth than household income. This issue is particularly important for children who are estranged from their families, are in the dependency system, and have no birth certificate documentation available but need assistance quickly, as often happens when they are being sheltered.

Also as recommended by the monitoring team regarding indigent adult wards, LSNF has drafted an affidavit and will seek to obtain the signature of a third party. Unfortunately, there is sometimes little notice for appointing an attorney to represent a ward regarding emergency medical procedures. Please advise if the attached document filed in court is sufficient in those cases. If not, LSNF will be forced to notify the Judicial Administration Commission (who makes the appointments) that LSNF is unable to accept appointments without citizenship verification. This could easily result in our removal from the appointment list.

3. Closing Codes— During the course of the review, staff was reminded about the proper use of closing codes, including the “k” closure code. LSNF will continue to train staff on closing codes emphasizing that only in rare instances may a “k” closure be appropriate. LSNF would like to seek guidance on one issue: In several of the examples in the finding, work was undertaken on behalf of the client, but the client decided not to follow through or simply failed to return. Footnote 5 of the 2008 CSR handbook indicates that legal assistance must actually be provided to the client in order for the assistance to be reported as a case. As an example given, if a program performs legal research but does not advise the client of the results, this would not constitute a CSR reportable case. LSNF seeks clarification on the issue of when work is performed as described in the findings but never “delivered” to the client, if that is a reportable CSR case. (See 08-02-02000128, 07-02-02003392 and 09-0112051.)

4. Counting All Cases— The finding which led to this corrective action indicates, “it appears that LSNF may be underreporting Guardian Ad Litem funded cases ...,” citing several examples and noting they were not reported in the CSR data submission. LSNF does not obtain information in these cases about income and assets. Section 4.3 of the CSR Handbook indicates that cases without eligibility determinations may not be reported to LSC. LSNF does not believe a corrective action is warranted.

5. Group Representation— LSNF does not anticipate it will open any future group files with LSC funding. However, LSNF has modified its retainer form (see attached) in the event that a group client is opened with LSC funds. (Please advise if this form is acceptable.)

6. Notification to Funders— As the finding indicated, LSNF produced documentation of notification to all private donors. Of the three grant sources, LSNF produced two and was unable to locate the third notification. LSNF was unaware that notification had to be provided to its grant sources every time a

new application was done or renewed. However, recently LSNF, in order to erase any concern, prepared a letter of notification that will be mailed to all grant sources in the next couple of weeks. In the future LSNF will ensure the notification is given each time a renewal or new application is submitted.

LSNF understands that recommendations are not required, but would like to report back that:

- (1) All of the fiscal suggestions except one have been implemented. Cash flow statements are being submitted monthly (as opposed to quarterly, as had previously been done), a procedure to review stale checks every six months has been implemented (and will be written up and added to the Fiscal Manual), and signs have already been displayed in each of the lobbies regarding cash receipts (an activity already identified by the Board prior to the LSC visit). The Board recently (but prior to the LSC visit) considered dividing the financial oversight responsibilities and decided not to follow that suggestion.
- (2) LSNF will modify the rejection letters as recommended and has already revised the client eligibility guidelines (which are attached) as recommended. LSNF requests clarification on whether educational grants and loans are to be considered income or assets. (If assets, we will make one other modification to remove that as an excluded item under definition of assets.) LSNF also will take to the Board a modification to clarify that child care expenses must be related to employment, training or education (and will modify the directions accompanying the intake sheet), and requests clarification that child support is an allowable deduction pursuant to 1611.5(4)(vii). LSNF also notes, although a field does not exist on the ACMS for prospective income, a questionnaire connected to Legal Server collects that information.
- (3) LSNF has already been in contact with the staff at the homeless clinic to continue to work on ways to check conflicts.
- (4) Attorneys conducting reviews for FLAP are using the correct acknowledgment form--I believe this was merely a misunderstanding during the visit. Additionally, there is and has been a field on the ACMS to enter fixed debts and obligations, but one of the receptionists was not consistently entering data there. She (and all other staff) will be trained on the modified information to be input.

Danilo Cardona
May 11, 2011
Page 6

- (5) LSNF will conduct additional training for case handlers on documenting legal assistance and timely closing of cases. LSNF has a programwide staff meeting scheduled for the end of May, at which all of the issues identified in this document will be reviewed.

Finally, we have two miscellaneous questions unrelated to the visit:

- 1) Can we post notice of board meetings on our website to satisfy the requirements of 1607.4(a)?
- 2) If we represent someone and make a referral, should we report both a case and a matter?

LSNF hopes it has responded to all of the concerns and looks forward to guidance on the issues identified in order to ensure all of our operations meet the expectations in regard to our requirements.

Sincerely,



Kristine Knab
Executive Director

KK:mjr

Attachments

REFERRAL FORM

To: All Interested Parties:

Please complete this form and submit it to our office if you know of someone who may be in need of public guardianship services and you wish to refer them to the Office of Public Guardian, Inc. Guardianship is a serious step and should only be used as a last resort. Alternatives to guardianship are listed on the referral form., Guardianship is for persons who are unable to make decisions to manage their property and/or personal lives.

Public Guardianship Eligibility Criteria:

- The person must be ADJUDICATED incapacitated by a court,
- The person must have limited financial resources,
- The person must have no family or friends willing or qualified to be their guardian, and,

Referral Procedure.

- Once a complete referral form is received, OPG will notify the referring person whether there is space available in the program.
- Once space is available, an OPG case manager will make an initial visit to the person to verify the information on the referral form and assess whether the person is eligible for public guardianship services. The person's family members will be contacted.
- You will be notified in writing of the referral's status (accepted, denied, or wait-list). The person making the referral must be willing to testify in court of the need for guardianship.
- Due to a change in state guidelines, OPG can only file as petitioner in cases where there is no other resource available. Please check with our office or the probate clerk's office for the current filing fee amount. Our office can assist in preparing the paperwork necessary for filing.
- Three professionals will visit the person and make recommendations to the judge. These professionals are called the "examining committee."
- There will be a court hearing where the person who may need guardianship will have an opportunity to present evidence and have an attorney appointed at no cost to represent their interests.
- The entire process takes on average from 1 to 3 months; however, emergency temporary guardianship can be arranged if needed.
- The referring person must be willing to appear in court and testify under oath as to the information provided on the referral form.

If you have any questions, regarding our program, please feel free to contact Karen Campbell at (850) 487-4609, ext. 103.

REFERRAL FORM

OPG USE ONLY:	
Date Received:	_____
First Contact:	_____
CM & Date Assigned:	_____
Pre-Intake Due:	_____
Pre-Intake Rec'd:	_____
Decision:	_____

REFERRAL: PERSONAL INFORMATION

Name: _____

Current Address (include facility): _____

_____ Phone: _____

Contact person at the facility (may be different from referrer) _____

Social Security Number: _____ Date of Birth: _____

A Place of Birth: _____

Age: _____ Current Diagnoses: (List all): _____

REFERRING SOURCE: CONTACT INFORMATION

Name: _____

Organization: _____

Address: _____

Telephone: _____ Cell phone: _____ pager _____

E-mail: _____ Fax: _____

ALTERNATIVES TO GUARDIANSHIP: Guardianship is a serious step and should only be used as a last resort. Please indicate with an "X" the alternatives to guardianship that have

already been considered or used in this case. (Please consider these options before proceeding with this referral.)

- 1. Client Advocate (for recipients of developmental services).
- 2. Joint Bank Accounts.
- 3. Direct Deposit/Automatic Bill Pay.
- 4. Power of Attorney. _____
- 5. Trust.
- 6. Medical Proxy.
- 7. Guardian Advocate (for persons with developmental disabilities and/or mental health services.)
- 8. Health Care Surrogate Designation.

For items 1-7 you checked above, please explain whether these alternatives have sufficiently met the person's needs, or not.

LEGAL

Please check with an "X" if the client has been previously adjudicated incapacitated (if so, attach copy of legal papers including medical assessments leading to adjudication, or specify county where legal papers are filed)

Current Guardian, if any: _____

Year established: _____

Person Referred Needs:

Guardian of Property _____ If yes, explain why

Guardian of the Person _____ If yes, explain why

Have you told the client in terms that are understandable to him or her that you have initiated a referral for guardianship? _____

SOCIAL

Please note that public guardianship is NOT an alternative if a qualified relative or friend is willing and able to assume guardianship. Before making this referral, we require you make every effort to contact family members to determine their willingness.

Relatives and friends: (Required by the court)

Name/Address	Relationship	Willing To be Guardian?
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Summary of contact with family over period you have been involved: _____

List the name, address and phone number of persons who have personal knowledge of this person's disabilities and need for guardianship:

FINANCIAL

Monthly Income:

Source	Amount
_____	_____
_____	_____
_____	_____
_____	_____

Assets/Property: (include bank account balance with copy of recent statement to verify; attach property inventory if facility keeps one)

Description	Value
_____	_____
_____	_____

ASSESSMENT

Describe client's problems which lead you to believe the client cannot manage or make decisions concerning his or her person and/or property (Do not simply state diagnosis, describe in specific functional terms):

Are there special problems this person has that will require immediate action or attention, including immediate medical needs, financial management? (Specify):

Will this individual require placement? (Specify needs and suggested or arranged placement.)

What specific action, both short and long term, should be taken on this client's behalf?

Public guardianship services do not replace case management services. If the individual is assigned a guardian, their need for full case management services will remain. Do you understand that our office will not augment case management services? _____

Since the Public Guardian does not provide direct services to its wards, what suggestions would you make in meeting the needs of the ward from available community resources?

*This document may be filed with the court petition. Your signature below attests that the information contained in this referral form is true, accurate and correct. Your signature below also indicates your agreement to testify in court regarding the information contained in this referral form.

Signature of Referring Person*

Date

Agency

Street Address

City, State, Zip (+4)

Telephone (+ Area Code if necessary)

With this completed application, please submit a copy of the most recent treatment or habilitation plan, medical, psychiatric, psychological and psychosocial assessments and return to:

The Office of Public Guardian, Inc.

2292 Wednesday Street, Suite 1

Tallahassee, Florida 32308

-or fax-

850-922-2986

LEGAL SERVICES OF NORTH FLORIDA, INC.
Group, Corporation or Association Representation Retainer
(for cases utilizing LSC funds)

We, the _____, hereby retain Legal Services of North Florida, Inc., to represent us in connection with the following matter:

1. We, as representatives of the above named group, corporation or association declare that:
____ (a) It is primarily composed of persons financially eligible for legal assistance under the Legal Services of North Florida guidelines, which have been provided to us, and we have submitted income and asset information for our board or members to allow Legal Services of North Florida, Inc. (LSNF) to confirm our eligibility;
____ (b) Its primary function or activity is the furtherance of interests that benefit persons financially eligible under the LSNF guidelines, we have provided information to LSNF to substantiate our mission and purpose, and we are seeking legal assistance on a matter relating to such function or activity.
2. We do not have funds to retain private counsel, nor do we have practical means of obtaining such funds. We will provide information and documentation to support this assertion. We understand that our organization is not accepted as a client of LSNF until this form is signed by LSNF. LSNF will not sign this form until its representative has received information about our organization's income and income prospects, assets and obligations and determined that we have no ability or practical means of obtaining funds to retain private counsel.¹
3. It is understood that we retain the services of LSNF to provide legal assistance to our group, corporation, or association consistent with the purposes of the LSC Act and its provisions.
4. We agree to keep LSNF informed of our activities that relate directly or indirectly to the legal assistance being provided by LSNF. This will include meetings, negotiations and decisions of the representatives, or of the group, corporation, or association as a body, that affect the strategies and legal work of the individual attorney(s) of LSNF in providing direct legal assistance to us.
5. It is understood that failure to communicate or cooperate with LSNF regarding the case or matter identified in this retainer may be grounds for LSNF to withdraw from representation of our group, corporation or association. This agreement does not bind LSNF to file any court action, appeal a decision of a court, or appear before a tribunal.

Client Representative(s) - (signature)

Attorney(s), LSNF

Print Name

Date: _____

Position Held: _____

Date Position Expires: _____

¹LSNF staff must document its determination in the case file.

LEGAL SERVICES OF NORTH FLORIDA
CLIENT ELIGIBILITY GUIDELINES

Pursuant to Section 1007(a)(2) of the Legal Services Corporation Act and 48 C.F.R. Part 1611, and pursuant to criteria for funding from other Legal Services of North Florida grant sources, the following client eligibility guidelines are to give preference to the legal needs of those least able to obtain legal assistance and to adequately apportion the program's limited resources.

I. Geographic Service Area

Applicants must reside within Leon County, Jefferson County, Gadsden County, Liberty County, Calhoun County, Wakulla County, Franklin County, Okaloosa County, Walton County, Bay County, Holmes County, Jackson County, Washington County, Escambia County, Santa Rosa County, or Gulf County in order to qualify for services from Legal Services of North Florida. However, Florida residents of counties served by other legal aid or legal services programs will be accepted by this program pursuant to the statewide referral agreement so long as the referral is not inconsistent with the guidelines of Legal Services of North Florida. Out-of-state clients who meet the eligibility guidelines of their local legal services program will be accepted on a case-by-case basis at the discretion of the Senior Attorney of the office where the referral would be handled so long as the referral is not inconsistent with the guidelines of Legal Services of North Florida.

II. Definitions

A. "Governmental programs for the poor" means any federal, state or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need. "Governmental programs for persons with disabilities" means any federal, state or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

B. "Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to the support of, a family unit. In establishing the income of an applicant who is a victim of domestic violence, the income of the alleged perpetrator shall not be considered in determining the applicant's eligibility under LSC guidelines.

Total cash receipts include money, wages and salaries before any deductions; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security, unemployment and workers' compensation benefits; strike benefits from union funds; veteran benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household that are currently and actually available; public or private employees' pensions; regular insurance or annuity payments; and income from dividends, interest, rents, royalties, or from estates and trusts. They do not include the value of rent or food received in lieu of wages, any money withdrawn from a bank, tax refunds, gifts, compensations for and/or one-time

insurance payments for injuries sustained, non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans derived from Indian trust income or distributions exempt by statute.

C. "Assets" include cash or other resources of the applicant or other household members that are readily convertible to cash and are currently and actually available. In assessing the assets of an applicant who is a victim of domestic violence, the assets of the alleged perpetrator, assets jointly held by the applicant and the alleged perpetrator, and assets jointly held by household members and the alleged perpetrator will not be considered in determining the applicant's eligibility under LSC guidelines.

The following are excluded from the definition of assets:

- Homestead property being used as the principal place of residence;
- Vehicles which are necessary for household transportation and employment;
- Trust for medical expenses;
- Value of farm land essential to employment or self employment;
- Work related equipment needed for employment of a family member provided its owner is producing income or attempting to produce income with it;
- Cash value of IRAs, TSAs or KEOGH Plans;
- Educational grants and loans to pay for tuitions and fees;
- Any assistance received on account of major disaster.

D. "Fixed debts" means debts that are fixed as to time and amount, including current income and employment taxes, Social Security and Medicare taxes, local property taxes, mortgage payments, rent, work transportation (car payments, not gas), alimony, and business equipment loans, but not including food costs, utilities, or revolving loan accounts.

III. Individual Representation

A. Income Eligibility for Services Funded by LSC.

1. Automatic Eligibility: Two categories of applicants will be deemed automatically income eligible for services: (1) Applicants who are seeking assistance to maintain benefits provided by a governmental program for low-income individuals and families (such as supplemental security income, temporary assistance to needy families, or food stamp benefits) (no independent determination of income is necessary when serving an applicant whose income is derived solely from a governmental program for low-income individuals or families); (2) Applicants whose maximum income levels are 125% of the current official federal poverty income guidelines. The following table is a useful guideline; however, references to monthly incomes and weekly incomes are to be used to determine the respective applicant's annual income and the applicant's current monthly or weekly income is not in and of itself evidence of

the applicant's eligibility. Applicants whose yearly "income" is within the following limits are eligible unless current income prospects, taking into account seasonal variations in income, would increase the applicant's income to exceed the limits.

<u>FAMILY SIZE</u>	<u>YEARLY INCOME</u>	<u>MONTHLY INCOME</u>	<u>WEEKLY INCOME</u>
1	13,613	1,134.42	261.79
2	18,388	1,532.33	353.62
3	23,163	1,930.25	445.44
4	27,938	2,328.17	537.27
5	32,713	2,726.08	629.10
6	37,488	3,124.00	720.92
7	42,263	3,521.92	812.75
8	47,038	3,919.83	904.58

For family units with more than eight individuals add \$4,775 annually for each additional member.

University student applicants considered tax dependents by their parents or legal guardians will have their parents' or legal guardians' household income considered when determining financial eligibility.

2. Eligibility with Deductions: If an applicant's income is above the maximum income guidelines but below 200% of the current official federal poverty guidelines as reflected in the following chart:

<u>FAMILY SIZE</u>	<u>YEARLY INCOME</u>	<u>MONTHLY INCOME</u>	<u>WEEKLY INCOME</u>
1	21,780	1,815.00	418.85
2	29,420	2,451.67	565.77
3	37,060	3,088.33	712.69
4	44,700	3,725.00	859.62
5	52,340	4,361.67	1006.54
6	59,980	4,998.33	1,153.46
7	67,620	5,635.00	1,300.38
8	75,260	6,271.67	1,447.31

For family units with more than eight individuals add \$7,480 annually for each additional member.

[Year 2011]

the applicant may receive representation from the program if he or she is seeking legal assistance to secure benefits provided by a governmental program for the poor, he or she is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities, or if deductions described in sections (a)-(c) below singularly or in the aggregate place the client's income within Section III-A-1:

a. Current prospects for the applicant's income (taking into account seasonal variations) that are likely to decrease the applicant's income;

b. Deductions for unreimbursed medical expenses and medical insurance premiums; child care expenses necessary for employment, job training, or education activities in preparation for employment; child support; transportation needed for employment; and/or fixed debts and obligations (including unpaid federal, state, and local taxes from prior years);

c. Deductions for non-medical expenses associated with age or physical infirmity of resident family members.

If a person is determined eligible under Section 2, the factual basis for the decision will be documented in the Case Management System (CMS).

3. Exception Based on Factors that Affect Applicant's Ability to Afford Legal Assistance: If an applicant is determined ineligible under criteria listed in 2 (i.e. his/her income is under 200% of the poverty guidelines but deductions do not bring him/her under 125%), the person may receive representation, if the executive director determines there are other significant factors that affect the applicant's ability to afford legal assistance. A copy of the written documentation and the executive director's approval will be maintained by the executive director.

4. Fifty Percent Medical Exception: If an applicant's income is above the 200% ceiling, but over 50% of the applicant's income is committed to medical or nursing home expenses and, excluding the portion of the applicant's income that is committed to medical or nursing home expenses would make the applicant financially eligible based on his/her remaining income, that applicant may receive representation from the program. Written approval of the Executive Director must be obtained based on written documentation received from the applicant. A copy of the written documentation and the executive director's approval will be maintained by the executive director.

5. Other Eligibility Factors: If an applicant is tentatively determined eligible based on the criteria listed in 1, 2, 3, or 4, that person may not receive representation if the applicant has assets that are currently and actually available in excess of those in Section V (and the executive director does not waive the asset limitations).

6. Verification of Client Income: If the senior attorney or a staff attorney of a particular office has substantial reason to doubt the accuracy of the client's income information, he/she shall request that the client produce proof of income and expenses. Such proof may include, but not be limited to, the last year's W-2 form, employer's salary voucher, copy of check from pension/governmental agency, actual copies of bills of indebtedness, or a sworn statement from creditor, of same.

B. Income Eligibility for Services Funded by IOTA Legal Assistance for the Poor.

1. Automatic Eligibility: Applicants whose income is within 125% of the federal poverty guidelines (see chart III-A-1 above) are eligible.

2. Eligibility with Deductions: Applicants whose income is within 200% of the federal poverty guidelines (see chart III-A-2 above) are eligible if extenuating circumstances (such as significant medical expenses or child care expenses in connection with employment) clearly render them unable to hire private counsel.

C. Eligibility for Title III Services.

Applicants who are 60 years of age and over are eligible for advice, referral and brief services irrespective of their income or assets. Applicants who are 60 years of age and over who are also eligible for services funded by LSC, IOTA, or another funding source will be provided the full range of services offered by LSNF in accordance with priorities, case acceptance criteria and LSNF's long range plan.

D. Eligibility for Services Funded by the Violence Against Women Act (VAWA) and the Victims of Crime Act (VOCA):

Domestic violence victims who qualify for services under grants funded by VAWA and VOCA are eligible for services irrespective of their income or assets.

E. Eligibility for Services Funded by the IRS Low Income Tax Clinic:

Applicants with tax cases and controversies (in amounts up to \$50,000 per controversy in any one year) are eligible for assistance if their income is at or below 250% of the poverty guidelines (with a provision for waiver in up to 10% of the cases).

F. Other.

Services provided pursuant to other grants will be performed according to the grant requirements.

IV. Group, Corporation or Association Representation

Groups, corporations or associations may receive legal assistance under LSC guidelines if they:

- are primarily composed of eligible individuals for legal assistance, or
- have as a principal activity the delivery of services to persons who would be financially eligible, which must be documented by a description of financial and socio-economic characteristics of the persons to be served (and the assistance sought relates to such activity), and
- provide information showing that they lack, and have no practical means of obtaining, funds to retain private counsel, which must be documented by a review of resources available to the group.

Groups, corporations or associations may receive legal assistance under IOTA guidelines if:

- 50% or more of their membership is eligible for services; or

- their primary function or activity is the furtherance of interests that benefit persons financially eligible under subsection III-B and they are seeking legal assistance on a matter relating to such function or activity (and the applicant demonstrates it lacks and has no practical means of obtaining funds to enable it to obtain private counsel in the matter for which legal assistance is sought).

V. Asset Ceiling

Applicants whose assets exceed the following ceilings, notwithstanding their eligibility under Section III, will not be represented:

For an applicant with a family size of one, \$10,000. For households containing additional family members, the limit increases by \$3,000 per family member.

The executive director may waive the asset ceiling "in unusual situations." This waiver must be documented and included in the applicant's file.

In computing the value of assets, only the equity value will be considered. In computing the assets of an applicant who is a victim of domestic violence, assets of the alleged perpetrator, held jointly by the alleged perpetrator with the applicant, or held jointly by any member of the applicant's household with the alleged perpetrator will not be considered. No independent determination of assets is necessary when serving an applicant whose income is derived solely from a governmental program for low-income individuals or families.

VI. Withdrawing from a Case

If a person or group who qualifies for services pursuant to a means test becomes ineligible through a change in circumstance, the program shall discontinue representation if the change in circumstance is sufficiently likely to continue so that the person or group can afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibility.

VII. Case Restrictions

Legal Services of North Florida will not represent persons who fall within case restrictions imposed by the Legal Services Corporation or by policies set by Legal Services of North Florida as described below, notwithstanding the financial eligibility of those persons.

A. Restrictions Established by the Legal Services Corporation.

1. Legal Services of North Florida will not undertake representation with LSC funds in the following:

a. Abortion litigation or assistance with respect to a non-therapeutic abortion;

b. Desegregation of schools, except for advice;

- c. Violations of Military Selective Service Act or military desertion;
- d. Assisted suicide, euthanasia or mercy killing;
- e. Criminal cases except pursuant to court appointment or if required by professional responsibility;
- f. Collateral actions attacking criminal convictions except pursuant to court appointment.

2. Legal Services of North Florida will not undertake representation with any source of funds in the following:

- a. Class actions;
- b. Aliens unless they
 - (A) are present in the United States and are:
 - 1) lawfully admitted for permanent residence;
 - 2) married to U.S. citizens and have pending applications for adjustment of status;
 - 3) parents of a U.S. citizen and have pending applications for adjustment of status;
 - 4) unmarried children under the age of 21 of a U.S. citizen and have pending applications for adjustment of status;
 - 5) lawfully present in the U.S.
 - a. pursuant to a refugee admission;
 - b. based on a granted asylum by the Attorney General;
 - c. as a result of being granted conditional entry to the United States before April 1, 1980, because of persecution, fear of persecution, or being uprooted by catastrophic natural calamity;
 - d. as a result of the Attorney General's withholding a deportation;

or (B) are:

- 1) special agricultural workers whose status is adjusted to temporary resident alien under IRCA,
- 2) Specified H-2 agricultural and forestry workers for matters arising under their specific employment contract in the areas of wages, housing, transportation and other specified employment rights, or

- 3) lawfully admitted for temporary residence as replenishment agricultural workers;

or (C) are victims of domestic violence (battered or subjected to extreme cruelty), sexual assault, or qualify for immigration relief under Section 101(a)(15)(U) of the Immigration and Nationality Act (INA);

or (D) have a child who, without the active participation of the alien, has been subjected to battery, extreme cruelty, or sexual assault in the U.S. or qualifies for immigration relief under Section 101(a)(15)(U)

and the legal services are directly related to the prevention of, or obtaining relief from, the activities described in (C) and (D) above or the crimes listed in Section 101(a)(15)(U)(ii) of the INA;

or (E) are victims of trafficking or have a child who, without the active participation of the alien, has been a victim of trafficking seeking assistance with any legal issue in which LSNF would otherwise provide legal services or representation.

c. Administrative representation challenging conditions of incarceration or any civil litigation on behalf of prisoners;

d. Cases which are not within the program's board adopted priorities unless they fall within the emergency definition defined by the board;

e. Reapportionment including influencing the timing or manner of taking a census;

f. Attempts to influence executive orders, regulations or other general future statements of federal, state or local agencies unless the attempts are made with non-LSC funds and (a) are regarding state and local funding for LSNF or (b) constitute comment on public rulemaking or (c) are in response to a written request to the party making the request and LSNF has not arranged for the request to be made;

g. attempts to influence adjudicatory proceedings designed to formulate or modify general future agency policy;

h. attempts to influence federal, state or local legislation or constitutional amendments unless the attempts are made with non-LSC funds and (a) are regarding state or local funding for LSNF (b) are in response to a written request to the party making the request and LSNF has not arranged for the request to be made;

i. attempts to influence oversight proceedings of LSC;

j. filing affirmative complaints or engaging in precomplaint settlement negotiations unless a client statement of facts is on file (unless an injunction has been obtained protecting the client from disclosure or an emergency exists);

k. abortion litigation;

l. litigation, lobbying or rulemaking involving efforts to reform federal or state welfare systems (except in compliance with f and h above and except on behalf of an individual client seeking specific relief from a welfare agency);

m. proceedings to evict persons from public housing projects if the person has been charged with or convicted of illegal sale, distribution or manufacture of drugs or with possession with intent to sell or distribute drugs and the illegal activity threatens the health or safety of another resident or an employee of the public housing agency;

n. actions resulting from in-person unsolicited advice from a LSNF employee that the applicant should obtain counsel or take legal action.

o. Fee generating cases, unless other adequate representation is unavailable, except for cases seeking SSA and SSI benefits, cases involving emergencies, or cases in which recovery of damages is not the principal object of the case and substantial statutory fees are not likely;

B. Restrictions Established by Legal Services of North Florida.

Legal Services of North Florida will not undertake representation in the following:

1. traffic cases;

2. matters which can be litigated in Small Claims Court where it is determined that the eligible person is capable of representing himself or herself;

3. appeals brought in any court unless approved by the executive director;

4. legislative or administrative advocacy described in VII-A-2 (f) and (h) unless approved in writing by the executive director;

5. Criminal cases;

6. Collateral actions attacking criminal convictions.

VIII. Referral of Ineligible Applicants

Attorneys in this program will make an affirmative effort to assist applicants who are outside the eligibility guidelines or whose claim is potentially "fee generating" to obtain counsel, either through a referral system established by the local bar association or by The Florida Bar Association.

IX. Disclosure

As required by federal law, eligibility information, client retainer agreements, client names, client trust accounts, time records, and financial records maintained by Legal Services of North Florida that may contain information about clients' cases must be made available to auditors or monitors. Additionally, information regarding client eligibility must be made available to the Legal Services Corporation to evaluate allegations regarding eligibility. If a civil complaint is filed on behalf of a client (or precomplaint settlement negotiations are pursued), the client must be informed that a statement of facts supporting that complaint (or claim) must also be made available to auditors or monitors. Except where protected by state or federal law or an order or rule of court, or where the client would be placed at physical risk of harm, in each case filed LSNF must provide to LSC and upon public request, each party's name and address, the cause of action, the name and address of the court where the case is filed and the case number assigned by the court.

X. Limitation on Representation

The client must be informed at the beginning of the case that Legal Services of North Florida is governed by certain restrictions that may affect our ability to provide full representation of the client's claim, and that the client will be informed as an apparent restriction applies of the limitation on representation, with the ability to consent to the limited representation or to determine that the client does not wish to have Legal Services of North Florida continue its representation.

XI. Review of Guidelines

These guidelines shall be reviewed each year by the Board of Directors and may be amended at any time the Board deems it necessary. The reference to 125% and 200% of the official poverty guidelines shall be adjusted as the federal government updates its official economic definition of poverty without prior board review.

02/99
(04/99 updated pgs 2&3)
(11/00 amended AssetCeilings)
11/05
2/06
9/06
12/07
02/08
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