



October 29, 2013

Sam H. Buchanan, Jr., Esquire
Executive Director
Mississippi Center for Legal Services
P.O. Drawer 1728
Hattiesburg, MS 39403-1728

President
James J. Sandman

Board of Directors
John G. Levi
Chicago, IL
Chairman

Martha Minow
Cambridge, MA
Vice Chair

Sharon L. Browne
Sacramento, CA

Robert J. Grey, Jr.
Richmond, VA

Charles N. W. Keckler
Arlington, VA

Harry J. F. Korrell
Seattle, WA

Victor B. Maddox
Louisville, KY

Laurie Mikva
Evanston, IL

Fr. Pius Pietrzyk, OP
Zanesville, OH

Julie A. Reiskin
Denver, CO

Gloria Valencia-Weber
Albuquerque, NM

Dear Mr. Buchanan:

I am writing in response to your September 25 appeal of the Legal Services Corporation's (LSC) Management Decision to disallow \$21,424.35 in costs incurred by Mississippi Center for Legal Services (MCLS) and paid for with LSC funds during the years 2009-2011.

I have reviewed the record in accordance with 45 C.F.R. § 1630.7(g). Pursuant to the authority given to me under 45 C.F.R. § 1630.7(f), I am affirming the disallowance of \$21,424.35 in costs in its entirety. The reasons for my decision are set forth below.

Background

On May 9, 2011, an anonymous complainant contacted LSC's Office of Inspector General (OIG) alleging that a managing attorney and a staff attorney in MCLS's Gulfport office were engaged in the unauthorized outside practice of law. OIG initiated an investigation and conducted an on-site visit of MCLS from October 24-28, 2011. As a result of that investigation, OIG determined that the two attorneys had engaged in the unauthorized outside practice of law in violation of 45 C.F.R. § 1604. OIG also determined that MCLS had violated the timekeeping requirements of 45 C.F.R. Part 1635. OIG referred its findings to LSC's Office of Compliance and Enforcement (OCE) for possible further action.

After receiving the OIG referral, OCE wrote to MCLS seeking additional information. OCE asked MCLS to respond to the OIG's findings; to explain what corrective actions, if any, MCLS had taken in response to the alleged violations; to provide a schedule of the costs chargeable to the two attorneys while engaged in the unauthorized practice of law; to explain whether MCLS had made any attempts to recover costs; and to provide any other information MCLS believed would help OCE determine how to proceed. In its response, MCLS did not dispute any of the OIG's findings and

advised OCE that both attorneys were no longer employed by MCLS. MCLS provided OCE with the requested schedule of costs, totaling \$21,424.35.

On February 15, 2013, OCE sent MCLS a Notice of Questioned Costs. In the Notice, OCE informed MCLS that it was questioning \$21,424.35 under 45 C.F.R. § 1630 based on the attorneys' having engaged in the outside practice of law in violation of 45 C.F.R. § 1604 and on their failure to document their time in the manner required by 45 C.F.R. § 1635.

MCLS responded to the Notice by letter dated March 28, 2013. MCLS asserted that it would be inequitable for LSC to recover costs from MCLS associated with the two attorneys' unauthorized outside practice of law precisely because MCLS did not authorize the attorneys' outside activities. MCLS also stated that it had cooperated with the investigation and had refrained from taking action against either attorney during the course of the investigation because it "deferred to the authority of the OIG" and was therefore unable to mitigate damages caused by the ongoing unauthorized outside practice during the period that the investigation was pending. Finally, MCLS explained that it had calculated the \$21,424.35 by using the full daily rate of pay for each attorney, but had subsequently come to believe that it was more reasonable to estimate the time the attorneys spent on unauthorized outside practice at 2.5 hours per day. MCLS based its new calculation on a review of the docket sheets associated with the unauthorized outside practice and typical preparation times (including travel) for the type of outside practice the attorneys conducted.

On May 17, 2013, LSC Management sent MCLS an Interim Management Decision. LSC Management reiterated its intent to disallow the full amount of the questioned costs, finding that MCLS's March 28 letter failed to account for MCLS's own responsibility to ensure the proper use of LSC funds and to ensure that staff comply with LSC's outside practice and timekeeping regulations. Management also found that MCLS had not met its burden of proof to show that the costs were properly allowable. Management did, however, provide MCLS with a second opportunity to document the actual time the two attorneys spent on the unauthorized practice of law. Finally, Management granted MCLS's request that in the event LSC made a final decision to disallow the costs, the repayment would be deducted over the remaining payments for MCLS's calendar year 2013 grant.

MCLS responded to the Interim Management Decision on July 1, 2013. MCLS acknowledged that its timekeeping records did not provide enough information to identify the actual time the two attorneys spent on the unauthorized practice of law. MCLS stated, however, that, based on its experience, it was reasonable to charge only two hours per day (reduced from the 2.5 hours proposed in MCLS's March 28 letter) for the attorneys' court appearances. Using that measure, MCLS calculated the total cost of the attorneys' unauthorized practice to be \$6,500.23.

On August 23, 2013, LSC's Vice President for Grants Management issued a final Management Decision. The Management Decision disallowed costs in the amount of

\$21,424.35. The decision concluded that MCLS's time records did not contain enough detail to distinguish between allowable and unallowable costs for the days on which the two attorneys engaged in the unauthorized practice of law. The decision further noted that the attorneys did not keep contemporaneous time records in the manner required by 45 C.F.R. § 1635. Because the evidence showed that the two attorneys engaged in the unauthorized practice of law on particular days, and because it was not possible to tell from their timesheets how much time was spent on that practice each day, the Vice President for Grants Management determined that there was no sufficient basis for reducing the disallowance. This appeal followed.

Analysis

MCLS raises three arguments in support of its appeal of the August, 23, 2013 Management Decision. First, MCLS argues that recoupment of the questioned costs is inequitable because MCLS did not authorize the outside practice of law by the two attorneys. Second, MCLS asserts that it required its attorneys to maintain timekeeping records and that those records show that the two attorneys engaged in activities properly chargeable to the LSC grant. Finally, MCLS contends that, based on the types of appearances reflected in court dockets for outside practice by the two attorneys, and based on MCLS's "experience in such matters of court," only a portion of the questioned costs (two hours per day in question) should be disallowed.

I do not find these arguments persuasive.

First, MCLS is responsible for managing its staff and for ensuring that they comply with applicable regulations and policies. In its letter of appeal to me, MCLS itself notes that *an employee of MCLS* brought the improper activities of the two attorneys to the attention of OIG. Particularly if the attorneys' improper activities were apparent to a fellow employee, it does not seem inequitable to me to hold MCLS accountable for insufficient supervision and oversight of the two attorneys. A contrary conclusion would visit the consequences of the attorneys' misfeasance on the taxpayers who fund LSC's grants – people who did not receive the value they paid for from the two attorneys who charged time improperly to the LSC grant. I am mindful that my decision may also have an unfortunate consequence for clients and potential clients of MCLS, whose service may suffer because of MCLS's loss of the amount I am disallowing, but that is an inevitable result of a questioned-cost proceeding and of the nature of the remedies available to LSC.

Second, while it is true that the two attorneys maintained time records showing that allowable activities occurred on the days they appeared in court for private, non-MCLS clients, at least some of those records are demonstrably false. For example, the report for one attorney for the pay period February 1 through February 15, 2009, shows that he charged all of his time for February 3 – eight hours – to the LSC grant. The docket sheet for one of the attorney's private clients, however, shows that he filed documents with a court over the course of two hours on that same day. The record is replete with similar examples for both attorneys. I therefore have little confidence in the value of the attorneys' timekeeping records.

Third, I do not believe that MCLS has met its burden (45 C.F.R. § 1630.4) of establishing that two hours is the appropriate amount to assess for each day on which the two attorneys engaged in outside practice. MCLS acknowledges that the attorneys' time records do not show that they spent only two hours on each court appearance. And MCLS's calculations do not account for any time the attorneys may have spent preparing pleadings, meeting with their private clients, meeting with opposing counsel, or undertaking any other work that might have been necessary to prepare for the activities noted in the court dockets. In the absence of better documentation or other evidence to identify the amount of time the two attorneys spent working on private clients' matters, I believe it is appropriate to disallow their entire daily salaries for the days in question.

Conclusion

In accordance with 45 C.F.R. § 1630, I am disallowing \$21,424.35 in expenditures of LSC funds made by MCLS during calendar years 2009-2011. This amount shall be deducted from the remaining payments of MCLS's grant for calendar year 2013.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "James J. Sandman", written in a cursive style.

James J. Sandman
President