



April 12, 2010

Marilyn Harp  
Executive Director  
Kansas Legal Services, Inc,  
712 S. Kansas Avenue, Suite 200  
Topeka, KS 66603

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**Re: Follow-Up Review, Recipient No. 517001**

Dear Ms. Harp:

I would first like to thank you and the Kansas Legal Services (“KLS”) staff for the courtesy and cooperation extended to the team from the Office of Compliance and Enforcement (“OCE”) conducting the Legal Services Corporation’s (LSC) Follow-Up Review (“FUR”) on January 25-29, 2010.

The FUR focused primarily upon KLS’ Private Attorney Involvement (“PAI”) activities and pay for service activities. The review included interviews with KLS staff, a limited assessment of KLS intake and case management procedures, case file review of KLS’ PAI and Reduced Fee Program (“RFP”) cases, and a fiscal review of KLS’ accounting procedures and fiscal documents. In addition, OCE reviewed documentation and conducted interviews regarding all of KLS’ pay for services programs. The following are findings with respect to LSC regulatory requirements excluding findings relating to the RFP program which LSC continues to review at this time.

**PAI**

KLS’ PAI model includes pro-bono and reduced fee components. The Final Report for the LSC Case Service Report/Case Management System Review in 2008 required KLS to ensure that all PAI components provide adequate oversight and follow-up of referred cases pursuant to the requirements of 45 CFR § 1614.3(d)(3) and cease the proactive payments of \$200.00 signing bonuses to private attorneys under the Retainer Contract Program.

Since LSC’s CSR/CMS review, KLS has revised its PAI Manual to encompass both pro-bono and contract PAI practices. KLS staff now includes a Pro-Bono Coordinator who has monthly conference calls with PAI staff in the various branch

offices. According to the Executive Director, there will be a spring 2010 training conducted by the PAI Coordinator.

### *Oversight and Allocation*

45 CFR § 1614.3(d)(3) requires all LSC recipients to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources. As stated above, during the 2008 review KLS was cited for not providing adequate oversight of PAI case files. During the current visit, a review of case sample files revealed that KLS has improved its oversight of PAI files and is in compliance with 45 CFR § 1614.3(d)(3). There were only two (2) cases cited for lack of oversight.

Also, the 2008 Final Report cited KLS for paying a \$200.00 signing bonus to PAI attorneys and allocating the bonuses as PAI expenses even when the private attorney did not accept a PAI case. KLS still makes the \$200.00 payment when a private attorney signs a participation agreement however, the payment is now accounted for as a retainer and the attorney receives additional payments once their billable payment is over \$200.00. This was substantiated by the review of PAI contract payments which documented the first payments to PAI attorneys were reduced by \$200.00. In those instances in which the private attorney does not accept a case or bill over \$200.00, the transaction is accounted as a pre-paid transaction not as PAI expense.

Finally, KLS was cited in the 2008 Final Report for insufficient documentation of legal advice, specifically in the Elder Law PAI case files. A review of 2008 and 2009 PAI files revealed that KLS has made improvement documenting legal advice. Although a pattern of non-compliance was noted in 2008 case files, the 2009 case sample evidenced an improvement.

### *PAI Timekeeping*

Review of KLS' accounting records and related supporting documentation of payments to private attorneys found compliance and noted no exceptions. The program's PAI expenses appear to be valid and reasonable expenses. The program allocates common costs to its PAI cost center based on a percentage of PAI staff salary to total program salary plus any direct PAI related personnel and non-personnel costs. Also the program's PAI cost allocation methodology is adequately documented. KLS maintain files which contain contracts which set forth payment systems, hourly rates, maximum allowable fees, invoices, and related supporting case and billing documentation. The review of sample payments to PAI attorneys found that the payment files contained all the required documentation in accordance with the requirement of 45 CFR Part 1614.

### **General Timekeeping**

KLS is in compliance with 45 CFR Part 1635 (Timekeeping). 45 CFR § 1635.3(b) requires that the time spent by attorneys and paralegals on cases, matters and supporting activity must be documented on timesheets that record the amount of time spent on each case, matter, or supporting activity. The program utilizes the timekeeping component of its case management software, Legal Trek, and requires its case handlers to maintain their time in the case management system.

To review KLS' timekeeping policies and procedures, case handlers' time records for two (2) payroll periods in May and September 2009 were examined for compliance with the requirements of 45 CFR Part 1635. The review of KLS' timekeeping records maintained in the case management system, i.e., the data captured, along with discussions with program management found that the program complies with the requirements of 45 CFR Part 1635.

Staff time records are created contemporaneously and account for time by date, funding sources and in increments that comprise all the efforts of the case handlers for which compensation is paid by the recipient. Time record entries for case work contain a unique case number along with the client's name. For matters and supporting activities, the data captured consists of activity codes that identify a category of action on which the time was spent.

As a result of the review and discussion with program management, no irregularities or exceptions were noted with KLS' timekeeping records and information captured.

### **Sub-Grant Expenditures**

The 2008 Final Report required KLS to take its subgrantee, the Kansas Bar Association ("KBA"), off the automatic payment module. Instead, KLS was to review the KBA's quarterly invoices to ensure that expenses are accurate and appropriate before issuing payments, as required by 45 CFR § 1627.3(c).

KLS has taken partial corrective actions by disbursing sub-grant payments based on periodic billing instead of automatic payments. However, the submitted invoices are not based on actual expenditures but rather estimated expenditures by the sub-grantee.

A review of the KBA's invoices revealed that KBA is continuing to use boilerplate language in each of the invoices with a modification to reflect the percentage of staff time devoted to each activity. However, the amount billed on the quarterly invoice is based on an estimate of the grant expenditures for that quarter. All of the invoices for each quarter of 2009 were identical, which indicates that the total amount of the subgrant [\$46,000] for the year had simply been divided into four (4) equal quarterly payments of \$11,500. 45 CFR § 1627.3(c) states, in part, that recipients shall be responsible for ensuring that sub-recipients comply with the financial and

audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Further, 45 CFR § 1630.3(a)(1) states, in part, that expenditures are allowable only if it can be demonstrated that the cost was actually incurred in the performance of the grant or contract.

KLS must ensure that the expenses are accurate and appropriate, as required by 45 CFR §§ 1627.3(c) and 1630.3(a)(1). KLS should require the sub-grantee to submit quarterly invoices based on actual expenditures instead of estimates or have the sub-grantee attest to the authenticity of the expenditures. During the current visit, the Executive Director stated she spoke to the KBA representative and advised them that in the future they must submit invoices based on actual expenditures.

### **Description of Non-LSC Activities (Reduced Fee and others)**

Review of KLS' case files and accounting records and discussions with program management and staff revealed that in addition to its LSC and non-LSC grant support and revenue for delivery of legal assistance, KLS has sources of support and income from:

- A contract with state bar association, Kansas Bar Association ("KBA"), to administrate its lawyer referral service;
- KBA's Reduced Fee Program (RFP);
- Non-refundable administrative fees earned from RFP cases;
- Fees charged for legal advice provided on Lawyer Advice Line;<sup>1</sup>
- Referral fees in the form of voluntary payments/donations from a private corporation- Midland Professional Associates ("MPA") to whom referrals of disability applicants who pay for the legal assistance provided are made; and
- An annual donation from MPA's Independence Charitable Trust.

KLS allowed OCE to review RFP cases and explained how and when cases are referred to RFP. Each year, every KLS branch managing attorney is provided a spread sheet that outlines the annual funding goals and objectives for their branch offices. Once received the managing attorneys are expected to staff and budget accordingly. The case sample evidenced that KLS does not report RFP cases to LSC and all the applicants are screened for citizenship. No violations of LSC regulations were noted in the files except that a retainer agreement previously utilized by KLS was misleading. Although the retainer was titled as a Flat-Fee retainer, RFP clients were actually being charged a cash retainer that once the KLS staff exceeded the retainer, the client was charged additional funds at an hourly rate. KLS has stopped utilizing the noted retainer. In 2009, KLS started executing two retainers one for flat rate cases and other for hourly rate cases. Copies of the two retainers were provided to OCE.

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<sup>1</sup> Private attorneys and KLS' staff provide legal advice on the hot line. If a private attorney provides advice they are paid \$1.00 of the \$3.00 charged.

In addition, LSC eligible clients whose income is under 125% of the Federal Poverty Guidelines are also referred to RFP without an attempt by KLS staff to place them with a pro-bono or judicare attorney prior to referral. During the visit, the KLS Executive Director stated that in non-emergency cases, an attempt is made to place the client with a PAI attorney and that going forward it will be required that staff document the referral attempt in the case files.

KLS management articulated how and when cases are referred to RFP; KLS did not have any written practices or procedures written for staff. KLS could not articulate what measures were being taken to ensure that there is not an inherent bias towards steering clients to the RFP as opposed to free legal services in order to meet the program's goals and objectives cited above. In response, the Executive Director advised that staff has been trained that utilizing LSC funds is the first option. Also, after the current visit, KLS forwarded a proposed copy of a newly drafted KLS Case Acceptance/Placement Guidelines for RFP cases. The chart was created February 5, 2010 and it outlines the type of cases and applicant income levels that are to be referred to the RFP.

#### *Fiscal Separation*

Discussions with management and a review of the monthly financial statements indicate that LSC funds were not required to finance any of the above revenue generating activities. KLS' Chief Financial Officer indicated that the revenue generating activities do not require any LSC funds to operate because RFP attorney fees are collected up front and the overhead associated with KLS staff is covered by non-LSC funds and net assets.

Review of monthly financial reports found that KLS' cash flows average approximately \$500,000 each month and the RFP fees charged appear to more than cover the RFP expenses. Further, analysis of expenses incurred in 2009 computed that the average staff attorney is paid approximately \$22.59 per hour and the average paralegal is paid \$12.37 per hour. Fringe benefits are approximately 22.17% of salaries and all other expenses (overhead, etc.) are approximately 28.98% of salaries. The cost of the RFP to KLS in 2008 was approximately \$392,244, against revenue of \$500,747 and administrative fees of \$76,288 for net income (profit) of \$184,791. Fees charged to clients under this program more than cover expenses and no LSC funds are required to finance the program.

#### **Program Integrity (45 CFR Part 1610)**

Review of KLS operation included a review of the relationship between KLS and its former Executive Director and his company, MPA and its Independence Charitable Trust ("ICT"). The review did not uncover any indications of non-compliance with 45 CFR Part 1610 to trigger an independent program integrity review.

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According to KLS management, KLS refers a majority of its SSI and SSDI cases to MPA due to geographic considerations. MPA sends KLS referral fees on a quarterly basis for the cases KLS refers to MPA. The amount of the referral fees received is loosely based on an informal understanding between KLS and MPA. KLS does not track individual referrals but relies on MPA to determine and remit the quarterly referral amount. For 2009 the total referral received from MPA was \$48,124. There were no payments or outflows of cash to MPA from KLS. KLS was asked to submit the authority which allows KLS to accept referral fees. KLS submitted a letter from the Kansas Bar Association President that states it is customary practice for attorneys to receive referral fees.

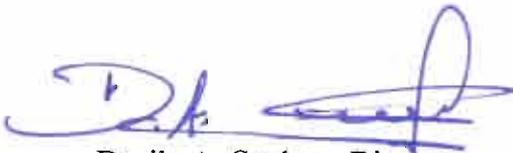
From a limited review of the general ledger, vendor list, cash receipts and disbursements for 2008 and 2009, review of the MPA website, and from interviews with staff and management, KLS does not appear to have made payments to outside individuals, entities, or MPA, or to have engaged in any restricted activity.

#### **Accounting Manual**

The 2008 Final Report required KLS to update its Accounting Manual. During the recent visit, an inquiry was made regarding the status of the revision of the manual. In response to the inquiry, the Chief Financial Officer replied that the revision of the Accounting Manual is in progress and to be consistent, KLS will complete its revision once the final version of the Accounting Guide for LSC Recipients is issued by LSC.

Within 60 days of receipt of this Report, please provide OCE with a copy of an invoice submitted by KBA that reflects invoicing based on actual expenditures. Again, thank you for your cooperation with the review and your attention to this matter.

Sincerely,



Danilo A. Cardona, Director  
Office of Compliance and Enforcement