



**FINAL REPORT**  
**LEGAL SERVICES CORPORATION**  
**Office of Compliance and Enforcement**

**Florida Rural Legal Services, Inc.**  
Program Integrity Review  
April 6-10, 2009

Recipient No. 610020

## **I. EXECUTIVE SUMMARY**

The findings, recommendations, and corrective actions in this report are based on the facts and history of Florida Rural Legal Services, Inc. (FRLS); they do not necessarily apply to other programs in different situations.

**Finding No. 1: FRLS is in compliance with the program integrity requirements of 45 CFR § 1610.8, that grantees have objective integrity and independence from any organization that engages in restricted activities.**

### **A. Legal Separation of Organizations**

FRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(1). FRLS has established a legal and fiscal identity separate from Florida Equal Justice Center, Inc. (FEJC). FRLS operates in a manner that clearly represents their independence from FEJC and the adequacy of their separation.

### **B. Transfer and Subsidization**

FRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(2). FRLS does not transfer or subsidize restricted activities with LSC funds.

### **C. Physical and Financial Separation**

FRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(3). Based on the totality of the facts gathered during the onsite program integrity review FRLS is sufficiently separate, physically and financially, from FEJC.

**Finding 2: FRLS is in compliance with 45 CFR § 1610.5 which requires that a recipient of LSC funds provide to the source of funds, unless the amount is less than \$250, with written notification of the prohibitions and conditions which apply to the funds.**

**Finding 3: FRLS is in compliance with 45 CFR § 1610.9 which requires that funds received by a recipient from a source other than the Corporation is accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.**

## **II. BACKGROUND**

### **General Background**

FRLS was incorporated December 29, 1966, as a non-profit corporation, and provides free civil legal assistance to low-income and elderly residents in 13 counties in south central Florida. FRLS maintains offices in Lakeland, Ft. Myers, Ft. Pierce, and West Palm Beach. Satellite offices are maintained in Punta Gorda and Belle Glade, and there is an outreach office in Immokalee.

On September 27, 2003, the FRLS Board of Directors voted to create a non-LSC entity within the FRLS service area for the purpose of conducting legal service activities prohibited by the LSC Act and regulations. On December 6, 2003, the Board voted to name the new entity FEJC. FEJC was incorporated in the State of Florida, on January 19, 2004, and officially opened on February 15, 2005.

FEJC is an entity that engages in restricted activities which include: class actions; legislative and administrative advocacy; representation of undocumented persons on a full-range of legal issues; and participation in cases where attorneys' fees are requested.<sup>1</sup>

### **Background of Review**

On April 6-10, 2009, the Office of Compliance and Enforcement (OCE) conducted an onsite Program Integrity Review (PIR) of FRLS. The stated purpose of the visit was to review FRLS' compliance with 45 CFR Part 1610. The visit was conducted by a team consisting of an OCE attorney, a fiscal consultant, and a management consultant. The visit focused on a review of the totality of FRLS' and FEJC's relationship in light of the requirements of Part 1610, and an assessment of FRLS' policies and procedures relating to Part 1610, to determine whether they are consistent with the LSC Act, regulations, and other applicable authority.

In preparation for the visit, OCE requested that FRLS provide, among other things;

- 1) A copy of FRLS' Certificate of Incorporation;
- 2) A copy of FEJC's Certificate of Incorporation;
- 3) A list of any staff that provides services in any capacity to, are employed by, or are shared by FRLS who also provides services in any capacity to, are employed by, or are shared by an organization which engages in restricted activities. For each staff member listed in response to this inquiry, FRLS was asked to provide: 1) the name of the organization employing such staff; 2) the position occupied and a detailed description of the duties performed by such staff for FRLS and for the organization which engages in restricted activities; and 3) the terms and conditions of employment between FRLS and such staff;

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<sup>1</sup> Based on information obtained from the Executive Director of FRLS during the onsite review.

- 4) A list of any joint utilization of office space or equipment (telephonic equipment, electronic equipment, and/or physical equipment such as fax machines, telephones, copier, and automobiles) between FRLS and any organization that engages in restricted activities in which the office space or any of the equipment is under the control of either FRLS or the other organization. For each space and/or piece of equipment FRLS was asked to provide: 1) the name of the organization with whom FRLS jointly utilizes the facility or equipment; 2) the specific facilities and/or equipment that are jointly utilized; 3) the breakdown of the frequency of use of such facilities or equipment by FRLS and by the other organization; 4) the financial arrangement for such joint utilization; and 5) whether there are separate entrances, signs and/or other forms of identification distinguishing FRLS from the other organization;
- 5) A detailed floor plan which clearly indicates the location of all the above mentioned equipment, office space and its user in response to request no. 4;
- 6) A detailed floor plan of all facilities which house both FRLS and any organizations which engage in restricted activities detailing the uses of the space by each entity;
- 7) A copy of any and all contracts regulating or specifying the transfer of non-LSC funds from FRLS to any organization which engages in restricted activities;
- 8) A copy of any and all lease/sublease agreements between FRLS and organizations which engage in restricted activities;
- 9) A list of all cases in which FRLS is/was co-counsel with an organization which engages in restricted activities, since FRLS' inception. Provide the name and job title of each attorney involved, both for FRLS and the restricted organization;
- 10) A copy of the written report with all back-up material submitted to FRLS' Governing Body in support of FRLS' Certificate of Program Integrity. FRLS was also asked to provide a copy of any other material considered by the Governing Body in this process;
- 11) A complete and detailed description of FRLS' accounting system;
- 12) Copies of all FRLS' and FEJC's Board and Board committee minutes from January 1, 2006 to present;
- 13) Copies of any contracts, memoranda of understanding, or other written agreements between FRLS and any organizations which engage in restricted activities which are housed in the same facility;
- 14) FRLS' litigation and administrative manuals;
- 15) All current leases to which FRLS is a signatory; and

- 16) A list of any and all entities conducting restricted activities that the FRLS has a relationship with involving funding, sub-grants, subsidies, sharing of staff, resources and/or facilities, including a brief description of all such relationships.

Additional document requests were made based on the program's response and the onsite review. FRLS cooperated fully with the OCE Review team and provided all documents requested by the team in an organized, thorough, and timely manner.

The visit was primarily conducted at FRLS' office in Fort Myers. An on-site visit was also conducted at FRLS' Belle Glade, and Lakeland offices. Interviews were conducted with FRLS staff members in all locations.

By letter dated August 27, 2009, OCE issued a Draft Report (DR) detailing its findings, and recommendations. FRLS was asked to review the DR and provide written comments. In response to the DR, FRLS, by letter dated September 24, 2009, stated "that after careful review of the draft report for the April 6-10, 2009 on-site Program Integrity Review (PIR), Florida Rural Legal Services has no additional comments to provide." FRLS further stated that they were happy with the findings in the draft report.

### III. APPLICABLE LAW

45 CFR § 1610.8(a) requires recipients to maintain program integrity by having "objective integrity and independence from any organization that engages in restricted activities." The regulation specifies three separate factors, each of which must be met, for a recipient to be determined to have objective integrity and independence from such an organization. First, the organizations must be legally separate entities. *See* 45 CFR § 1610.8(a)(1). Second, there can be no transfer of LSC funds from the recipient to the other organization and LSC funds cannot subsidize restricted activities. *See* 45 CFR § 1610.8(a)(2). For the purposes of Part 1610, a "subsidy" is:

a payment of LSC funds to support, in whole or part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part, relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a "fair-market price" for such use.

62 Fed. Reg. 27698 (May 21, 1997) (Preamble to final rule).

Finally, the organizations must be physically and financially separate. Physical and financial separation is characterized by a variety of indicators, including but not limited to:

1. The existence of separate personnel;
2. The existence of separate accounting and timekeeping records;
3. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

4. The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR § 1610.8(a)(3).

The financial separation requirement is separate and distinct from the non-subsidization requirement. While separate accounting may be evidence of lack of subsidization, the regulation explicitly states that mere bookkeeping separation is insufficient to meet the physical and financial separation requirements. Taken together, the recipient and the other organizations engaged in LSC- restricted activities must operate as two separate entities (that may collaborate), and cannot operate as essentially one entity with administrative separation on paper.

Physical and financial separation is the most nuanced and complex of the three factors required by the regulation. Whether physical and financial separation exists is determined on a case-by-case basis, considering the totality of the circumstances. Individual factors present in one situation might be acceptable in the context of the overall relationship between the entities, although they might be unacceptable in another situation in which other factors weigh more heavily against a finding of sufficient separation. Each factor weighs for or against separation. Some factors are weighed heavily; some lightly. It is the total weight of all the factors taken together that LSC looks at in determining the strength of the grantee's physical and financial separation from the other entity.

Thus, determinations taking into account the physical and financial separation standard must ensure that there is no identification of the recipient with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities.

62 Fed. Reg. at 27698.

Ultimately, in all situations the separation between the organizations must be clear to clients, courts, agencies and others with whom the recipient comes into contact, and to the general public. *See* LSC/OLA External Opinion 2003-1009 (June 24, 2003).

In addition to Part 1610, LSC issued a program letter on October 30, 1997, with "Guidance in Applying the Program Integrity Standards". In discussing the separate personnel factor of physical and financial separation, LSC stated: "There is no per se bar against a recipient employing part-time staff who are also employed part-time by an organization which engages in restricted activities." 1997 Program Integrity Guidance at 3. LSC cautioned, however, that "the more staff 'shared,' or greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised." *Id.*

## IV. FINDINGS

The findings, recommendations, and corrective actions in this report are based on the facts and history of FRLS; they do not necessarily apply to other programs in different situations.

**Finding No. 1: FRLS is in compliance with the program integrity requirements of 45 CFR § 1610.8, that grantees have objective integrity and independence from any organization that engages in restricted activities.**

In order to comply with these requirements, a grantee must meet each of the three separate factors in 45 CFR § 1610.8. FRLS has sufficiently implemented the appropriate measures necessary to comply with these requirements.

### A. Legal Separation of Organizations

FRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(1). FRLS has established a legal and fiscal identity separate from FEJC. FRLS operates in a manner that clearly represents their independence from FEJC, and the adequacy of their separation.<sup>2</sup>

FRLS was incorporated in 1966 and has been an LSC grantee since 1971. *See* Certificate of Status submitted in document request. FEJC was incorporated January 19, 2004. *See* Certificate of Incorporation submitted in document request.

#### 1. *Overlapping Boards of Directors:*

Although FRLS and FEJC are separate legal entities, the membership of each of their Boards, all officers, and Board committee members are identical, which is permissible under Part 1610. *See* Preamble to final rule, 62 Fed. Reg. 27697 (May 21, 1997) for authority on overlapping Boards. The current By-Laws of both organizations as approved by both on June 16<sup>th</sup>, 2004, define identical Board structures with the same appointing authorities. The two Boards appear to make every effort to function as separate Boards.<sup>3</sup>

#### 2. *Board Minutes: Minutes reflect the distinct nature of the meetings*

FRLS and FEJC minutes from January 1, 2006, to the present were requested. In response to the document request, FRLS provided minutes from the FRLS Board of Directors' meetings from 2005 through 2008 and FEJC from 2004 through 2008. A review of these documents reveals that the Boards hold four regularly scheduled meetings each year. These meetings are held on the same day. The recorded start and stop time reflect that the FRLS meeting is held first. Each Board also meets independently as the need arises.<sup>4</sup>

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<sup>2</sup> This finding of compliance is based upon the circumstances at the time of the onsite review.

<sup>3</sup> Generally overlapping Boards should have separate meetings and keep records of the two organizations separate. *See* Office of Legal Affairs External Opinion #99-19

<sup>4</sup> Both Boards met for regularly scheduled meetings February 19, 2005, October 8, 2005, December 10, 2005, January 9, 2006, February 25, 2006, April 22, 2006, September 23, 2006, January 27, 2007, April 28, 2007, June 23, 2007,

Onsite, the Executive Director provided minutes from the February 21, 2009 meeting. A review of the minutes revealed that each organization held at least four separate meetings annually since July 9, 2004 (the first meeting of the FEJC Board). Occasionally each Board meets independently via conference call to handle a particular issue, such as the approval of a lease agreement. Items of relevance to only one program are listed in that program's minutes, such as business or approvals relating to grants or contracts received by one program. Presentations by program staff members and litigation reports are also reflected in the appropriate minutes. Lastly, interviews reveal that each program records and maintains their own minutes.<sup>5</sup>

Two problematic statements related to LSC restrictions were found in the Board minutes. The first was in the FRLS December 1, 2007 minutes regarding bankruptcy and the increase in the number of subprime lending cases. There was a statement that erroneously states that FRLS and FEJC are getting together to explore possible funding to take on some of the legal work that will be involved with class action cases. This statement was discussed with the Executive Director who stated that on occasion the Board President will ask the FEJC Executive Director during the FRLS meeting if she is present. He further stated that there had not been any discussions between the two programs regarding the pursuit of funding for class action cases. The review team found no other mention or indication of FRLS' involvement in class actions. The Executive Director stated that the minutes are usually quite lengthy and sometimes errors may be missed. He further stated that he is working with the Executive Assistant to reduce the minutes and that he will be reviewing the minutes more carefully in the future.

The second issue relates to a statement in the FEJC Board minutes. During a presentation of the Comprehensive Wilma Response Project in the February 25, 2006 FEJC minutes the following statement was noted, "Legal Aid Society of Palm Beach County, FEJC, FRLS and other community leaders are discussing the issue of developing farmworker housing in the Glades area that was hit hardest by three separate hurricanes. The great thing about this housing is that it is being designed in a manner whereby people can apply for assistance *regarding of their immigration status.*" Emphasis added. It is unclear, given the typographical error, whether the sentence should read, "regardless of their immigration status" or "regarding their immigration status." The correct reading of the sentence is important for compliance purposes. The Executive Director reviewed the minutes and could not recall the details of the discussion. He stated that the project never progressed and that regardless he is aware that FRLS cannot serve persons outside LSC restrictions. He stated that he never reads the FEJC minutes. He asked the team whether he should review the minutes and he was advised that it would be best if a Board member review the FEJC minutes with a specific eye toward statements regarding FRLS.

### *3. The Audit Committees for each entity hold separate meetings.*

Audit Committee minutes were provided for both FRLS and FEJC. A review of the minutes and interviews with FRLS senior management reveals that the Audit Committee membership of both

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December 1, 2007, April 19, 2008, September 13, 2008, December 13, 2008. The FRLS Board met independently on April 16, 2005 (the FEJC Board did not meet in April 2005) and February 8, 2006, to discuss and approve the Lakeland office lease. The Boards also met on separate dates in February 2008 (FRLS met on February 21, 2008 and FEJC met on February 16, 2008).

<sup>5</sup> The FRLS Executive Assistant records the minutes for FRLS meetings and the FEJC Administrator records the minutes for FEJC meetings.

programs are composed of the same five Board members and that the committees are very active. The two Audit Committees usually meet on the same day but sometimes meet on different days. These meetings do not occur on the same days as regularly scheduled Board meetings.<sup>6</sup>

*4. Conflict of Interest Policy: Officers and committee members are the same on both Boards.*

Given that FRLS and FEJC have overlapping Boards, there is the potential that Board members will have to resolve a conflict between the programs. The Boards of FRLS and FEJC have adopted and revised a Conflict of Interest policy which is generally adequate to consider possible conflicts of interest between the member and the particular organization.<sup>7</sup> However, neither organizations policy defines any procedure to resolve potential conflicts which may arise relating to the interactive relationship of the organizations.<sup>8</sup>

It is recommended that policies reflecting a Board mediation and/or adjudication process regarding potential inter organizational dispute be included in both FRLS and FEJC Conflict of Interest Policies.

*5. Board Education: New and existing Board members are regularly educated regarding LSC requirements.*

New Board members are provided an orientation packet which contains information regarding FRLS. See new Board member board packet dated March 25, 2008. The packet contains the Articles of Incorporation, By-Laws, Board of Directors list, Board Minutes from the previous three meetings, FRLS & FEJC Strategic Plan (December 5, 2005), Staff program matrix, Organizational Chart and the Priorities Statement. While the strategic plan document references both programs in the title, it is a two page document listing FRLS' short term and long term goals. It does not discuss FEJC. A copy of a new member packet was requested from FEJC and the team was advised that it does not have such a packet.

The detail of the minutes demonstrates that the FRLS Board is engaged and well versed in issues relating to LSC restrictions.<sup>9</sup> Board members routinely ask questions and facilitate discussions regarding compliance issues and the specifics of the work performed by FRLS. Committee minutes

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<sup>6</sup> The FRLS and FEJC Audit Committees both met on April 12, 2006, May 30, 2006, September 6, 2006, February 16, 2008, August 7, 2008, and December 4, 2008. The FRLS Audit Committee also met on February 21, 2006, January 23, 2007, April 18, 2007, October 4, 2007, November 5, 2007, and April 17, 2008. The FEJC Audit Committee also met on July 19, 2007, October 31, 2007, May 22, 2008, June 13, 2008, and September 13, 2008.

<sup>7</sup> At the December 13, 2008, meetings of both Boards, each one adopted a Conflict of Interest Board Policy Certification to meet the new requirements of the redesigned Internal Revenue Services Form 990, Return of Organization Exempt from Income Tax. The new requirements require information regarding the policies and procedures of the organization's governing body. The conflict policy, however relates, to a potential conflict a Board member may have due to employment and not to a conflict that arises between the Boards.

<sup>8</sup> FRLS' Executive Director stated that the FEJC Executive Director's contract has a clause which states that FEJC cannot apply or otherwise pursue significant funding without discussing it with the FRLS Executive Director.

<sup>9</sup> See for example, minutes from December 10, 2005 regarding adoption of Certification of Program Integrity evidencing a discussion regarding the permissibility of transferring non-LSC funding to FEJC; September 23, 2006 regarding a presentation of the various FRLS funding sources including their restrictions, these minutes reflect a specific discussion of the LSC restrictions for the benefit of new Board members; and December 1, 2007 regarding the adoption of Certification of Program Integrity during which restrictions and 45 Part 1610 was explained to new Board members. These are only examples; many others are reflected in the minutes.

and other details of the discussions also reveal that the Board is very engaged in budget issues. Further, since the February 19, 2005, meeting, the FRLS Executive Director has presented a litigation report at the Board meetings. The minutes reflect often lengthy discussion on program priorities and specific legal issues.<sup>10</sup>

## **B. Transfer and Subsidization**

FRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(2). FRLS does not transfer or subsidize restricted activities with LSC funds.

An LSC recipient may receive contract services from any other organization, so long as the contract provides the recipient with reasonable assurance as to the process used for determining that fair value is exchanged for the services, and that no LSC funds are used to subsidize restricted activities. Based on the information obtained from the program the administrative, financial and technical services expenses are allocated according to a reasonable, well documented methodology, providing assurance that a fair value is exchanged, and that no LSC funds are used to subsidize restricted activities.

### *1. Administrative, Financial and Technological Support Services Expense Allocation.*

Pursuant to an annually executed Contract for Support Services, FRLS provides administrative, financial and technological support services to FEJC. *See* agreements for 2005 through 2009 provided in response to the document request. The contracts call for FRLS to record all hours and to bill FEJC monthly based on the hourly rate of the employee plus benefits, and associated overhead. The contracts sufficiently set forth a description and the terms of the services to be provided by FRLS.

During 2005 and 2006 as the staffing and administrative structure of FEJC was being developed, certain costs and expenses were made by FRLS on behalf of or at the request of FEJC. These included technology purchases, use of a FRLS credit card for hotel and air travel, etc. These charges were billed at cost monthly. A sampling of these charges reflects that they are properly billed to FEJC monthly. Since the establishment of FEJC's own merchant billing accounts and approval of a credit card by the FEJC Board, such charges and billings are rare.

FRLS staff provides fiscal and personnel services on behalf of FEJC under the provisions of an annual support contract. Under the contract FRLS is to record all hours of staff on behalf of FEJC and bill FEJC for the hourly rate of the employee plus benefits and associated overhead. This is accomplished by the FRLS employee selecting cost center code "85- FEJC billing" in the Time Reporting system.<sup>11</sup> At month-end, this data is reported from the system and used to compute billing for staff time (by multiplying the hours charged by individual staff member against an individual hourly cost factor based on salary, FICA, Insurance, Flex Card, Unemployment and Workers Comp).

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<sup>10</sup> *See* for example, minutes from December 1, 2007 during which the Executive Director discussed major cases open in each office and February 21, 2008 Litigation Report, which also included analysis of FRLS' 2007 CSR. These are only two examples; many others are reflected in the minutes.

<sup>11</sup> Interviews by other LSC Team members indicated that some FRLS personnel may not have properly charged time to FEJC, (i.e. such as when attending a FEJC Board meeting).

For purposes of determining “associated overhead” the program has added a percentage to the employees hourly cost, (i.e. 10% in 2007 and 20% in 2008).

Two issues were noted with respect to the contract: overhead and IT services.

The Director of Accounting and Finance stated that the percentage of overhead billed to FEJC is not based upon a specific methodology. Currently overhead is charged at 20%, in the past it has been 10%. This method of billing for “associated overhead” appears to be arbitrary. In order to more accurately define the indirect costs, it is recommended that the program use as a guide criteria established in 45 C.F.R. §§ 1630 (e) and (f) to develop their formula for determining overhead costs. FEJC must develop and document the methodology used to calculate overhead. It is noted that there is no concern that FRLS is subsidizing FEJC as FEJC has only seven current employees and FRLS has 68, according to the staff list provided in response to the document request. Accordingly, the 20% overhead rate appears to be high, which could result in FEJC overpaying FRLS.

It is noted that IT services are still included in the services contract although FRLS staff no longer perform these services. This was discussed with the Executive Director who stated that the provisions were left in the contract in case circumstances changed. The LSC fiscal team member confirmed that neither of the IT staff members billed FEJC for services for at least a year.

As discussed above, staff performing services pursuant to the contract utilizes different methods to record time for activities benefiting both programs. FRLS must develop and implement a uniform method to record time spent on activities which benefit both programs.

*2. The sub-leases executed between FRLS, FEJC are allocated according to a reasonable, well documented methodology, providing assurance that a fair value is exchanged, and that no LSC funds are used to subsidize restricted activities.*

FRLS has annual sub-lease agreements with FEJC for space in the Fort Myers office. The space layout and design is such as to provide a clear segregation and delineation of the subleased space. *See* space floor-plan provided in response to the document request.

*a. Ft. Myers.* Beginning on February 1, 2005, FRLS leased 1,225 sq. ft. to FEJC based on the actual cost per sq.ft. as charged FRLS in its master lease. Under the agreement, rent was to be adjusted annually on the same date the FRLS master lease was adjusted. In 2007, two additional offices were added to the FEJC space bringing the total space to 1,317 sq.ft. Currently the space leased by FEJC remains at 1,317 sq ft. for a total cost of \$1,495.89/mo through August 31, 2009, at which time it will increase to \$1,535.40, keeping pace with the scheduled increase in the FRLS master lease. *See* copies of Master Lease and Annual Sub Leases provided in response to document request.

*b. Belle Glade.* From 2004 through the present, FRLS has leased two offices to The Legal Aid Society of Palm Beach County (LASPBC). These two offices encompass approximately 258 square feet each. The rent for these offices is \$750.00 per month.

*c. Immokalee.* FRLS stated that in 2004-2005 FRLS rented space in a building from a private landlord who subsequently leased two offices to Florida Legal Services (FLS), an organization which engages in restricted activities. Because the total rental space had one electrical meter, the entire usage was billed to FRLS who subsequently billed 22% of the electric, water and disposal fees to FLS on a monthly basis. A log was kept of FLS usage of the copier and fax machine. No formal agreement was reached between FLS and FRLS. FLS vacated the space in December 2005.

Inasmuch as sub-lease costs are based on the actual costs of the commercial master lease, there is no subsidization.

*3. FRLS provides permissible transfers non-LSC funds to organizations that may engage in restricted activities.*

In response to the document request, FRLS stated that it transfers non-LSC funds to organizations that may engage in restricted activities. This is permissible under 45 CFR Part 1610. *See* 62 F.R. 27697 (preamble discussion of statutory restrictions not reaching transfers of non-LSC funds). From 2005-2009, FRLS has entered into annual contracts with Gulf Coast Legal Services to provide legal services to eligible senior clients in Sarasota County with Title III B funds.<sup>12</sup> In 2005, FRLS sub-granted \$9,500 to Broward County Legal Aid to provide services to clients in the 20<sup>th</sup> Circuit utilizing Florida Civil Legal Assistance Funding. Further, from 2005-2009, FRLS has entered into annual contracts with the Legal Aid Society of Broward County to provide legal services to eligible senior clients in Collier County.<sup>13</sup> *See* annual contracts provided in response to document request.

In addition, FRLS has transferred non-LSC funding to FEJC. In 2005, FRLS sub-granted \$213,500 in money received from the Florida Bar Foundation (FBF) (using IOTA funds)<sup>14</sup> to FEJC to provide free civil legal assistance to low income residents of Lee, Hendry, Glades, DeSoto, Charlotte and Hardee counties. *See* sub-grant agreement provided in response to document request. FRLS also sub-granted \$49,000 in FBF funds to provide general immigration services in Region Five. *See* Letter from Sally Schmidt, FEJC Executive Director to Paul Doyle of the FBF regarding such sub-grant, provided to LSC in response to document request. At the time these funds were awarded by the FBF, FEJC had not yet received its tax exempt status. Accordingly, both of these awards were made to FRLS with the understanding that they would be sub-granted to FEJC. In 2006, FRLS also sub-granted \$32,601 in FBF funds. Since that time, FEJC has been directly awarded from FBF, its primary funder.

*4. Furniture and Equipment Transfer at the Founding of FEJC.*

Review of FRLS accounting records found that FRLS transferred furniture and equipment to FEJC in February 2005 at the founding of FEJC. No capitalized property (over \$5,000) was transferred. It was found that identified property so transferred consisted of furniture and computers purchased to

<sup>12</sup> In 2005-2008, FRLS paid Gulf Coast Legal Services \$37,705. In 2009, FRLS paid Gulf Coast Legal Services \$37,000.

<sup>13</sup> In 2005-2008, FRLS paid Broward County Legal Aid \$21,026. In 2009, FRLS paid Broward County Legal Aid \$21,275. It is noted that each of the contracts for services in Collier County is between FRLS and Broward County Legal Aid, which is not the legally correct name for the entity.

<sup>14</sup> IOTA is the Florida interest on trust accounts program which is similar to what many other states refer to as IOLTA for the interest on lawyers trust accounts program. New York refers to it as IOLA for interest on lawyers accounts.

support the creation of FEJC during 2004. The cost of those purchases was charged to Florida Bar Foundation General Support (IOTA funds).

### C. Physical and Financial Separation

FRLS is in substantial compliance with the requirements of 45 CFR § 1610.8(a)(3). Based on the totality of the facts gathered thus far, it appears that FRLS is sufficiently separate, physically and financially, from FEJC.

For convenience, some of the factors are grouped according to the enumerated factor headings in 45 CFR § 1610.8(a)(3), but that is not an exhaustive list. Also, factors in one grouping, such as separation of facilities, may also have effects in other groupings, such as forms of identification.

#### 1. *Separate personnel*

Each program maintains separate staffing. *See* current Staffing Chart for FRLS and FEJC. There are several full time FRLS employees (non-attorneys) who serve as independent contractors to FEJC, providing periodic administrative, technical or translation services. Services are provided during off duty periods (nights, weekends or on leave). A test of such payments was made, comparing requests for payment for services by FEJC with the payroll records of FRLS. Sampling found that payments were for services performed when the employee was either off duty or on leave.

a. FRLS provides personnel, financial and information technology services to FEJC pursuant to annual Contracts for Support Services. Staff providing administrative and intake services to both programs are aware of the distinction between the programs and are aware of the LSC restrictions. The team interviewed FRLS personnel providing services to FEJC and reviewed numerous documents. Interviews reveal that staff is cognizant of the distinctions between the two programs.

Two FRLS staff moved to FEJC when it was created. One was the FRLS Director of Litigation who became the FEJC Executive Director.

Each program conducts its own new staff orientation, except that the FRLS Administrator handles new employee paperwork.

b. There are no part-time employees that are employed by both programs.

c. FEJC and FRLS do not share a receptionist.

d. Three full-time FRLS employees reported doing a small amount of work for FEJC either in off-hours or while on leave. *See* above discussion regarding independent contractors.

e. FRLS and FEJC staff collaborate on some legal work issues and cases. The nature of the collaboration is based upon an interest to share expertise, legal developments and strategies. FRLS and FEJC co-counsel cases and case specific work is governed through co-counseling

agreements. FRLS also collaborates on cases with other entities which engage in restricted activity and with private attorneys. The response to the document request provided a list of 15 co-counseled cases since FRLS' inception. These cases are either cases in which FRLS and another organization represents separate clients in a joint pleading or are cases in which FRLS and the other organization represent the same client. On-site FRLS provided co-counseling agreements for these cases or, for cases which lacked co-counseling agreements, a copy of the complaint. In other instances FRLS also provided a copy of FRLS' Litigation Approval Form.<sup>15</sup>

Only three of the 15 cases involved FEJC as a co-counsel. Of these, two lacked a co-counsel agreement though in one of the cases the FEJC attorney filed her own pleading. *See Polk County Health Department v. Almeida, d/b/a/ Parkway Mobile Home Park*. The other case lacking a co-counsel agreement is *Linda Marsh v. Commissioner of Social Security*. A co-counsel agreement was executed in the third case, *Dreama Chereza v. Commissioner of Social Security*. None of these cases included a fee request.

Although the format of the co-counseling agreement is widely publicized throughout the program, FRLS does not have a written policy on co-counseling arrangements. This issue was discussed with the Deputy Executive Director and the Executive Director and a draft policy was produced for our review. The new policy is acceptable and only minor recommendations were made. The Executive Director planned to put the issue on agenda for the April 18, 2009 Board meeting.

f. FRLS has its own practice and policies manuals. *See* manuals provided in response to document request. Staff is briefed on these manuals during the new staff orientation.

## 2. *Separate accounting and timekeeping records*

FRLS has established a fiscal separation from FEJC and maintains separate accounting and timekeeping records.

a. *Separate Accounting Records.* FRLS, under an annual contract for services, provides accounting and financial administration services to FEJC. The contract calls for services to be performed by FRLS employees for which FEJC is billed for the actual cost of services provided. FRLS and FEJC maintain separate bank accounts, the signers for which are approved by their respective Boards. No FRLS staff are named as signers on the FEJC bank accounts. *See* Board Minutes where FRLS and FEJC Boards approve Bank Accounts and Signers item #12 in response to LSC's letter of request dated February 9, 2009.

A review of FRLS accounting and financial records indicate general separation of these systems from the FEJC systems. FRLS utilizes customized accounting software, Management Assist. The software is mounted on a server located in the Finance Office in Lakeland and is only accessible by fiscal staff computer workstations utilizing AccuTerm 2000 terminal emulator software to access the dedicated server (no internet access). Access to the system is by password set to reflect level of access. The FEJC accounting system is mounted on the same server, and uses the same

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<sup>15</sup> This form is not required for cases in which costs are not anticipated to be substantial, i.e., dissolution of marriage.

software however it requires separate passwords and there is no direct interaction between the programs.

The Chart of Accounts for FRLS and FEJC are each unique, recognizing the funding, expense and asset structure of each entity. The management of each program as well as their Board and Audit Committees are provided with fiscal reports on a regular basis that are unique to their program.

*b. Separate Time-keeping Records.* FRLS maintains its timekeeping and payroll system in a manner defined in its Policy Book and Employee Handbook and in its Collective Bargaining Agreements (one for Attorneys and Associates and a second for Secretaries and Paralegals). *See* FRLS Employment agreements, Policies and Timekeeping regulations and procedures in Item #14 in response to LSC's letter of request dated February 9, 2009. FRLS, under contract, provides personnel and payroll services for FEJC, for which FEJC is billed monthly based on actual costs based on staff time expended. Under operating procedures in place, the FEJC Board and/or Executive Director approves hires and salary rates and FEJC staff are responsible for preparation of their own timekeeping records which are approved by either the FEJC Executive Director or Administrator prior to forwarding to FRLS for payroll processing. *See* Internal Control Worksheets for FRLS and FEJC.

### *3. Degree of separation from facilities in which restricted activities occur*

The restricted activities that FEJC engages in include: class actions; legislative and administrative advocacy; representation of undocumented persons on a full-range of legal issues; and participation in cases where attorneys' fees are requested.

a. FRLS sub-leases space to FEJC in Ft. Meyers. FRLS and FEJC have separate entrances and receptionists, with appropriate signage. The spaces occupied by the two programs are separated by an unlocked door with a sign on the FRLS side which states, "Stop, Do Not Enter, FEJC Employees Only, Thank You." FEJC employees must use this door to access restrooms and the kitchen, which are considered common space. Two FEJC offices have second doors which open to an FRLS hallway. These doors are kept locked. The parking lot has signage for separate parking. The program spaces are decorated quite differently giving a feel of two separate programs.

b. FRLS leases two offices to the LASPBC in Belle Glade. Both offices have appropriate signage. One office contains two desks and computer equipment and a copier. The other office contains a table and chairs for meetings, a refrigerator and a microwave. FRLS staff working in the Belle Glade office states that one LASPBC attorney uses the offices a couple of times a month and another uses the offices every couple of months. FRLS does not share supplies or equipment with LASPBC.

### *4. Signs and other forms of identification which distinguish the recipient from the organization:*

a. As discussed above, FRLS and FEJC have separate entrances to the office space in Ft. Meyer. Each program is clearly identified by name with prevalent signage, which sufficiently distinguishes the organizations.

- b. Each entity has its own receptionist which answers the phone identifying its own program by name.
- c. FRLS and FEJC have its own letterhead and logos.
- d. FRLS and FEJC do not have joint pamphlets.
- e. FRLS and FEJC do not conduct joint fundraising.
- f. FRLS has its own website. FEJC does not have a website. One is planned for the future but the Executive Director stated that it will not be a joint site with FRLS.
- g. FRLS and FEJC have separate published mailing address.
- h. The specifics of the signage for both the Ft. Myers and Belle Glade offices are discussed above.

5. *Other factors:*

- a. FRLS and FEJC have overlapping Boards that hold separate meetings and maintain separate minutes which reflect distinctions between the two meetings.
- b. While FRLS and FEJC have developed core regional priorities, FRLS has adopted program priorities in conformance with 45 CFR Part 1620.
- c. FRLS has its own program manuals, staff directory, orientation materials, case acceptance policy and case management and compliance forms.
- d. Each program conducts its own intake.
- e. FRLS has sub-granted non-LSC funds to organizations that engage in restricted activities. The agreements specify the amounts and/or maximum amounts of each grant. The full Boards approve these subgrant agreements and the details are discussed in committee meetings.
- f. When FEJC was created, FRLS and FEJC shared a network, server and phone system. FEJC also used FRLS' Practice Manager case management system. Confidentiality agreements were entered into to ensure that FRLS staff with access to the FEJC information maintained client privacy. FEJC now has its own network, server and phone system. It also maintains its own Legal Server case management system.

The weight of the factors and the information obtained during the review demonstrate a sufficient physical and financial separation from FEJC and other unrestricted organizations. A few recommendations were made throughout the onsite review which could further clarify this separation.

**Finding 2: FRLS is in compliance with 45 CFR § 1610.5 which requires that a recipient of LSC funds provide to the source of funds, unless the amount is less than \$250, with written notification of the prohibitions and conditions which apply to the funds.**

Donations received by FRLS are recorded as donations in the accounting system using separate Chart of Accounts codes for those donations received from Title III-B clientele. For sampling purposes, an examination of all donations received during 2008 was completed and indicated two primary sources, from attorneys and law firms who make a donation in lieu of accepting PAI or pro bono work and from clients of Title III-B services, generated not from solicitation for donations, but from posted notices required by the servicing grant.

Attorney/law firm donations during 2008 totaled 209 individual payments which ranged in amount from \$25 to \$4,550. The majority were made at a “suggested” donation level of \$350. In each case sampled where the donation was or exceeded \$250, the program file retained a copy of the instrument (a check in most cases) and a copy of the receipt/notification letter signed by the Executive Director. Included in the body of the letter is the following notification:

“FRLS is funded in part by the Legal Services Corporation (LSC). As a condition of the funding it receives from the LSC, FRLS is restricted from engaging in certain activities in all of its legal work including work supported by other funding sources. As such, FRLS may not expend any funds for any activity prohibited by the LSC Act, 42 US Code, Section 2996 et seq., or Public Law 104-134. For a copy of these laws, or for further clarification, please contact the Administrative Office of FRLS.” *See*, Sample copy of FRLS Part 1610.5 donation notification letter.

Donations are also received from Title III B (Older Americans Act) clients resulting from postings required by the granting agency. These donations were found to range from \$5 to \$150, with most under \$25. No donations in this category required notification under 45 CFR § 1610.5.

No instances of receipt of donations of \$250 or more in which a notification letter was not sent were noted.

**Finding 3: FRLS is in compliance with 45 CFR § 1610.9 which requires that funds received by a recipient from a source other than the Corporation are accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.**

The Chart of Accounts General Ledger and Balance Sheet for FRLS recognizes and segregates the program’s funding sources and cost centers in a manner consistent with LSC requirements. Revenue, expense and asset, liability structure is sufficient to account for separate and distinct receipts and disbursements. *See* FRLS Chart of Accounts.

## V. RECOMMENDATIONS<sup>16</sup>

In view of the foregoing, OCE recommends that FRLS:

1. Develop and document the methodology used to calculate overhead in billing FEJC for services rendered pursuant to the Contract for Support Services.
2. Develop and implement a uniform method to record time spent on activities which benefit both programs.
3. Draft, submit to the Board for approval, and implement a policy to guide Board members in resolving conflict between the two programs.

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<sup>16</sup> Items appearing in the “Recommendations” section are not required by LSC for compliance purposes. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the recipient with items addressed in the report. Often recommendations address potential issues and may assist a recipient in avoiding future compliance errors. By contrast, the items listed in the “Required Corrective Actions” section must be addressed by the recipient, and will be enforced by LSC.

## **VI. REQUIRED CORRECTIVE ACTIONS**

Based on the forgoing, FRLS is required to take the following corrective actions:

None.