



LEGAL SERVICES CORPORATION

Office of Program Performance

FINAL PROGRAM QUALITY VISIT REPORT

FOR

Anishinabe Legal Services, Inc.

Recipient Number: 724018

August 17, 2009 – August 21, 2009

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INTRODUCTION

Background on the visit

The Legal Services Corporation's (LSC) Office of Program Performance (OPP) conducted a program quality visit to Anishinabe Legal Services, Inc. (ALS) between August 17 and August 21, 2009. The team members were Evora A. Thomas, OPP Program Counsel/Team Leader and Timothy Watson, OPP Program Counsel.

Program quality visits are designed to ensure that LSC programs are providing the highest quality legal services to eligible clients. In conducting its assessment, the team carefully reviewed the documents LSC received from the program including its application narrative and other forms for 2009 and for 2010; its case service reports (CSRs); other services reports (OSRs); its responses to special grant conditions attached to the 2009 grant funds; findings reported in external program evaluations; the numerous documents the program submitted in advance of the visit, including advocates' writing samples; and, a survey of ALS staff conducted on the Internet. On site, the team visited all three of the program's offices. In addition to speaking to all ALS staff members, the team met with several board members, judges, tribal authorities, attorneys, advocates, other legal services providers and community organizations.

In performing its evaluation of the program's delivery system, OPP relies on the LSC Act and regulations, LSC Performance Criteria, LSC Program Letters, and the ABA Standards for the Provision of Civil Legal Aid. Its evaluation is organized according to the four LSC Performance Areas that cover needs assessment and priority setting; engagement of the low income community; legal work management and productivity; and program management including board governance, leadership, administration, strategic planning, finance, resource development and coordination within the delivery system.

Program overview

ALS has been providing federally funded legal services to residents of the Leech Lake, Red Lake and White Earth Indian Reservations (Becker, Beltrami, Cass, Clearwater, Hubbard, Itasca, Koochiching, Lake of the Woods, Mahnommen, Pennington, Red Lake and Roseau Counties) in Minnesota since January 1974.¹ The service area overlaps with that of two other LSC programs that provide basic field services: Legal Aid Services of Northwest Minnesota Corporation (LSNM), headquartered in Moorehead, and Legal Aid Services of Northeastern Minnesota (LASNEM), headquartered in Duluth.²

¹ The predecessor to the current program, Leech Lake Reservation Legal Services Project, created in 1967 and incorporated in 1970, was the first independent Native American legal services office in the United States. The name was changed in 1980.

² Under the LSC grant, the program serves three of the seven Ojibwe (Chippewa) tribes in Minnesota. ALS does not serve Grand Portage, Bois Forte, Mille Lacs and Fond du Lac under the LSC grant.

The ethnicity of the service area is overwhelmingly Native American.³ The service area is almost entirely rural. Red Lake Indian Reservation covers 1,258.62 square miles in parts of nine counties in northern Minnesota.⁴ It is divided into many pieces, although the largest section is centered about Red Lake, in north-central Minnesota. The 2000 Census recorded 5,162 residents on the reservation. White Earth Reservation's land area is 1,093 square miles, and has a population of 9,192 residents as of the 2000 Census. The Leech Lake Reservation has the smallest percentage of its tribal lands of any of the state's tribes.⁵ There were 10,205 residents reported in the 2000 Census. In 1999, no less than 20% of individual residents lived in poverty.⁶

For 2009, ALS received a grant award in the amount of \$255,359 with which the program provides a full range of legal services in cases that focus primarily on issues involving the intersection of poverty law and federal Indian law, including educational and racial discrimination cases, domestic abuse, consumer, housing, juvenile law, especially the Indian Child Welfare Act, and other types of cases.

The closest urban center to the service area is Bemidji, located in Beltrami County, situated in northwestern Minnesota. ALS provides civil legal services from three offices strategically located on each of the three Reservations. The main office, located in Cass Lake houses a neighborhood office along with the program's executive and administrative staff. The other two neighborhood offices are located at or near the centers of tribal government and are relatively small.

SUMMARY OF FINDINGS

In 2006 ALS initiated a needs assessment to determine the most compelling legal needs of the client eligible residents of the service area. The assessment was a major contribution to development of a five year plan. During the process, information was gathered from a number of informant sources who completed surveys, discussion groups and analysis of intake and other in house statistical data. Additional empirical data was gathered from a state funded agency that maintains resources and information about the Native American population of Minnesota. ALS should aggressively publicize, throughout the community, its priorities and the limitations imposed by regulations and other funding restrictions. In particular, the program should dispel the belief that it represents adult criminal defendants.

³ Most Native American residents on the reservations are members of the Leech Lake, White Earth and Red Lake Bands of Ojibwe (Chippewa).

⁴ According to the State of Minnesota, Indian Affairs Council, Red Lake Reservation is 636,954 acres. Other holdings of the Red Lake Tribe include the Northwest Angle at 156,900 acres. Red Lake Reservation's total acreage (825,654) makes the reservation larger than the state of Rhode Island. Red Lake is the largest fresh water lake in the United States.

⁵ County, state, and federal governments own well over half of the original land allotted to the tribe by treaty during the 1870's. Of the 677,099 original acres, 212,000 acres are surface areas of the three big lakes. Of the remaining 465,000 acres, other levels of government own 332,804 acres. The National Chippewa Forest is the largest portion of the land. Seventy-five percent of the National Forest is within the reservation.

⁶ Leech Lake reported 21.7% of individuals lived below the poverty level; White Earth reported 20.0% ; and Red Lake reported 39.5%.

ALS conducts intake through a unified system that relies on PIKA, an automated case management system. Access is provided by telephone or walk-in to any of the program's three offices. A paper application is completed by an applicant for services. The program has few documented procedural guidelines for the intake process; and, reduced staffing levels have posed challenges for efficiency in the process. Depending upon the legal problem, case acceptance decisions may take up to seven days if rendered in the course of the program's regular staff meeting, conducted every Wednesday morning. Except in extraordinary circumstances, ALS should discontinue the inefficient use of pre-screening paper applications. Instead, information supplied during intake interviews with applicants should be entered into the case management system contemporaneously. ALS should also review and update its intake policies and procedures to reflect the current intake system, including changes for use of new technology. Once formally adopted, such policies and procedures should be assembled in a comprehensive intake procedures manual that includes compliance references to appropriate LSC regulations, guidelines and instructions; and, updated instructions on the use of the case management system.

ALS has adopted a legal work manual, the Standards of Practice, to define performance guidelines for advocates engaged in handling cases. Another component of case oversight employed by ALS is the weekly staff meeting where acceptance decisions on new cases are discussed, along with existing case developments and administrative matters. The program also provides case oversight by the involvement of the litigation director in informal case review. The departure of the managing attorney has adversely impacted case oversight, especially related to compliance reviews at the time of case closure. The ALS Standards of Practice should be revised to include a provision for file review at closure.

Current ALS staff, though limited in number, provides significant service for the client population, and, when resources permit, provides high level advocacy consistent with the program's historical reputation. In 2008 the program was responsible for precedent-setting cases in both the Minnesota Court of Appeals and in the Minnesota Supreme Court, involving consumer and equal protection issues, respectively. ALS should be wary of concentrating in narrow legal areas (family issues) that may prevent the staff from spotting issues and or litigating in other areas such as health and housing. While the national figure for family case closings is 35% and the ALS figure is 30%, the program ought to concentrate its resources on those substantive issues related to its unique status as a legal services provider for Native Americans, and thus, to issues uniquely derived from that status.

The ALS governing body is not in compliance with the provisions of 45 CFR 1607, the LSC regulation on governing body composition. However, the members are well informed and participate in decision-making, policy adoption and program oversight. ALS' governing body should formulate a plan to engage in comprehensive strategic planning to address the future course of program development, to increase staff capacity to respond to unmet legal needs, and to improve program efficiency. ALS' governing body should conduct a timely performance evaluation of the executive director that includes input from staff and other stakeholders within the service area. The evaluation process should incorporate performance expectations and timelines for review.

ALS staffing reductions have severely impacted program administration. ALS must immediately devise a process to ensure that cases are properly reviewed for compliance with LSC regulations and other requirements prior to case closure to avoid the risk of improper reporting that result in cases that are not countable for CSR purposes. At a minimum, cross training should be provided to paralegals and tribal court advocates who may be available to review case files prior to closing.

DISCUSSION OF FINDINGS

PERFORMANCE AREA ONE. *Effectiveness in identifying the most pressing legal needs of low-income people in the service area and targeting resources to address those needs.*

Finding 1: ALS conducts periodic needs assessments and responds to their findings.

ALS conducted its last periodic needs assessment in 2006 when it developed a five year plan. The process took eight months. The program acquired data by distributing surveys to low-income persons, community organizations, social service agencies, the courts, other legal services providers, and attorneys. Focus groups and other meetings were conducted with members of the general public and staff. Access challenges of lack of transportation, aging and limited literacy were addressed by surveying clients by mail, and conducting meetings at Elderly Nutrition Centers and setting up booths at tribal pow-wows. ALS also obtained and analyzed data from The Minnesota Chippewa Tribe and from its own internal case management system.

Staff analyzed the data and other feedback in a day long meeting where responses were tabulated and ranked. Before presenting their recommendations to the ALS board of directors, the staff identified a list of most pressing needs, concluding that these needs revolved around elder issues, youth issues, domestic violence, and Indian law. The board adopted priorities at its meeting held on September 8, 2007.

At a subsequent meeting in December 2008, the ALS board adopted the following priorities for all levels of service: (1) Discrimination against Indians rights and privileges based on their status as Indian people; (2) Needs of elders and other vulnerable persons; (3) safety, stability, health and education of Indian children; (4) safety, stability, health and education of victims of domestic violence and sexual assault; (5) cases funded with tribal funds; (6) legal rights concerning public benefits in health care; (7) tribal and public housing issues within the boundaries of the reservations (8) emergency cases and matters; and, (9) cases funded with non-Legal Services Corporation funds used for the specific purposes for which they are received and not prohibited by LSC regulations. ALS also listed several other priorities for which only advice, brief service and referral would be available. An examination of case services reports demonstrates that the program is providing legal assistance consistent with its priorities.

Several tribal agencies and community leaders conveyed a lack of familiarity with the ALS priorities. They were unfamiliar with case acceptance policies, LSC restrictions and other resource limitations that impact the decision to accept a client for legal assistance. In some

instances, erroneous opinions have been formed by representatives of community organizations within the reservation communities about the types of cases ALS can handle based on isolated events. For example, it had been assumed that ALS represented adult criminal defendants because a tribal court judge had appointed one of the program attorneys to handle a case.

Recommendations:

I.1.1⁷. ALS should aggressively publicize its priorities and the limitations imposed by regulations and other funding restrictions throughout the community. In particular, the program should dispel the belief that it represents adult criminal defendants.

I.1.2. In conducting its next legal needs assessment process, ALS should consider including empirical data from a variety of sources that address demographic, census, economic, labor/employment, health, education, housing, technology, transportation and other conditions to inform the analysis for identifying the most compelling legal needs of clients. Legal needs studies reported by other programs, states, tribal authorities, and agencies that support Indian concerns should be reviewed; and, if possible, GIS mapping should be explored.

Finding 2: ALS engages in evaluation and adjustment of ALS priorities.

Subsequent to the adoption of priorities, ALS staff has reviewed their applicability during weekly meetings where new intake, case developments and case management issues are discussed. In January 2008, ALS participated in an organizational excellence assessment performed by the Northwest Minnesota Foundation. While the purpose of the assessment was organizational effectiveness, a section of the evaluation covered processes and systems. This assessment prompted closer scrutiny of the intake process. As a result, ALS is developing a more holistic approach to case acceptance. For example, domestic violence clients are offered assistance in preparing wills as a part of their safety plan.

Beginning with 2009, ALS plans to hold annual staff meetings to develop workplans for the upcoming year, based on intake data, staff and board knowledge of emerging issues and recent developments in the law, along with feedback, complaints and concerns from clients, other service providers and/or interested people.

Recommendations:

I.2.1. ALS' annual review of priorities should result in a clear plan for service delivery that addresses quantitative and qualitative impact of service delivery, including the allocation of resources and strategies to address systemic and emerging legal needs.

I.2.2. ALS board of directors should participate fully in the process of evaluation of priorities at regular intervals, as well as annually. It should incorporate a review of case services or similar reports into its quarterly meetings.

⁷ Recommendations are numbered as follows: the Roman numeral references the Performance Area followed by the finding number and lastly by the recommendation number that pertains to the finding.

PERFORMANCE AREA TWO. *Effectiveness in engaging and serving the low-income population throughout the service area.*

Criterion One. Dignity and Sensitivity

Finding 3: ALS staff is respectful of clients and sensitive to their needs and circumstances.

The mission of ALS, “(t)o provide free civil legal services for low-income Indians to further self-sufficiency, overcome discrimination, preserve Indian families, enhance tribal sovereignty and promote equal access to justice,” reflects the program’s acute awareness of the nature, status and state of affairs of the Native American client community residing on the three reservations. The staff endeavors to render services in a way that recognizes the cultural values and ethnic pride of the tribes served. Accordingly, staff diversity reflects inclusiveness of Native Americans directly affiliated with the tribes served by ALS. Deference is shown to the elderly in client interaction and accommodations are offered to elderly clients who may be unable to come into the offices and who may have limited literacy capability. The program has adopted a policy to assist clients with limited English proficiency (LEP) and several staff members have whole or partial fluency in one or more Native American tongues, particularly Ojibwe the predominant language on the reservations other than English.

Tribal and other local judges have described the staff as respectful of clients and sensitive to their needs and circumstances. To monitor this dynamic of client relationship, ALS has adopted a client grievance procedure. However, the program has not developed a consistent method for discerning client satisfaction or otherwise acquiring input from clients about the services they receive from ALS.

Recommendation:

II.3.1. ALS should consider employing a procedure for determining general client satisfaction with program services, including the intake process, quality of legal services rendered and outcome of services rendered. Procedures may include letters inviting feedback at the point of case closure, randomly distributed client satisfaction surveys and supervisor review of correspondence in the case files and case notes in the automated case management system database.

Finding 4: ALS conducts intake through a centralized intake system.

ALS conducts intake, a system for accepting applications for legal assistance and making determinations of applicant eligibility for services, on Mondays, Tuesdays and Thursdays from 8:00AM to 4:30PM. ALS has developed a unified intake system by reliance on PIKA, an automated case management system (CMS). Guidance for the use of the system is drawn from procedures developed by another legal services provider in Minnesota that uses the same system,

Southern Minnesota Regional Legal Services (SMRLS) in St. Paul.⁸ PIKA is operational in all offices, but maintained by the program-wide ALS office manager in Leech Lake who supervises all intake workers. Currently, there are at least four staff members that are directly involved in the intake process, although no one bears the title of intake worker⁹. Either the ALS office manager or the former managing attorney has trained them to use the CMS and conduct intake.

The current process is initiated when an applicant completes a paper application. An applicant may do so over the telephone or as a walk-in to any office. ALS staff opined that telephone intake in a Native American culture is difficult, based on cultural reticence to disclose private, personal information, which also makes getting required intake paperwork back, extremely hard. Most advanced features of telephone technology, such as VOIP, have not been adopted by the program. ALS does not use VOIP because of the frequency of internet service interruptions on the reservations.

ALS currently has minimal intake procedural guidelines, developed in 2006. The intake process involves three primary stages. The initial stage is eligibility screening where the centralized intake worker, located in Leech Lake, obtains sufficient information about the applicant's circumstances to ascertain the nature of the legal problem. The intake screening sequence includes: (1) residency/tribal enrollment (2) case type/priority (3) conflicts (4) income and (5) assets. Thereafter, the information is entered into the case management system. The sole explanation for using paper applications was that a former executive director had required it, believing that LSC mandated it.

Once an eligibility determination has been made by the intake worker, the file is transferred to the "attorney of the day" who determines whether the case should be accepted and the level of legal assistance to be provided. The attorney can accept the case immediately, as is done in cases involving domestic violence, or defer a decision on extended service until discussion at the weekly staff meeting on Wednesdays. This delay could result in a case acceptance decision pending for up to seven days. The final stage of the process is undertaken in conjunction with the decision of the "attorney of the day," when the case is entered in PIKA and the case file is set-up. If the case is accepted, the casehandler assigned the case will notify the client by letter. If the case is not accepted, ALS will notify the client accordingly. A client, who is not accepted by ALS, may be referred to another organization for additional assistance.

Recommendations:

II.4.1 ALS should discontinue the inefficient use of pre-screening paper applications. Instead, information supplied during intake interviews with applicants should be entered into the case management system contemporaneously. This eliminates the unnecessary duplication of efforts at a later time. At the conclusion of the screening, a paper application may be generated if a case

⁸ In 2004, a statewide pilot was conducted by two programs to determine the appropriateness of two case management systems, PIKA and Practice Manager. SMRLS piloted the PIKA database.

⁹ In addition to the ALS office manager, intake is performed by the secretary/receptionist in Leech Lake; the secretary from Red Lake works in Leech Lake on Wednesday, assisting with intake; and, the secretary from White Earth may be directed to input data and open a case file. The staff member in Leech Lake is a 9 week, temporary employee placed at ALS by a job training program that subsidizes her wages.

file is being created. ALS should investigate acceptable procedures used by other grantees to address LSC compliance requirements, such as completion of citizenship attestations. ALS should continue to audit data entered in the case management system and casehandlers should review and confirm the information when they initiate legal assistance to new clients.

II.4.2. ALS should review and update its intake policies and procedures to reflect the current intake system. These policies should incorporate changes in intake procedures resulting from the use of its automated case management system. Once formally adopted, such policies and procedures should be assembled in a comprehensive intake procedures manual that also includes compliance references to appropriate LSC regulations, guidelines and instructions; and, updated instructions on the use of the case management system.

II.4.3. ALS should consider determining the level of risk involved in the potential delay of seven days for making a case acceptance determination, when applications received on Thursday are not decided until the following Wednesday; and, ascertain whether sufficient safeguards are in place to avert the potential risk.

Criterion Two and Three. Engagement with, Access and Utilization by the Low-Income Population.

Finding 5: ALS is well-known throughout the service area and the state of Minnesota for its availability to provide legal work on behalf of Native American clients.

ALS staff members are actively engaged in community outreach. They provide community legal education to client-eligible groups and staff of other tribal and/or community organizations; collaborate with other organizations to provide legal services to mutual clients; serve on the boards of directors of community organizations that serve mutual constituencies; and, participate in tribal events, such as health fairs, Native American regional conferences and pow-wows. From time to time, ALS has also entered into contracts with other legal services providers and tribal authorities to provide legal assistance.

ALS staff has earned a good reputation for providing a sophisticated caliber of legal work on behalf of its clients. Staff is well-liked, personable, and known to respond quickly to calls and emails from community organizations and other service providers, alike. ALS' new executive director has aggressively sought to increase communications with tribal authorities and to encourage opportunities for increased collaboration with them. In recent years, growing frustration among some community organizations and providers has arisen over the inability of ALS to accept clients because of conflicts of interest. As mentioned above, in Finding 1, other frustrations have resulted from lack of awareness of the program's current priorities.

Recommendations:

II.5.1. ALS should develop a procedure to record the hours of community service donated to other organizations, particularly hours donated to governance activities, for future reference in developing proposals to foundations and other sources of funding.

II.5.2. ALS should consider examining its policies and procedures regarding the inability to represent an otherwise eligible applicant due to a conflict. State ethics laws and principles should be examined to determine when a program may represent an applicant with a possible conflict.

Finding 6: ALS is accessible to the client community.

Offices are situated in areas that are well-known throughout the tribal communities and in close proximity to other tribal services. The offices are furnished and equipped to reflect the Native culture, to disseminate appropriate public information and to promote the availability of tribal resources and services related to the client needs. The offices are handicapped-accessible. Some clients lack transportation resources to visit the offices. ALS infrequently conducts home visits.

The caliber of the office facilities is not equal. The main office, located in a building in Cass Lake once used as a brothel, has undergone extensive renovations, but the building continues to require additional work especially on the heating, air conditioning and ventilation systems. ALS is negotiating with other agencies on the Leech Lake Reservation for the opportunity to build a new facility which would co-locate numerous tribal or community service entities. The ALS staff members in the White Earth office are housed in the newly erected tribal government headquarters opened in 2008. The office is directly adjacent to tribal court, which is equipped with significant technology support. The office in Red Lake is also in a tribal government office, although it is significantly less modern, separated by several unrelated tribal government offices and located approximately one mile from that tribe's new government facility, where the tribal court, tribal prosecutor, and public defender offices are located.

Recommendations:

II.6.1. ALS should consider investigating the prospects for upgrading office accommodations in Red Lake and Leech Lake, including discussions and cost benefit analysis of proposals with potential partners for co-location.

II.6.2. ALS should consider exploring outreach strategies that enable more direct services in remote locations. Mobile offices and circuit-riding may be a viable option, especially with the use of laptop computers that provide remote access. Models used by other programs that serve Native American communities, such as Oklahoma Indian Legal Services, should be consulted.

PERFORMANCE AREA THREE: *Effectiveness of legal representation and other program activities intended to benefit the low-income population in the service area.*

Criterion One. Legal Representation

a. Capacity

Finding 7: Although the ALS advocacy staff is knowledgeable and talented, attrition in the attorney staff has diminished ALS's capacity to provide representation to its clients.

ALS has experienced significant losses in its attorney staff in the last two years due to reductions in funding and low salaries. Its capacity to meet client needs has been diminished by these losses. The number of attorney staff was stable at seven for several years, but has decreased to four, which includes the director, who handles a few cases.¹⁰ Several of the attorneys, who left the program, were experienced litigators with exceptional skills. The remaining attorneys, including the litigation director, have been with the program less than five years; and, excepting the executive director, none has ten years experience as an attorney.

The drop in staff has resulted in a loss of presence and visibility in the service area. Judges have noticed a cut-back in services and would like to see ALS advocates in court more conducting more extended representation. Two reservations that were previously served by permanent on-site attorneys are now served out of the ALS main office. As staff members have departed, cases have been transferred to the remaining staff with the result that caseloads are quite high. One seasoned attorney reported a caseload of 120. Another reported a caseload of 100. Even a .8 FTE paralegal was up to about 80 cases at one point, although they are now down to a more acceptable figure.

These attorneys, nevertheless, have the requisite skills for effective representation in a variety of forums. All attorneys have argued in the Minnesota Court of Appeals on one or more occasions. All attorneys are licensed to practice before the tribal courts at all reservations. The litigation director co-wrote a brief on a matter that was argued in the Minnesota Supreme Court. Program advocates are regularly asked to train the staffs of outside agencies on a variety of matters or to speak at CLE events. Paralegals and tribal court advocates are all casehandlers and provide valuable service to the clients and the program. One judge suggested that although the ALS attorneys were good lawyers and welcome in his court, they were somewhat inexperienced and could sharpen their skills by taking on more challenging matters. Another was complimentary of their work but could not recall any matters handled by them which involved extensive litigation.

Four of the program's casehandlers are Native American. Three casehandlers have familiarity with the Anishinabe (Ojibwe) or Dakota (Sioux) language. Casehandlers have diverse backgrounds; apart from law, several have degrees in additional disciplines. Two have experience with fund-raising and grant-writing.

¹⁰ The actual figure for attorneys that handle cases is 3.25 FTE.

Casehandlers have ready access to on-line legal and other legal research materials. Technology support is described as excellent. All casehandlers have desktop computers, internet access, and email capability. A shared drive is employed for briefs, pleadings and forms. Advocates have access to funds for litigation expenses when needed.

Recommendations:

III.7.1. Due to the small attorney staff, ALS should consider limiting intake until caseloads can be reduced.

III.7.2. ALS should consider allowing casehandlers with grant writing expertise the opportunity to pursue additional funding sources to support the current demand for legal work by the program.

b. Systems, Approaches, Techniques

Finding 8: Although ALS employs procedures that ensure effective client representation, some improvements to those procedures would enhance quality assurance.

Case oversight at ALS consists of three system components: (1) procedures set forth in the program's Standards for Practice, a compilation of performance guidelines for legal work; (2) weekly staff meetings, which include decisions to accept new cases, problems and feedback on the old cases, and administrative issues; and (3) oversight by the litigation director. The program's current state of retrenchment with reduced staff and high caseloads has had some negative impact on its ability to adhere to procedures and devote time to detailed case review. The litigation director indicates that in this small office where all lawyers practice together, he is aware of the matters being handled by the other attorneys and that case handling issues are continually discussed. Cases are assigned based on experience, caseloads, funding contracts, and which advocate conducted the intake of the client. The Standards for Practice do not appear to have a provision for file review at closure. The program does not appear to employ client satisfaction questionnaires as a routine means of obtaining feedback.

ALS employs a real-time case management system (CMS). The program chose the PIKA system and employs it for both maintaining the client database, conflicts checking, and for managing court appearances and other matters that must be calendared. Some individuals also keep paper calendars. The ALS Standards for Practice contain a written policy about tickling cases. Staff members are able to use the CMS to call up and review case lists. The PIKA CMS used by ALS also allows remote access to files so that presence in the office is not necessary to work on cases and other matters.

The advocacy staff receives sufficient training, although in recent years resources have restricted the availability of funds to participate in expensive events. The attorney staff gets much of its CLE from video events and a statewide legal services conference. Staff members have attended some major out of state training events. Several staff members have been presenters at training events. The litigation director indicates that in this small office he doesn't

need to conduct an in-depth training needs analysis for staff. Some staff members suggested that they need more access to training and mentoring.

Recommendations:

III.8.1. The ALS Standards for Practice should be revised to include a provision for file review at closure.

III.8.2. ALS should consider establishing a procedure for distributing client satisfaction questionnaires when cases are closed.

c. Achieving Significant Results

Finding 9: Current ALS staff, though limited in number, provides significant service for the client population, and, when resources permit, provides high level advocacy consistent with the program’s historical reputation.

From 2004 until 2007 ALS closed approximately 1,000 cases per year. In 2008 it closed 594 cases. This 40% drop in cases was roughly matched by the drop in attorney staff from 7 to 4, which is a 43% decrease. The five substantive areas in which the program closes most cases are Miscellaneous – 32%¹¹, Family – 30%¹², Consumer – 11%, Income Maintenance – 10%, and Housing – 6%. While there is some variation in these percentages from year to year, the two highest categories are always Family and Miscellaneous. The percentage of extended cases closed by ALS in the years 2005-2008 remained relatively constant, varying from 32% to 37%, significantly higher than the national mean, which varied during the same period from 22% to 28%.

ALS has a statewide reputation for its excellent advocacy. Many cases in the state’s body of law were filed and won by ALS advocates. In 2008 the program was responsible for precedent-setting cases in both the Minnesota Court of Appeals and in the Minnesota Supreme Court, involving consumer and equal protection issues, respectively.

Although the program’s work continues to be highly valued by all observers and stakeholders, some interviews of judges, former employees, board members, and outside agencies suggested that the overall level of sophisticated advocacy has dropped significantly. Several of these interviewees expressed a hope that ALS will assume a higher profile in the federal district court and in the state appellate system.

Judges generally reported positive experiences with staff, indicating that ALS advocates are timely with document preparation, prompt, prepared, sensitive about their clients’ needs, and accurate with legal research. ALS advocates are frequently seen in tribal courts and somewhat

¹¹ In Native American programs, the “Miscellaneous” category is used to reflect work that is not specifically identifiable under LSC closure categories, such as tribal court development, tribal recognition, and codification of laws.

¹² Many of the family cases involve domestic violence and child protection.

less in state courts. Their work in tribal court development, codification of tribal law, child protection, and domestic violence is seen as particularly valuable to the client population.

Recommendation:

III.9.1. Despite the demands of funders that may be providing funding for solely family law work and others, ALS should be wary of concentrating in narrow legal areas (family issues) that may prevent the staff from spotting issues and or litigating in other areas such as health and housing. While the national figure for family case closings is 35% and the ALS figure is 30%, the program ought to concentrate its resources on those substantive issues related to its unique status as a legal services provider for a special population, Native Americans, and thus, to issues uniquely derived from that status.

Criterion Two. Private Attorney Involvement

ALS receives no basic field funds from LSC and has no PAI obligation.

Criterion Three and Four. Other Services and Activities on Behalf of the Eligible Client Population

Finding 10: Considering the program's current state of retrenchment, ALS has demonstrated a substantial commitment to providing other services to clients and participating in activities on their behalf.

The ALS staff participates in a broad range of activities and services that benefit the client population. Staff members attend tribal code development meetings, provide training for other service providers, and occupy leadership positions in agencies that provide client services. They act — often daily — as ad hoc consultants to other providers on a variety of issues affecting clients, such as domestic violence, racial justice, civil rights, and child protection.

In 2008, ALS staff provided 2,108 persons with legal information concerning family, housing, and other issues, through presentations or newsletters. Through workshops, clinics, or materials distribution, an estimated 2,148 persons were informed about their ability to proceed *pro se*.

PERFORMANCE AREA FOUR: *Effectiveness of governance, leadership and administration.*

Criterion One. Board Governance

Finding 11: ALS' governing body is actively engaged in governance activities.

Following a year of upheaval in the board membership, the current governing body has met on a quarterly basis throughout 2009, adding special meetings and choosing to meet as a full board even though an executive committee has been appointed. This opportunity has created a more informed governing body by strengthening the board's awareness of program

developments, training them on their fiduciary responsibilities and increasing their accountability for the direction of the program. Other committees have also been formed. ALS does not have a file of committee meeting minutes because the committee members generally have no final authority other than to make recommendations to the full board. The board has already revised the program mission statement and begun to discuss strategic plans. In the meantime, the recommendations from an organizational assessment conducted in 2008¹³ form the basis for dialogue about areas of focus for examination and reorganization.

The board continues to rotate its meeting locations between the reservations within the service area and permits participation by telephone. Many members, however, expressed a desire to participate in person. This is not practical for members who live and work in the Twin Cities area. Both attorney and client eligible board members are well informed and engaged. They are conversant about recent and pending issues before the board and have a high degree of familiarity with one another.

In the past two years, ALS has been challenged by the loss of VAWA funding, along with the threat of significant questioned costs that, if left unsubstantiated, will have to be repaid to the Department of Justice (DOJ). Such an outcome will render the program financially unstable. The matter is the subject of ongoing negotiations with DOJ. An accounting firm has been representing the program to resolve the matter since 2007. With a high level of concern for the outcome, the board is monitoring this situation on a regular basis, providing their support and encouragement to the executive director to achieve a speedy resolution of the matter.

The current governing body is engaged in financial oversight. At each board meeting, they are provided with financial reports prepared by the financial administrator, who submits financial statements, current through the date of the most recently concluded reporting cycle. He reviews the statements and budget projections at each meeting. Because of the magnitude of current financial concerns, the board has acted as a committee of the whole on fiscal matters, rather than through the finance committee. For example, decisions on staffing levels and salary adjustments have been presented to the membership for discussion and approval. In light of the current financial position of ALS, the board anticipates future discussions about caseload levels and priority areas of practice the program can continue to handle.

A new board chairman was elected in 2008 who has substantial ties at Leech Lake, Red Lake and White Earth Reservations. His reputation for strong leadership and business acumen, and therefore his capacity to work on behalf of the program, is acknowledged throughout the Ojibwe community. He is the Chief Tribal Court Judge for one band (Leech Lake), a Special Tribal Attorney for another band (Red Lake) and the Chief Legal Counsel of the other band (White Earth) within the service area. His participation lends credibility to the program. He was also a staff attorney at ALS early in his legal career.¹⁴

A new executive director was selected in September of 2008. He meets weekly with the board chairman to report on program activities, but may report by email on major issues that

¹³ Discussion of the organizational assessment is reported in Finding 15, below.

¹⁴ Joseph Plumer was the Reginald Heber Smith Fellow placed at ALS from August 1983 through June 1986.

arise. Members view this interaction as “healthy.” A process is being developed to conduct the executive director performance evaluation.

Recommendations:

IV.11.1. ALS’ governing body should formulate a plan to engage in comprehensive strategic planning to address the future course of program development, including resource development, to increase staff capacity to respond to unmet legal needs, and to improve program efficiency. Such a planning process should focus on the mission, vision, structure and staffing of the program, along with focus on the form of advocacy the ALS staff can undertake and the allocation of resources to support those activities.

IV.11.2. ALS should consider reviewing its current committee structure, including those not currently meeting and develop guidance for committees it wishes to retain or establish, such as committee membership roles, expectations and functions.

IV.11.3. ALS’ governing body must conduct a timely performance evaluation of the executive director that includes input from staff and other stakeholders within the service area. The evaluation process should incorporate performance expectations and timelines for review.

IV.11.4. ALS’ governing body should, when resources permit, engage in additional board governance training that focuses on fiduciary responsibility, especially financial oversight, program evaluation and policy governance. Training opportunities may be increased by collaborating with other legal services providers and other non-profit organizations within the state. ALS should also consider a membership subscription to a professional organization that supports governing body development, such as Board Source.

Finding 12: Although its composition is well-balanced and diverse, both geographically and culturally, the ALS governing body is not in compliance with its by-laws or with 45 CFR 1607 and other applicable LSC regulations.

ALS currently has an active membership of attorneys, client eligible participants and others, some of whom are tribal advocates. The by-laws provide for a roster of 15 members, including nine attorneys and six client eligible, non-attorney board members. The bar associations and appointing agencies are specifically designated in the by-laws. The program has worked to fill and maintain 12 positions. There are six attorney members and six non-attorney members. However, this composition ignores the by-laws requirement of 15; and, it does not meet the ratios established by LSC regulations which require 60% attorneys and 33½ client eligible members. Among the six non-attorney members, at least one is a tribal advocate, currently serving as the public defender in Red Lake; and others are employed by tribal authorities or enterprises. Their income and asset eligibility has not been determined and may not meet the current Federal Poverty Income Guidelines required to determine client eligibility by 45 CFR 1611.

Recommendation:

IV.12.1. ALS must exercise due diligence to bring its governing body into compliance with applicable LSC regulations and other legal authorities, including its own by-laws. In prior years, other LSC grantees with substantial Native American service areas, have requested waivers of some of the LSC requirements related to attorney members in the governing body composition, particularly with regard to the appointment of tribal advocates to the board.

Criterion Two: Leadership

Finding 13. ALS leadership has a shared vision that emphasizes high standards of performance and achievement.

Along with a re-invigorated board of directors and influential board chairman, ALS has attracted dynamic new staff leadership. Its executive director, hired in September 2008, is recognized throughout the state as an accomplished attorney in public service, having served as a former Assistant United States Attorney; as senior corporate counsel to a major international corporation; as a specialist in Indian law where, in private practice, he has represented many of the tribes throughout Minnesota; and, as a tribal court judge. He is also a spiritual elder of the Leech Lake Band, attesting to the trust and confidence that the community places in the integrity of his dealings. Early in his legal career, the new executive director was a law clerk with the predecessor of ALS, the Leech Lake Reservation Legal Services Project. Each staff and board member interviewed, expressed satisfaction with his selection as the executive director, noting a significant improvement in staff morale.

One immediate goal of his administration has been the reconnection of the program with other stakeholders that had become disengaged with ALS. He facilitated the re-examination of the program mission; and has been researching new funding opportunities, identifying project partners and developing materials for new grants. He believes that partnerships with the tribes are essential.

ALS has no leadership development or succession plan. Some of the persons interviewed thought that the position of litigation director was created to provide the incumbent with the requisite exposure to understand the responsibilities and dynamics of program leadership and master the skills necessary to succeed as an executive director. No funds have been designated for formal leadership training, nor has anyone been encouraged to pursue such training.

Recommendation:

IV.13.1. ALS should engage in leadership development. In addition to the positions of executive director and board chairman, the program must determine how best to cultivate leadership among other attorneys and non-attorneys in their current positions. Effective leadership development results in individuals taking ownership of their individual responsibilities and exploring new ways of expanding and/or performing their roles more effectively and efficiently.

Criterion Three. Overall Management and Administration

Finding 14: ALS staff reductions have severely impacted program administration.

Due to the loss of staff in 2009 that included the managing attorney and two secretaries, responsibilities previously assigned to three non-attorney staff members, are now held by only one, the ALS office manager. The responsibilities of legal work oversight, formerly assigned to the managing attorney, especially those related to compliance, have been divided between the executive director and litigation director. This has created a void in training, particularly around compliance for case closing. At the time of the visit, no one was reviewing cases before closure. The office manager continues to be responsible for human resource management and for aspects of compliance, technology, and financial management; setting up and preparing for board meetings; and, serving as back-up along with oversight of intake workers.

Recommendation:

IV.14.1 ALS must immediately devise a process to ensure that cases are properly reviewed for compliance with LSC regulations and other requirements prior to case closure to avoid the risk of improper reporting that result in cases that are not countable for CSR purposes.¹⁵ At a minimum, cross training should be provided to paralegals and tribal court advocates who may be available to review case files prior to closing.

Finding 15: ALS carried out an effective evaluation of management operations.

The program engaged the Northwest Minnesota Foundation to conduct an organizational assessment to provide information and recommendations to the board to improve ALS' effectiveness. The assessment was based on a SWOT¹⁶ analysis conducted through document review, organizational culture survey, and, two days of onsite visits to the program. The ensuing report of the assessment covered human resources, board and governance, financial oversight, use of technology, management, leadership, process and systems, and staff attitudes/teamwork. The report issued in March 2008 cited numerous weaknesses and threats.¹⁷ These findings have sparked proactive responses from board members who have become increasingly engaged in program leadership and governance.

Criterion Four. Financial Management

Finding 16: ALS has capable, trained and effective staff to provide financial administration, although recent staff attrition has impacted the execution of day-to-day functions.

¹⁵ LSC's Office of Compliance & Enforcement (OCE) visited ALS in July 2008, at which time OCE made adverse findings regarding ALS' intake procedures, case management system and application of the CSR case closure categories.

¹⁶ "SWOT" is an assessment of an organization's strengths, weaknesses, opportunities and threats.

¹⁷ ALS supplied a copy of the full report, "Organizational Excellence Assessment" to LSC in accordance with the 2008 Grant Assurances.

A licensed, certified public accountant, working as an independent contractor, who is employed by Legal Services of Northwest Minnesota (LSNM), is responsible for administration of all the financial books, accounts and records of ALS. There is currently no formal agreement between ALS and LSNM defining his duties. His work is supported by ALS staff, including the office manager who reviews accounts payable and authorizes those for which checks should be issued to creditors by the financial administrator; and, by paralegals who reconcile the ALS bank statements. His participation in meetings of the governing body is described above, in Finding 11.

The financial administrator participated in the development of the ALS Accounting Manual. It mirrors many of the internal controls and policies adopted by LSNM. Among other things, it addresses check writing and other forms of cash disbursement and general ledger entries. Some of his work was developed from non-specific information and internal controls provided by *Larson & Allen, LLP*, an accounting firm that has worked extensively with ALS in the past two years. He currently serves on the LSC Financial Advisory Committee, an ad hoc group that was formed to identify “best practices” in financial management to be recommended to LSC programs.

The financial administrator acknowledges that internal controls have been adversely impacted by the shortage of staff, resulting in the legal staff having to participate in financial oversight. The financial administrator expressed a high regard for the current staff, yet, to minimize unforeseen defalcations, he has adopted the daily practice of logging onto the respective bank websites that house the accounts for the two programs to look at account activity every morning. This practice allows him to identify and follow-up on irregularities immediately.

Recommendations:

IV.16.1. ALS should consider formalizing the terms of its agreement with LSNM for the administration of financial services to the program, including a description of the scope of work to be performed by the LSNM staff.

IV.16.2. ALS should review its internal controls to assess whether there is an increased risk of loss associated with the current staffing level of the program.

Finding 17: ALS engages in financial oversight that includes planning and budgeting beyond the current fiscal year.

ALS operates on a fiscal year that concludes on December 31st and maintains its accounting system on an accrual basis. The financial administrator prepares financial statements on a monthly basis that include revenue, expenses and projections from the beginning of the fiscal year for ALS management to review. In addition, he prepares the statements of financial position (balance sheets/cash flow statements); and he also produces figures to support development of the annual ALS budgets and for grant proposals to existing and future funders. He forecasts funding trends based on current spending patterns and income projections. Board members and management are comfortable with the presentation and usefulness of the financial reports.

Finding 18: ALS is addressing significant issues raised by financial audits conducted by the independent public accountant (IPA) retained by the program and by past audits conducted by other outside evaluators.

The ALS annual financial audit is performed by *Drees, Risky & Vallager, Ltd.*, an accounting firm from Grand Forks, North Dakota. The auditors spend one week at LSNM where the financial records of both programs are housed, performing the audit field work. They follow-up with a two-day visit to the ALS office in Leech Lake thereafter, where they perform the compliance checking and fiscal comparisons. Even though there were independent audits performed in the past, all funds of ALS, except LSC funds were combined¹⁸ in the annual audit report prior to the current financial administrator joining the program in 2003. The most recent audit report available at the time of the visit noted that ALS “has suffered losses from general operations and reductions in grant revenues that raises substantial doubt about the Organization’s ability to continue as a going concern.” The report further noted that,

Management has worked to implement the following plans to mitigate the conditions:

- 1. As of March 28, 2009 they suspended the 4% SEP-IRA contributions effective immediately.*
- 2. As of April 2, 2009 they made reductions in support staff.*
- 3. They are actively seeking additional funding sources.*

If no additional funds are raised by the fall of 2009, the board will again have to take action to reduce the ALS budget. Personnel and health insurance are the biggest line items in the current ALS budget. If additional cuts to the budget must be made, the board will consider options that will provide less health insurance coverage for the staff and their dependents, but saves ALS up to \$50,000 per year.

In June 2007, the Office of Inspector General, Audit Division of the U.S. Department of Justice (DOJ) issued a final report on an audit of the Violence Against Women (VAWA) grants awarded to ALS between September 30, 1998 and September 13, 2004. Grants were awarded by two Department of Justice offices: the Office of Justice Programs (OJP) and by the Office on Violence Against Women (OVW). These grants, awarded for the purpose of providing legal assistance to victims of domestic abuse who were members of the White Earth Ojibwe Indian Reservation, totaled \$854,146.

The DOJ report raised assertions of questioned and/or unsubstantiated costs that have caused ALS to operate in a retrenchment mode of activities during the past two years. ALS has insurance coverage regarding the DOJ audit and the insurance company for the program has retained an attorney, Stephen Parsons, in Minneapolis, Minnesota, to assist ALS in the matter. Concurrently, the former and current ALS executive directors have each worked with the accounting firm of *Larson & Allen, LLP* during their respective tenures, to obtain substantiating documentation of expenditures and to negotiate a settlement amount for which the program may be liable for reimbursement. Most recently, ALS has been trying to schedule an in-person

¹⁸ It is unclear whether the funds were also commingled in ALS’ accounting system.

meeting in Washington, D.C. with appropriate DOJ officials to get the VAWA audit concluded. Efforts to schedule this meeting have not been successful.

ALS has certified that the repayment to DOJ, in any amount, will not come from the proceeds of a grant from LSC. The current executive director is setting aside “Indian” money from tribal contracts and grants to pay the settlement amount when it is determined – it may total approximately \$35,000.¹⁹

The former executive director has filed a lawsuit against the program. Prior to doing so, he made assertions to DOJ regarding the propriety of ALS’s capacity to repay questioned costs. This development has adversely impacted negotiations between ALS and DOJ. ALS has also received a letter from DOJ, notifying the program that ALS has been designated as “high risk” by DOJ’s Office of Justice Programs (OJP) pursuant to the requirements of 28 CFR §70.14.

At its June 27, 2009 meeting, the board of directors took actions to cut approximately \$130,000 from the current ALS budget. That was accomplished, in part, by the lay-off of the managing attorney, freezing pay increases for all staff until further notice and postponing the replacement of one secretary who was separated from employment in early June. The board also took action to lay-off another secretary in April of 2009 and that position remains vacant.

Recommendation:

IV.18.1. In addition to continued negotiations with DOJ to resolve the total amount and reimbursement of questioned costs, the governing body should consider establishing an *ad hoc* committee to explore the potential for merger with another LSC program, such as LSNM, if opportunities to stabilize funding do not materialize in the immediate future.

Criterion Five. Human Resources Administration

Finding 19. ALS has established personnel policies and procedures, although enforcement is compromised by the limited staff available for oversight.

ALS has developed job descriptions for most, but not all positions. The loss of permanent staff has left remaining staff working beyond the scope of their enumerated responsibilities if they have a job description. The program leadership expressed a commitment to career development and training. However, staffing reductions have left some employees feeling overwhelmed by the volume of work; and funding losses have resulted in temporary forfeiture of training benefits and salary adjustments.

Currently, the ALS office manager is responsible for handling all insurances, COBRA, orientation of newly hired employees, issuing office keys, preparing reports, and approving time sheets (time/attendance reports must match PIKA timekeeping records). The program has developed an Employee Handbook that covers hiring policies, policies defining the terms of

¹⁹ The total funds set aside in the amount of \$34,928.90, include: \$ 8,000 from the Leech Lake Juvenile Child Protection; \$2,000 from the Federal Bar (National Indian Association); \$928.90 from the Dave Rasmussen Memorial Fund; and, \$24,000.00 from the Mille Lacs (Mid-Minnesota conflicts cases).

employment, compensation, fringe benefits, training and travel expenses; and employee grievance procedures.

Employees have been evaluated within the past year despite the lack of a formal performance appraisal system. Evaluations appear to be geared toward employee improvement and are a basis for salary adjustments. Interviews did not suggest dissatisfaction with the process.

Recommendation:

IV.19.1 ALS should adopt a performance appraisal system for its employees that defines and measures expectations, goals and objectives of work to be performed. The process should also take into account the individual employee's progress in professional growth and achievement and propose new targets for future advancement.

Criterion Six. Internal Communication

Finding 20. ALS maintains consistent communication within the program.

ALS has held weekly meetings at the Cass Lake office, described in Finding 4, where all staff members participate in discussions about intake, cases and administrative matters. This has helped to preserve cohesiveness among the staff, particularly in the face of the turmoil of the past two years. Staff opined that communications with program leadership have substantially improved since the hiring of the new executive director. Technology is available for telephone and email contact in all offices.

Criterion Seven. General Resource Development and Maintenance

Finding 21. ALS has centered resource development around identifying potential funders and writing grant proposals.

ALS continues to submit proposals to foundations and other public and private organizations for funding.²⁰ Subsequent to the onsite program quality visit, ALS was notified by the state of Minnesota that it has been awarded another two (2) year grant. The Minnesota funds and the LSC funds make up two-thirds (2/3) of ALS' annual funding.

Currently, no formal fundraising campaign is underway. The executive director is responding to the expectation of the governing body that he will pursue grants. They have identified issues associated with youth, mental health and veterans as appropriate for research and development of funding proposals to private foundations and tribal authorities. ALS does not produce an annual report, although it contributes news articles to tribal publications.

²⁰ Since the onsite program quality visit in August 2009, ALS was notified that its grant request to the state of Minnesota for federal stimulus funds to help prevent homelessness and for rapid re-housing was denied.

Recommendation:

IV.21.1. When program funding stabilizes, ALS should publish an annual report.

Criterion Eight and Nine. Coherent and Comprehensive Delivery Structure; Participation in an Integrated Legal Services Delivery System

Finding 22: ALS is engaged in a comprehensive and integrated service delivery system.

ALS is uniquely configured to serve as Minnesota's only reservation-based legal services provider for Native Americans. It has established a solid reputation for the quality of its legal work. Many important cases in the state's laws relating to Native Americans are the result of ALS advocacy. In serving this special population, ALS collaborates with other agencies that provide assistance to the low-income population of the service area, including several that operate off the reservations in Bemidji, MN.

ALS also collaborates with tribal community groups, organizations and agencies located on the reservations. Apart from providing direct legal assistance to clients referred through these collaborations, ALS staff members have worked on the board of directors and committees of other programs. They have also facilitated training opportunities for these programs and other legal services providers. Many agencies commend ALS for the quality of its services and contributions to their missions. Similarly, tribal authorities expressed an increased willingness to formulate new collaborations with ALS in light of recent overtures by the new executive director to explore such opportunities.

In the late 1970's, Minnesota legal services programs began a formal collaboration known as the Minnesota Legal Services Coalition (MLSC), designed to coordinate and support the provision of legal services to clients on a statewide basis. This organization has continued to thrive, providing leadership to programs, including ALS, in substantive training, fundraising and other aspects of program development and service. ALS has maintained its membership, but its engagement is peripheral.

Recommendations:

IV.22.1. After addressing internal management challenges and developing a more strategic approach to service delivery based on anticipated resources, ALS should develop its own public relations campaign. The program should promote its many legal victories and accomplishments on behalf of Native American clients and the rights of Indians.

IV.22.2. The executive director and other ALS staff should pursue increased participation in the activities of MLSC. Their presence will highlight and promote the essential role the program plays in the delivery of services to a special population.