

NORTH MISSISSIPPI RURAL LEGAL SERVICES



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May 7, 2012

Mr. Willie Abrams, Program Counsel
Legal Services Corporation
3333 K Street, NW3rd Floor
Washington, DC 20007-3522

Re: North Mississippi Rural Legal Services Program Quality Visit Draft Report

Dear Mr. Abrams:

I am writing to provide North Mississippi Rural Legal Services' (NMRLS) response to the Legal Service Corporation's Draft Report from its visit by the Office of Program Performance on January 23-27, 2012. NMRLS appreciates the time, effort and thoughtful recommendations provided by you and your team while on site and in the draft report. We took detailed notes during the exit conference on January 27, 2012 and have been diligently working on improvements identified by the team.

We have reviewed the PQV draft report for factual inaccuracies and hereby set out our responses in attachment "A" which is hereby incorporated herein by reference. We have pointed out factual inaccuracies and provided explanations designed to clarify any misunderstandings which may have occurred during the process.

If you should have any questions regarding our response to the draft report, please contact me. We look forward to receiving the final report, but more importantly, we will continue our efforts to comply with the tier one and other recommendations contained in the report.

Sincerely,

A handwritten signature in black ink that reads "Ben Thomas Cole, II".

Ben Thomas Cole, II
Executive Director

NORTH MISSISSIPPI RURAL LEGAL SERVICES

RESPONSE TO

Office of Program Performance

Draft

PROGRAM QUALITY REPORT

FOR

North Mississippi Rural Legal Services

Recipient Number: 625040

January 23-27, 2012

ATTACHMENT "A"

Finding 2.

As reflected in footnote 12, NMRLS did change the priorities concerning SS/SSI cases. Also the 2011 priorities and 2012 priorities added employment matters including employment discrimination.

Finding 3.

OPP's conclusion that NMRLS' priorities lack goals or objectives is incorrect. The goals and objectives are clearly set forth. The element lacking is a stated desired outcome. However, there are demonstrable measured outcomes in the form of reports showing results obtained for clients. Contrary to OPP's assertions, NMRLS' objective is not to simply accept the cases. Implicit in the accepting of a case is an intent to render the client services commensurate with the facts and applicable law. NMRLS has a staff of dedicated and committed workers who vigorously and aggressively pursue their clients' interests. To conclude NMRLS' goal is simply to accept the case belies the fact that NMRLS is not opening an extraordinary number of cases.

The interaction and sharing of experiences among case handlers was not clearly demonstrated or articulated to OPP. Contrary to the conclusion reached, case handlers do not make strategic decisions on a non-routine case without conferring with colleagues. Because of the limited years of experience of some case-handlers and the limited number of case-handlers, input from older, more experienced case handlers is both essential and routine. OPP fails to account for these exchanges of ideas in its conclusion there is no mechanism to discuss strategies as to how best meet the needs in a more systemic way. In retrospect there was no thorough discussion between NMRLS and OPP regarding the support systems existing between the branch offices.

During the course of time NMRLS staff has identified a number of systemic issues and attempted to deal with them. The Access to Justice Commission did not find there was a lack of NMRLS visibility. The ATJ finding is a general finding.

A systemic issue identified by NMRLS is the prevalence of Refund Anticipation Loans. In Response to Document Request 62, NMRLS discussed the VITA program it administers. It is estimated this predatory lending practice siphons thousands of dollars from low income workers. In response to this issue, NMRLS in cooperation with a consortium of agencies and local governments applied for and obtained grants from the IRS to establish and operate three (3) VITA sites within our service area. These sites are focused on providing services to low income rural clients with a concentration on the Earned Income Tax Credit. In 2011 more than 1100 federal and nearly 1000 state returns were filed by these groups. More than 2.5 million dollars in refunds were returned to the local communities. In 2012 more than 1100 federal and an additional 900 state returns were filed. This added more than 2 million dollars to the local economy. In connection with this the filers are provided financial literacy counseling. A number of the filers who had been un-banked in the past were able to open checking and savings accounts without out of pocket deposits.

A large percentage of these previously un-banked individuals maintain these accounts long term. The establishment of checking and saving accounts for the previously un-banked clients addresses the problem of clients having to pay to cash their paycheck which further diminishes the amount of disposable income in the home. The partners had discussed seeking seed money to expand this project to include establishment of Individual Development Accounts. NMRLS views this as an asset building venture and further believes this is an example where NMRLS addresses a systemic issue impacting low income individuals. This initiative is discussed in Response to Document Request # 62.

Finding 4.

NMRLS does not have a written strategic plan. However, it does have focus and vision regarding provision of legal services to its clients. NMRLS intends to begin a strategic planning process in 2012.

Finding 5.

NMRLS work is guided by explicit goals and objectives. While the goals and objectives have not established a desired measurable outcome, there are measurable outcomes. NMRLS can readily report how many homes were saved from foreclosure, how many protective orders were obtained, and how many applicants were successfully represented before administrative agencies. Prior to any decisions being made, very deliberative and thorough discussions of the advantages and disadvantages are weighed. In hindsight someone may disagree with the results, however, it does not diminish the process or thought given to reach that decision.

Finding 7.

NMRLS' Call Center continues to function as a statewide seamless system which provides a "single point of entry" for persons in Mississippi who need civil legal services. There is a single statewide toll - free number (1-800-498-1804) for callers to use anywhere in the State of Mississippi. The caller will seamlessly be transferred via the VOIP technology to the office which serves the caller's area. North Mississippi Rural Legal Services serves the northern part of the state and Mississippi Center for Legal Services serves the southern part of the state. The two said federally funded legal services programs worked with a consultant and developed statewide Call Center protocols for the mutual operation of each program's Call Center. The goal is for all callers to the statewide toll-free number receive essentially the same level of services regardless of the area of the state they are calling from.

Call Center attorneys estimate that a total of 75-120 calls come into the Call Center per week - NOT "... that they each handle anywhere from 75 to 120 calls per week." Additionally, they provide case specific advice to callers, NOT that "... they use scripts to provide advice...".

The Call Center is not on emergency intake, it is the branch offices that are on emergency intake. The Call Center takes all calls and provides at a minimum, advice and counsel or brief service to all client eligible callers.

Finding 8.

Walk-in applicants to the branch offices are told they should contact the Call Center only after an initial assessment has been made by the receptionist. If the case is an emergency or other factors such as distance traveled, age or disability of the applicant exists, an intake is done by the receptionist. NMRLS has a written definition of what constitutes an emergency which provides guidance to the staff. However, the protocol for checking the other factors in deciding whether an immediate intake is needed is not written. Staff is trained to inquire about the existence of other factors and to err on the side of conducting the intake if any doubt exists about the applicant's ability to access the Call Center.

Applicants who are told to call the Call Center are given the option to use a telephone in the office. A telephone is made available in a vacant office or the library in order to assure client confidentiality. Additionally, applicants are provided assistance by NMRLS staff to get through to the Call Center if needed.

Finding 9.

Through an oversight the list provided was not representative of NMRLS' involvement with agencies serving low income individuals. Additionally, several of the branch offices state they were not asked about community involvements.

OPP references the existence of a strong community action agency network. NMRLS has a long history of involvement with the local community action agencies and continues to be very involved with the agencies. In the past NMRLS staff trained the Community Action Agencies' staff to handle social security and unemployment hearings. Each year the Executive Director appears as a speaker at the statewide Community Action Agencies meetings. Other staff has appeared to do substantive presentations.

While the list did not include NMRLS' involvement with the community action agencies and other social services agencies, other documents provided should have given OPP a better view of NMRLS' relationship to the community action agencies. In response to Document Request# 34, NMRLS explained its ongoing relationship with Mississippi Department of Human Services (MDHS) (the funding entity for the local community action agencies) and the local community action agencies. Response to request # 34 states that a grant for education and outreach from MDHS allowed NMRLS to strengthen its working relationship with MDHS and the local community action agencies. The document further explains that "the sessions focused on providing information and materials on topics such as social security, supplemental insurance, bankruptcy, guardianship etc. and also allowed us to provide direct representation of persons who attended the sessions with legal problems in those areas or who were later referred to NMRLS by the Community Actions Agency (CAA)." These involvements are further explained in responses to Document Request # 48 and #49 in which NMRLS listed funding in 2011 and 2012 from DHS and WWISCAA for the purpose of providing education and outreach and providing services to individuals eligible for WWISCAA and MDHS service.

NMRLS' Street Law professor and her students conduct outreach weekly at the Oxford Pantry during the Spring and Fall school semesters.

In addition to OUR House , NMRLS also advised OPP it had served as consultant to the shelter previously serving the Lafayette County service area which was no longer in existence.

OPP was further advised of NMRLS' association with local housing counseling agencies including recommending a person for one non-profit's board of directors and referring other clients to housing agencies for pre-purchase counseling.

In Response to Document Request #62, NMRLS lists a number of agencies with which it has provided preventative law education seminars. These included MS Center for Legal Services, UM and MS College Public Interest Law Foundations, Planning and Development Districts, Department of Human Services and the Community Action Agencies.

Finding 10.

In addition to the answer submitted in response to Finding # 9, NMRLS submits the following information. All Justice Court Clerks, Chancery Court Clerks and Circuit Court Clerks have been provided copies of NMRLS brochures explaining our services and have been asked to post them at the court house. All CAAs have been provided brochures explaining who we are and some provided legal materials that clients can pick up at visits to the office. Also, prior to its changes in priorities Social Security Offices of Hearings and Appeals included NMRLS' contact information on their notices to applicants for disability.

In 2012 NMRLS will provide a detailed outreach schedule which will be posted on its website.

Finding 13.

In reviewing NMRLS case closures, while it remains below the national average, since 2008 NMRLS has steadily increased the number of cases closed. This increase has been accomplished despite a reduction in funding between 2010 and 2011 of nearly Five Hundred Thousand Dollars (\$500,000.00). Additionally, in reviewing NMRLS' case closures for 2011, the national average of closed cases per 10,000 poor persons decreased while NMRLS' number of cases closed per poor person increased. Also included in NMRLS' closed cases were several decisions from Appellate Courts.

NMRLS has committed to completing the Social Security cases it has already accepted. Additionally, NMRLS accepts Social Security cases where contingency fees are not available such as overpayments and cessations.

Finding 14.

NMRLS does have guidance or definition of an emergency. This is included in the document provided in response to Document Request# 15.

OPP was advised the two in state LSC programs had adopted a statewide Call Center protocol. During OPP's visit the statewide Call Center protocol was discussed. The Call Center protocol sets out which cases are to be provided counsel and advice or brief service and which cases are to be referred to the branch office for extended services. While this document was not provided before hand, the unit manager discussed this document and its contents with OPP during its visit and in a subsequent telephone call.

NMRLS disagrees with OPP's conclusion that extended service decisions are left to the individual managing attorney's discretion with little review. The Litigation Director has access to all cases referred to the branch office. OPP was advised these cases are periodically spot checked by the DOL. No case-handler has unrestricted discretion. A decision to provide or not provide service is always subject to review by the case-handler's supervisor. The client is advised of this by the Call Center and the case-handlers. Finally, all clients are sent a closing letter and advised of their right to request review of the decision to close their cases. These are further explained in Response to Document Request #15.

Finding 15.

NMRLS has no corrections to this finding. However, According to a Clarion Ledger article of August 25, 2011, Mississippi has one of the highest divorce rates in the country. Family law was identified by the needs assessment and the Mississippi Access to Justice Report among the needs of low income Mississippians.

NMRLS will include in its outreach information on other type of services it provides.

Finding 16.

NMRLS was not aware OPP discussed the complexity of cases with staff. NMRLS was not aware OPP reviewed any case pleadings or other documents prepared by staff other than writing samples submitted prior to the visit and copy of a Federal Court document requested during the visit. However, there are some documents that are prescribed or recommended in form, content and format. NMRLS does not disregard the prescription or recommendation in preparing such documents.

NMRLS disagrees with the conclusion NMRLS' lack of aggressive advocacy is shown in regards to in forma pauperis filings. During the OPP exit interview a discussion was had of why more of the cases referred to the branch office were not filed in court. Staff provided a litany of reasons including different assessment by the office from that of the call center attorney, failure of clients to return compliance documents, clients changing their minds, failure to pay filing fee and inability to pay filing fees. Staff did not state clients were often unable to pay the filing fee. They did state sometimes they are unable to pay the filing fees. There was no quantifying of how much of an issue this may be. In some instances there is no filing fee and the applicant does not follow through. In others the applicant pays the filing fee but fails to sign documents sent them.

NMRLS did not present this and does not understand inability to pay filing fee as an insurmountable barrier. When this issue was brought up by OPP in subsequent interview with

one managing attorney, the attorney specifically informed OPP filing in forma pauperis was not an impediment to filing cases in her district and she routinely filed IFP requests. Therefore, NMRLS does not believe this conclusion is neither factual nor supports the conclusion that NMRLS does not engender a culture of aggressive advocacy or lacks aggressive advocacy in the threshold of low income issues.

Interestingly, as far back as 1994 NMRLS staff has handled cases dealing with in forma pauperis issue. The Supreme Court case M.L.B. VS S.L. J. addressing the right of an indigent in a parental rights termination case to a free transcript for an appeal was handled by a NMRLS staff attorney on the trial level, Mississippi Courts of Appeal and Mississippi Supreme Court level. While private counsel became involved in the U.S. Supreme Court Case, NMRLS' staff identified and pursued the issue.

In reviewing the landmark decisions in Mississippi from the 1970 through the present, NMRLS has filed, pursued, supported and completed cases aimed at having lasting impact on low income individuals. Within the past 2 years NMRLS has litigated cases that if successful would have modified the employment at will doctrine in regards to employers receiving federal money, in unemployment hearings prevented hearing officer and employer from changing the grounds for denial of benefits after notice, and granting terminated SNAPS recipients the right to judicial review of their adverse action.

Also, in the past NMRLS challenged constitutionality of garbage fee legislation on due process basis allowing county tax office to refuse to sell car tags to persons not paying garbage bill without notice and a right to a hearing to contest the action, appealed several cases to the Mississippi Supreme Court regarding standard and requirements for guardian ad litem in child custody and parental rights termination cases. Currently NMRLS has an appeal with the Mississippi Courts of Appeals questioning whether a Chancellor can place a child with a third party without a finding of abandonment or unfitness of the natural parent which had been the established standard for years.

The filing fees are scheduled to increase on July 1, 2012. NMRLS and MCLS have agreed to jointly revisit the IFP issue as a result of the increase enacted by the Mississippi Legislature.

Finding 17.

NMRLS disagrees with OPP's conclusion that hands on supervision of all advocacy staff is somewhat limited. At the time of the OPP visit the advocacy staff consisted of mostly senior managers operating from single attorney offices. As they are senior and experienced the supervision and review needed by them is different. However, because of the current staffing pattern supervision is rather thorough and close. In reviewing OPP's assessment of NMRLS services and operations, it appears NMRLS did not clearly articulate nor demonstrate to OPP how the different branch offices, units or departments interact on an ongoing or continuing basis. OPP appears to believe each branch office, unit and department is free standing and disconnected from the whole. Because of the small number of case handlers, a small core operation exists that

provides backup and support for all advocacy staff. This is also crucial because each of the extended service lawyers have developed certain areas of expertise which results in frequent dialogue between the different offices.

Additionally, all advocacy staff and the Call Center Manager must submit bimonthly detailed time sheets showing cases worked on and activity on each case, travel request, reimbursement request and request for litigation expenses to the Director of Litigation.

While formal case review is conducted twice a year discussion and follow-up is ongoing. Response to Document Request #15 better describes the process. The two case reviews mentioned consists of the Director of Litigation physically reviewing each file. The reviewing of the file is only a part of the process. As described in Document Request #15, during the case review, issues are identified, tasks are assigned and deadlines for completion of the tasks are established. The cases and discussions naturally progress from the review and there is follow up to ensure the assigned tasks are achieved, abandoned or modified.

Also, while there is no routine reviews of case acceptance decisions, there is periodic review of activities on cases. The case management system provides ready access to up to date activities on the cases. Those cases are reviewed for activities and staff is contacted regarding status of cases. All clients are sent a closure letter explained their right to review of the decision closing their case. Clients who are unable to contact their attorney or dissatisfied with the level or speed of service on their case are provided the supervisor's number or transferred directly to the supervisor. Extended service cases are reviewed during the work on the case to assess the weakness or strengths of a case.

Managing Attorney's supervision and review of staff attorneys' work is set forth in response to Document Request# 15.

NMRLS is not aware OPP requested additional policies. NMRLS was told to have additional documents available for review. OPP was made aware these documents existed and were shown where they were. Included in these documents was the corrected NMRLS case handler standards.

Finding 19.

The two Mississippi legal services programs conduct a biennial (every two years) statewide legal services workers conference, which also includes board member training/development.

Finding 21.

NMRLS' extended PAI closed cases per 10,000 has equaled or exceeded the national average and median the last 5 years. In 2011 NMRLS' PAI closed cases per 10,000 poor person exceeded the national average 14 to 9 and the national medium 14 to 11. During this period NMRLS' PAI number of contested cases exceeded the nation median 4 to 3 and equaled the national average.

Finding 22.

MVLP cases are established by priorities. NMRLS has always used PAI as a flexible tool to meet the needs of a particular service area. NMRLS did not think a rigid one size fits all approach was warranted.

MVLP is limited in the number of cases we can refer to them. Also the closing of the case as uncontested does not reflect whether the case may have been sent to MVLP. Some cases sent to MVLP are returned to NMRLS due to MVLP's failure to timely assign an attorney to the client. If the client remains interested in the services, NMRLS branch offices will offer the client the needed service upon return of the case.

Finding 23.

A major portion of NMRLS' efforts to educate the general public about the availability of legal services to assist them is tied to the myriad of community education and outreach seminars conducted each year by the various projects (see responses to findings numbers 9 and 10 above). Specifically, a segment of each outreach session is devoted to providing information to the attendees about the types of cases and services provided by NMRLS and how to access those services. Additionally, brochures containing said information are provided and persons are encouraged to take additional copies to distribute to family, friends and others in the community such as in churches.

Call Center attorneys provide pro se and self help assistance to Call Center applicants on a limited basis in that they will draft answers or other form pleadings in cases where NMRLS will not provide extended service.

NMRLS works cooperatively with the Mississippi Volunteer Lawyers Project (MVLP) in providing self-help and pro se legal clinics held within our service area. MVLP regularly conducts divorce, guardianship and family law clinics throughout the state and particularly in the Greenville, Tupelo, West Point and Oxford areas. Collaboration with state partners is one of the recommendations made in the 2008 LSC joint visit report.

Additionally, NMRLS is involved in the planning stages of a four county pilot project with the Mississippi Access To Justice Commission. The pro se subcommittee along with some chancellors are developing forms with instructions to be distributed in packets to unrepresented litigants as part of the pilot project.

Finding 27.

NMRLS does have a leadership succession plan and a disaster preparedness plan. The leadership succession plan is contained in the disaster preparedness plan submitted in response to Document Request # 46 via upload into the wiki on Thursday, December 8, 2011.

Finding 29.

The letter (fund-raising) campaign to private attorneys is not the only item on the fund-raising committee's agenda. The letter to the private attorneys within the 39 county service area

was identified as top priority because it was recognized that attorneys, law firms and businesses generally make decisions early in the year about donations they will make during the year. It was decided the letter campaign would next be expanded to staff and board members, former NMRLS staff (alumni), businesses, friends, supporters and churches. Board and staff members have been requested to submit a list of at least 10 names and addresses of persons believed to be willing to donate to NMRLS to which a letter will be sent. The fund-raising committee was appointed in early December, 2011 and the letter campaign was the initial project undertaken. However, it will decide upon other areas of funding the program will pursue.