



VIA US MAIL AND EMAIL

March 19, 2014

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Re: Final Letter, Follow-Up Review, Recipient No. 948010

Dear Mr. Torres:

This letter addresses, in part, the Follow-Up Review (“FUR”) conducted during the week of May 9-11, 2011 by the Legal Services Corporation’s (“LSC”) Office of Compliance and Enforcement (“OCE”). I apologize for the delay in issuing this letter and appreciate your patience. A Draft Letter (“DL”) dated October 24, 2013 was provided to Northwest Justice Project (“NJP”), along with a 30 day opportunity to provide comment. NJP requested an extension of the comment period, which was granted, and program comments were received by letter dated January 30, 2014. NJP’s comments have been integrated into this Final Letter, and the comments in their entirety have been attached hereto as an exhibit.

I am pleased to report that all of the Required Corrective Action (“RCA”) items that are assessed in this FUR Final Letter are now closed, as further discussed herein. However, as detailed below, there remain pending areas related to Private Attorney Involvement (“PAI”) and 45 CFR Part 1604 that will be the subject of a separate, future communication.

Background of Review

During the week of May 9-13, 2011, OCE conducted a FUR to the Northwest Justice Project (“NJP”). The FUR was designed to assess NJP’s progress towards addressing identified RCAs that arose from a prior Case Service Report/Case Management System (“CSR/CMS”) review conducted in June 2007. Following the June 2007 review, LSC sent an interim corrective action letter dated September 13, 2007 (“September 2007 LSC letter”) that identified five (5) categories of Immediate Corrective Action (“ICA”), with a total of 15 specific ICAs. Subsequently, LSC issued a draft report - then, after NJP had the opportunity to comment, a Final Report (“FR”) containing 19 RCAs.

The FUR was designed to review the success of the corrective actions taken by NJP in response to the September 2007 LSC letter and the FR, and to assess current program compliance practices and outcomes in the affected areas. The items discussed in this letter primarily involve compliance with the CSR Handbook (2008 Ed., as amended 2011) and the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); and 45 CFR § 1611.9 (Retainer agreements). As the NJP intake system had been substantially changed and a new automated case management system (“ACMS”) had been implemented since the CSR/CMS review took place, a basic review of current intake practices was conducted. The FUR included extensive assessment of the new ACMS system, the primary intake system - Coordinated Legal Education Advice and Referral (“CLEAR”) - other selected office or unit intake systems, case management, case oversight, and adherence to LSC case reporting requirements.

The OCE team consisted of six (6) attorneys, one (1) management analyst, and one (1) fiscal analyst. Four (4) of the attorneys and the fiscal analyst were OCE full-time staff members and the remaining team members were temporary employees. The review period was January 1, 2008 to May 15, 2011. Over 880 cases were sampled, comprised mostly of randomly selected cases. The case sample included a few targeted case files that were identified primarily to test the use of the ACMS and the accuracy of case closure categories. In addition, 15 files providing solely legal information were reviewed.

Scope Limitations of Current Letter

This letter is a partial reporting of the areas reviewed and findings reached during the May 2011 FUR. However, several areas will not be discussed in this letter and are hereby reserved by LSC for future reporting and/or communication. The areas reserved and not discussed or resolved in this letter primarily regard NJP’s PAI activities and all findings, recommendations, RCAs, or other discussions of PAI found in the September 2007 LSC letter, the FR from the June 2007 review, and any other communications between OCE and NJP regarding PAI since the June 2007 review. This includes, but is not limited to, RCA-14 through RCA-17 in the FR and ICA 5-1 through ICA 5-3 in the September 2007 LSC letter.

In addition to the comprehensive area of PAI, two (2) smaller and new potential issues identified during the FUR are also hereby reserved. These are: (1) the NJP Cross-Cultural Family Law Clinic conducted in association with the King County Bar Association's Neighborhood Legal Clinic program; and (2) compliance with 45 CFR Part 1604 regarding the outside practice of law. Neither of these two (2) topics are discussed or resolved in this letter.

Access to Information/Records

In an advance letter sent regarding the FUR, NJP was advised that OCE would seek access to cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC Access to Records (January 5, 2004) protocol. In response, NJP wrote to LSC regarding its concerns regarding access to client names, including signatures on compliance-related documents. Due to these concerns, NJP signed a specialized

access protocol with LSC that allowed the general use of Unique Client Identifiers (“UCI”) in place of client name. The UCI was based on a number calculated from a birth date, as well as five (5) letters from the person’s name, and easily allowed for identification of potential duplicate cases. The program’s methodology for constructing a UCI allowed for appropriate visit preparation and for LSC to assess what cases were for the same client and to otherwise maintain control of selected cases. Further, some testing of the UCI conducted on-site indicated that the program UCI was consistent with the identified file.

During the review, LSC was not allowed access to citizenship attestations in cases that did not contain a signed client retainer agreement. Program management stated that only a signed retainer agreement allowed NJP to provide to LSC direct access to the signed citizenship attestation. Therefore, for cases with a signed citizenship attestation that did not have a signed retainer agreement, FUR team members were limited to recording oral information provided by staff intermediaries regarding whether a file had a citizenship attestation and if the signature on the form matched the client name on the case file and in the ACMS. In such cases, FUR team members were unable to provide any independent assessment or verification regarding the citizenship attestation.

The topic of access to records will be the subject of separate communications with NJP.

Findings

The FR identified numerous issues requiring action by NJP, many of which related directly or indirectly to its then intake and case management system and practices. RCA-1 through RCA-11 in the FR and ICA-1 through ICA-3 from the September 2007 LSC letter included various requirements that relate, in one (1) or more ways, to proper case intake, documentation, and management. This letter will report on these different items in sections organized around related topics.

For intake and case management related corrective action items, the FUR determined that NJP has taken substantial and effective action to improve intake, case oversight, and case management with the result being dramatically reduced case and file errors. The DL discussed some areas for additional attention, which should be viewed as a fine-tuning of the measures already accomplished. As discussed in the relevant sections below, these areas for additional attention were addressed by NJP as described in their comments to the DL. As a result, the five (5) RCA that had been left open at the time the DL was issued, have been now closed, as detailed below.

Finding 1: NJP made several significant intake system changes including reorganization of the CLEAR unit into a two-tier screening process and implementation of a new software system. Revised NJP intake screening procedures have addressed previous weaknesses and intake practices appear strong.

Several of the RCAs and ICAs addressed the need for specific improved practices in intake, case tracking, and case reporting requirements, as discussed below, and in various sections of this

letter, *infra*. Overall, implementing these RCAs and ICAs required that NJP make certain overall improvements to the related systems of intake, case management, and CSR case reporting.

Several corrective action items specifically addressed the need for staff instruction and training regarding proper compliance standards and practices. The training-related corrective actions involved both immediate and mid-term items. ICA 2-1 required instruction to staff regarding the proper documentation of alien eligibility as set forth in LSC Program Letter 99-3 (July 14, 1999). ICA 2-2 required instruction to staff regarding the proper closing of hotline, or limited service, cases with a lower level case closing category. ICA 3-1 and ICA 3-2 required training for all staff regarding documentation of legal assistance requirements. ICA 4-1 required immediate staff instruction regarding closing code definitions, documentation requirements, and relevant time parameters, and specifically noted the requirement that higher level cases (those with case closure category "F" and above) require a citizenship attestation or alien verification and a retainer agreement. ICA 4-2 required distribution and training of the then newly issued 2008 CSR Handbook (2008 Ed., as amended 2011).¹ RCA-8 required staff training regarding the consistent screening and documentation of client assets. RCA-10 required staff training regarding the proper documentation of legal advice. RCA-13 required that all staff be provided adequate training regarding CSR closing codes.

Several corrective actions addressed policy or procedural changes. RCA-2 required that NJP revise all intake forms to ensure that they mirror the Board's adopted eligibility guidelines. RCA-6 required that the NJP group eligibility form be revised in accordance with 45 CFR Part 1611. RCA-8 also required that the NJP asset policy be reviewed (by the Board). ICA 1-3 and RCA-19 required that NJP draft and implement new procedures regarding the consistent and systematic review of all open and closed case files.

Several significant changes and actions have improved NJP intake and compliance-related systems and operations. First, NJP implemented revised policies and procedures and addressed the requirements of ICA 1-3, RCA-8, and RCA-19, discussed above.

Second, NJP provided staff training that included instruction on the then newly issued CSR Handbook (2008 Ed., as amended 2011) and other LSC requirements. Trainings were conducted on December 4, 5, 6, and 13, 2007 and included several targeted topics as identified in ICA 2-1, ICA 2-2, ICA 3-1, ICA 3-2, ICA 4-1, and ICA 4-2, discussed above.

Third, NJP significantly improved its case management and case oversight. Of particular effect, NJP divided the functions of its CLEAR hotline by separating the majority of eligibility screening from the provision of legal assistance. The result of this change has not only been to free advocates of the majority of the eligibility screening, thereby allowing them to focus on the

¹ This letter cites to the current CSR Handbook (2008 Ed., as amended 2011). However, it is noted that for several of the discussions in this letter it was the CSR Handbook (2008 Ed.) version that was used by NJP to update policies and create training materials for the period of 2007-2011. However, ultimately, it was the program's compliance with the current CSR Handbook as amended in 2011 that was the basis for any discussion or conclusion regarding current compliance found in this letter.

provision of legal assistance, but it has also improved oversight of each new division as the screeners and advocates have separate supervisors.

Fourth, and a central agent of change, was the transition from its Client Advocacy Support System ("CASS") ACMS to Legal Server. CASS had been designed especially for NJP and was outdated. In contrast, Legal Server provides new options that assist in efficient intake, oversight, and management of cases, which NJP incorporated into its new ACMS intake protocols.

The use of Legal Server has significantly improved NJP's ability to consistently screen, record, and generate accurate case reports consistent with the requirements of the CSR Handbook (2008 Ed., as amended 2011). The system is also capable of preventing compliance errors, by providing various levels of flags for incomplete or inconsistent data including the highlighting of certain errors in a manner that forces resolution. For example, if an applicant's income exceeds 125% of the Federal Poverty Guidelines ("FPG"), the percentage of poverty appears in red font. If the over-income applicant has a factor allowing for case acceptance, it must be selected from the computer options, and the user must affirmatively designate income eligibility by selecting "override" and documenting the override reason in the ACMS. The ACMS also has a required field to record inquiry into income prospects. If the answer is yes, it brings up a note section in which users must document the prospective change. Both of the above have assisted to specifically address areas noted for corrective action.

Other features of the ACMS also improve the program's compliance and case management efforts. For example, each time a staff member logs into Legal Server, their open case list is present on their individual "Home" page. Also if an applicant is ineligible, the system will alert the user. Review of Legal Server evidenced no prohibited defaults in essential compliance categories.

Lastly, the Director of Administration, responsible for the administration of Legal Server, has instituted several procedures to effectively review case service data for accuracy and completeness both throughout the year and immediately prior to the CSR submission. For example, three (3) times per year, a series of reports is generated that have been designed to identify data problems, with several of the reports specifically targeting issues noted in both ICAs and RCAs, as discussed above. These reports identify data issues that can be corrected as well as file errors that require deselection.²

² Reports are generated to determine and correct whether: cases over 200% of FPG are correctly charged to a non-LSC source and correctly not identified as LSC-eligible or reportable; cases over basic asset levels are correctly charged to a non-LSC source, and correctly not identified as LSC-eligible or reportable; cases for non-citizens have a designated immigration status; non-LSC funded cases designated as not LSC eligible are truly ineligible; LSC-eligible cases assigned to a non-LSC funding source are in fact eligible for LSC reporting; cases have been incorrectly closed in the name of a support staff person; office and advocate assignments agree; all cases have an assigned funding code; all cases have both an open date and an intake date; cases designated as PAI have a volunteer or contract private attorney case handler and not a staff assignment; and whether LSC-eligible cases handled by a volunteer attorney in the Home Foreclosure Legal Aid Project are correctly coded as PAI. In addition, reports are run to check that cases are not under or over reported, including whether reopened cases within the same year remain a single case. An aged case report with the case open date and last time entry is generated to identify potentially dormant cases. Finally, CLEAR cases receive additional testing to identify any case closing category usage higher

FUR Intake Review

During the FUR, intake practices were reviewed in the main CLEAR unit, two (2) specialty units - Native American Unit ("NAU") and Farmworker, one (1) clinic, and four (4) sampled offices (Bellingham, Everett, Seattle, and Spokane). The CLEAR unit was reviewed in depth with a detailed assessment of the ACMS use, witness of several dozen telephonic screenings, interview of multiple staff, and ongoing engagement of supervisory and other management staff.

NJP's primary intake mechanism is CLEAR, a toll-free statewide centralized intake, advice and referral service. The system is complemented by in-person intake at local offices and outreach locations. CLEAR is open for intake 9:15 am until 12:15 pm, Monday through Friday. CLEAR operates 30 telephone lines. Queued calls are answered by one (1) of seven (7) eligibility screeners who conduct a full eligibility screening for persons within priorities. Legal Server intake screens provide clear guidance through all key areas of inquiry including financial, conflicts, demographics, and case-related questions. Eligible callers are placed in a second queue to be answered by one (1) of CLEAR's approximately 25 staff attorneys, one (1) to three (3) volunteer attorneys, and two (2) paralegals. Because of the ratio of intake screeners to advocates, advocates can also be required to handle intake screening, and when doing so, they can provide advice at the same time.

CLEAR attorneys and paralegals are responsible for screening, when necessary, to determine alien eligibility status. Advocates also gather and record detailed facts about the legal problem, provide legal advice, and determine whether to close the case or provide a referral for future assistance. Electronic referrals can be made to an NJP office or to one (1) of several organizations in the state. Advocate decisions regarding referrals are guided by detailed protocols identifying the criteria for various options. In addition to general intake, CLEAR also operates dedicated hotline projects for domestic violence and for seniors.

The review of CLEAR evidenced that strong and clear systems and practices have been implemented and, in almost every instance, proper protocols are followed by staff. The one (1) exception involved some inconsistencies regarding prospective income screening, discussed, *infra*.

While most program intake is through CLEAR, direct intake by branch offices can also occur. Legal Server is the primary intake tool, both in and out of the office, as it can also be accessed with use of laptops. Review of the intake practices of the NAU, Farmworker Unit, and of four (4) offices (Bellingham, Everett, Seattle, and Spokane), as well as related outreach intake evidenced that standard NJP intake protocols and forms were used, and that intake practices of these offices or units meet LSC requirements. The Bellingham office conducts some intake directly by telephone using the Legal Server intake system. The Spokane office conducts some intake for emergency cases using NJP forms or Legal Server. The Everett office conducts little intake, but

than "B." For higher level CLEAR cases, the case closing category is reviewed and the electronic file is checked to ensure that documentation of higher level service is present and, if yes, that required citizenship attestation or alien documentation and a retainer agreement have been scanned into the case record.

can conduct out-of-office "field intake" for direct referrals from other agencies. During this field intake a centralized form is utilized, which is downloaded from NJP via the internet. The centralized form includes a line for citizenship attestation.

The Seattle office conducts a higher level of intake, as it directly handles applicants contacting the office. Similarly, the NAU intake practices are ongoing, as they directly handle CLEAR callers who request to speak to a Native American specialist, as well as a monthly offsite clinic for the Swinomish Indian Tribal Community in LaConner. For clinic intake screening, NAU staff directly use Legal Server, via a laptop. Also, all standardized NJP compliance-related forms, such as the citizenship attestation, are accessible via the internet and printed for use by staff during outreach activities. Another NJP project with occasional offsite intake screening was also reviewed and it was determined that, similarly, a Medical-Legal Partnership for Children ("MLPC") attorney will access Legal Server through a laptop, and will print needed forms to obtain required client signatures.

The Farmworker Unit conducts intake primarily through field intake with the use of standard NJP paper forms. During these in-person screenings, US citizens sign the standard citizenship attestation and for eligible aliens, NJP staff members take a digital photograph of the status documentation. When Farmworker Unit staff members return to the office, applications are entered into Legal Server, and photos are copied into the case record.

Based upon the FUR team's confirmation of actions taken by NJP, the training aspects of ICA 2-1, ICA 2-2, ICA 3-1, ICA 3-2, ICA 4-1, ICA 4-2, and RCA-10 are considered closed. However, all of these corrective action items are also further discussed, *infra*. Similarly, the other corrective action items mentioned above (RCA-2, RCA-6, RCA-8, RCA-13, RCA-19 and ICA 1-1) are also further discussed, *infra*.

Finding 2: The revised NJP eligibility policy has been updated and fully complies with 45 CFR Part 1611 requirements. In addition, intake and other related compliance forms were updated.

The FR found that intake forms in use needed standardization so as to appropriately follow the adopted policy. RCA-2 required NJP to revise intake forms to mirror the board adopted eligibility guidelines. RCA-6 required NJP to update its group eligibility screening to ensure compliance with the revised regulatory standards.

With its comments in the FR, NJP stated that the written intake form had been updated to reflect CSR Handbook (2008 Ed., as amended 2011) problem codes and current eligibility requirements. During the FUR, intake and other related compliance forms were reviewed as part of sample case review and as part of the intake assessment of CLEAR, two (2) specialty units (NAU and Farmworker), and four (4) sampled offices (Bellingham, Everett, Seattle and Spokane). The FUR found that intake and basic compliance-related forms in use are standardized and maintained centrally on the program's intranet, including a written intake form, Attestation of Citizenship, and Immigrant Eligibility Checklist.

The NJP Client Eligibility Policy, also identified as “Program Policy Memorandum No.2,” was revised after the June 2007 review - in October 2007. A review of this prior version (October 2007) of NJP’s eligibility policy was done in advance of the May 2011 FUR and indicated a few items requiring additional detail. These were discussed with program management during the review. In subsequent conversations between the team leader and NJP management, NJP provided documentation evidencing that needed changes were completed. First, the prior policy allowed for the “governmental programs for low-income persons,” however the board had not yet identified the specific programs it had reviewed and approved as meeting its eligibility standards. Subsequent to the May 2011 FUR, NJP updated its eligibility policy two (2) times, in October 2011 and April 2013. The current NJP policy dated April 29, 2013 clearly lists, in Appendix A to the policy, the precise 11 governmental programs identified by the board to establish eligibility, which include four (4) federal programs, six (6) state programs, and one (1) county program for veterans. Second, the prior policy allowed for exemption of “other exempt assets” which were defined as assets exempt from attachment by state or federal law, however the actual assets from these sources to be exempted were not specified. The current NJP policy lists, in Appendix A, the precise assets adopted from state or federal attachment law that are exempt.

The revised policy follows LSC regulatory requirements, and sets forth appropriate waivers, exemptions, and standards as needed. For over-income clients, under 45 CFR § 1611.5(b), the current policy requires that all waivers be documented in the client’s file and approved by a managing attorney or her/his designee. The policy also states that authorized factors are not to be applied as deductions from gross income but as considerations related to the person’s ability to afford legal assistance.

Finally, the FUR identified one (1) additional form update, as the paper form was not as helpfully detailed as the ACMS. The standard paper intake form had been updated as required by RCA-2, but the version current at the time of the FUR only listed the four (4) most common asset categories, rather than the detail that is provided via Legal Server. As the written intake form is used infrequently, this does not raise a significant compliance concern. Nevertheless, an update to the written intake form is warranted, so as to include the same asset screening detail available through Legal Server. Any written intake or related screening document should be viewed as a critical tool that directs and assists staff in establishing, and documenting, fully compliant screening practices. Comments to the DL stated that even when the intake form is used, a more thorough intake will be conducted through Legal Server before an applicant is accepted for service. Due to this, LSC’s concern regarding this form is resolved, with comments noting that the paper form will be used only as a preliminary screen for eligibility and priority. Comments stated that no applicant will be accepted for service based strictly on the written intake form. Comments also added that NJP proposes to strictly limit the use of the written intake form, and that it has obtained additional laptops to support off-site intake through the ACMS.³

With these actions, RCA-2 is closed.

³ Program comments also noted that for off-site intake conducted, such as at clinic locations, typically NJP staff directly access the ACMS to conduct intake, through the use of laptops or other computers available at those locations. Comments noted that written forms are primarily used when there is a lack of internet access or when internet access is precluded due to security restrictions.

The FR found that NJP did not have a current group eligibility form which complied with the revisions to 45 CFR Part 1611, effective September 2005. Those revisions to the regulation required more specificity when documenting a group's eligibility status. RCA-6 required NJP to update its group eligibility screening to ensure compliance with the revised regulatory standards. After the FR, NJP updated its group eligibility *policy*. During the FUR the revised NJP group eligibility policy was assessed and the continued need for a helpful *form* was discussed with program management. Subsequent to the FUR, NJP adopted a group eligibility form that did accurately follow the language of the revised regulation. In subsequent communications with NJP management, OCE provided feedback regarding this form, including recommendations for additional detail that would better document elements of the group eligibility decision.⁴ OCE also provided a sample group eligibility form containing strong detail. The DL requested NJP to provide an update as to any further planned revisions to its group eligibility form. In its comments to the DL, NJP stated that, at this time, no changes to its current group eligibility form are planned, but that should NJP update its income eligibility policies and review the group eligibility form it would consider the need to include any additional detail per the sample form provided by OCE.

Based upon the FUR team's confirmation of actions taken by NJP, RCA-6 is considered closed.

Finding 3: NJP took several dedicated actions to implement the prospective income screening requirement after receipt of the September 2009 LSC Office of Legal Affairs (“OLA”) opinion affirming that requirement. While most current intake practices reviewed included standard prospective income screening, the FUR determined that a few CLEAR screeners were inconsistent with this requirement. NJP management took immediate corrective action during the FUR to address this limited observation.

The FR found that NJP did not ask most applicants about “prospective income” as part of the standard income screening. RCA-4 required NJP to: ensure uniform screening for income prospects; create amended intake procedures instructing staff to screen for income prospects; provide training to staff regarding screening for income prospects; and amend its ACMS to capture income prospects. NJP also was required to document its revised intake procedures, training materials, training attendance, and amended ACMS screen for review by LSC.

NJP sought clarification of the prospective income requirement by seeking an OLA advisory opinion. On September 2, 2009, OLA Advisory Opinion # AO-2009-1006 resolved any questions holding that, as part of financial eligibility screening, recipients are required by 45 CFR § 1611.7(a) to make a reasonable inquiry into the income prospects of each applicant for LSC-funded legal assistance. In response to the OLA opinion, NJP took immediate steps to implement this requirement by October 1, 2009. NJP's policy was updated to require screening and consideration of an applicant's income prospects. NJP implemented procedures to screen and

⁴ Sampled cases identified one (1) senior housing group client in the Seattle office, which was easily documented as eligible, being a 501(c)(3) corporation comprised solely of persons eligible for public housing. A more detailed group eligibility form would be useful for other more complex group clients for which additional detail is needed to evidence eligibility.

record an applicant's income prospects. NJP added a mandatory ACMS question to which the intake screener is required to provide a yes or no answer. An affirmative response triggers a note field in which the screener should document the prospective change(s). In addition this question was added to the written intake form. Staff members were instructed of this requirement, which was reaffirmed through emails, training, and ongoing management supervision.

Screening for prospective income was reviewed in the FUR through assessment of the intake procedures in the main CLEAR unit, as well as in selected specialty units (NAU and Farmworker) and in four (4) sample offices visited (Bellingham, Everett, Seattle and Spokane). This testing found compliant practices in all locations except CLEAR. While most CLEAR intake screeners observed were properly questioning prospective income as a standard part of income screening, some CLEAR screeners were not screening prospective income on every case. Interviews further indicated some of these staff incorrectly believed that the prospective income question applied only in some, but not all, applicant screenings. As screening for prospective income screening was not uniform, NJP had not yet accomplished full implementation of RCA-4.

This observation was shared with NJP management during the review week, along with some suggested oversight methods, and program management took immediate focused corrective action. During the FUR, NJP provided copies of instructional emails sent during the review week - including management memorandums setting forth new oversight protocols. All CLEAR screeners were informed that prospective income screening "is a mandatory question for every caller whose income makes him or her eligible for NJP services." Also, screeners were informed that management "...will be checking your intakes to make sure this question is present, and sending them back to you to get the information if it does not appear." Finally, the CLEAR intake supervisor indicated that they would be testing for prospective income screening by sitting with screeners, on an unscheduled basis, to observe questioning.

A related, but separate, concern regarding the inconsistent prospective income screening by some staff relates to the mandatory ACMS screen that must be completed as part of intake. Some cases accepted after the adoption by NJP of the mandatory ACMS prospective income question in October 2009, but prior to the May 2011 review, would have been inaccurately indicated as screened for prospective income. The mandatory screen requires staff to indicate that the prospective income question was asked by answering yes or no. Some persons who were not consistently querying prospective income had been recording an answer of "no" when that question was not asked. It was the mistaken assumption that "no" was correct, to indicate that the question did not apply. The corrective action adopted by NJP during the FUR to address any remaining inconsistent screening should also work to restore needed assurance that future prospective income "no" answers are reliable -- meaning that the question was affirmatively asked and received a negative answer from the applicant.

The additional oversight protocols adopted by NJP involving review of intakes and periodic surprise observation of intake should resolve the outstanding issues. It is anticipated that RCA-4 may be closed after updated information is provided to LSC. In the DL, NJP was requested to provide an update regarding the above discussed corrective actions, or any other actions taken that address the standardization of prospective income screening. Also, the DL asked NJP

management to discuss whether, and why or why not, it currently has confidence that prospective income is now routinely screened for all CLEAR applicants. With its comments to the DL, NJP emphasized the usefulness of its mandatory field in the ACMS requiring intake screeners to indicate that prospective income was queried. NJP also noted that management is confident that prospective income is being routinely screened.

As a result of the corrective action taken regarding the screening of prospective income, and the update provided in program comments, RCA-4 is closed.

Finding 4: Review of intake, interviews, and sampled cases evidenced that NJP properly screens for assets under its board adopted policy, and that files contain asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

The FR found that some staff were not screening assets in accordance with the NJP's Board adopted Client Eligibility Policy. RCA-7 required that NJP ensure that staff is consistently and accurately screening for assets in accordance with NJP's Board approved asset policy. RCA-8 required that NJP's asset policy be reviewed (by the Board) and that NJP provide training to staff regarding the consistent screening and documentation of assets.

As part of its process of addressing these RCAs, NJP updated its Client Eligibility Policy in October 2007 and removed an outdated Appendix. Further, NJP included asset screening training as part of all staff training conducted in December 2007 that also addressed the newly issued LSC

CSR Handbook (2008 Ed., as amended 2011).⁵ NJP adopted procedures to facilitate consistent assets screening. Interviews of selected intermediaries, senior attorneys, upper management, and intake personnel in the offices visited evidenced that those staff members are well-versed on the program's asset ceiling and exemptions. In particular, intake workers interviewed were highly cognizant of their responsibility to properly screen for, and document, applicant assets. In addition, the FUR noted appropriate specialty area awareness needed for intake of unique client population issues – for example, the knowledge of Indian trust property details for Native American applicant screening.

Importantly, intake observation and case review evidenced screening for assets compliant with LSC requirements, and consistent with the NJP policy. All sampled LSC-designated cases complied with 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011) §5.4, as they contained documentation to evidence that the client was eligible under the program's asset level for LSC eligibility. In addition, sampled cases with asset levels exceeding the program's limit for LSC-funded cases had been properly designated as non-LSC and were deselected from reporting to LSC. The use of Legal Server has also improved asset screening and documentation. A substantial Legal Server drop-down list of countable and excluded asset categories is actively used by staff to select a specific asset type and input the corresponding value. For each ACMS asset entry screeners are given the option to check a box to exclude the asset from the total asset calculation.

One (1) new, but minor, asset recordation issue was identified during the FUR, regarding the ACMS classification option of whether an asset is exempt or not. Some screeners do not consistently mark excluded assets as such when the amount of excluded assets, even if included, would not render the applicant ineligible. Interviews indicated that the involved staff had been fully trained, but were not in the habit of using the exclude check-box unless necessary. In other words, if the total of both the exempt and non-exempt assets would still be under the total allowable asset level, the staff would not indicate which assets were exempt. This isolated practice does not raise an eligibility compliance issue - as the practice, if followed consistently, would not result in NJP accepting an over-asset client. However, this is an issue related to consistency and clear recordation, and it was noted that it did make it difficult in some files to assess whether certain listed assets, such as a vehicle, should be considered an exempt or non-exempt asset. It is recommended that NJP management send a communication to all staff that reiterates its adopted policy and practice requiring a proper designation of each asset as exempt or non-exempt.

The FUR found that the NJP staff training and other follow-through activities appear effective towards the standardization and improvement of asset screening and documentation. Based upon the FUR team's confirmation of actions taken by NJP, RCA-7 and RCA-8 are considered closed.

⁵ It is noted that the program's training was based on the CSR Handbook 2008 Edition that was issued at the end of 2007, as effective on January 1, 2008.

Finding 5: Sampled cases contained proper evidence of income eligibility. NJP staff properly screen and document exceptions in files with client income between 125-200% of FPG, as required by 45 CFR § 1611.5.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁶ *See* 45 CFR § 1611.3(c) (1) and CSR Handbook (2008 Ed., as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines ("FPG") and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed., as amended 2011), § 4.3.

The FR found cases with client income between 125-200% of FPG that did not contain evidence of an authorized exception, and that in some instances staff was incorrectly applying the NJP over-income policy. RCA-3 required NJP to not report to LSC over-income cases lacking proper exception documentation, and RCA-5 required NJP to ensure that intake staff consistently apply over-income exceptions according to the NJP's Board approved guidelines.

As part of the 2008 CSR Handbook training, NJP re-trained staff on the appropriate treatment of the authorized exceptions under its income eligibility policy. All screeners interviewed during the FUR demonstrated a clear understanding of the policy and required practice. Further, during the FUR, all sampled cases with income between 125-200% of FPG correctly documented one (1) or more approved exceptions allowing for case acceptance.

Finally, it should be noted that Legal Server does automatically deduct listed expenses from gross annual income - however, this practice is done solely so that NJP can identify referral

⁶ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

opportunities to statewide partner agencies with various other funding guidelines. This automatic deduction did not cause concerns regarding LSC compliance, as NJP staff use the gross income - without deductions - to determine LSC eligibility and/or the need for 45 CFR §1611.5 documentation.

Sampled cases during the FUR also evidenced that client files with income *under* 125% of FPG, consistently contained evidence of eligibility to meet 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

The corrective action and training conducted by NJP regarding documentation of over-income exceptions appears effective. Based upon the FUR team's confirmation of actions taken by NJP, RCA-3 and RCA-5 are considered closed.

Finding 6: NJP has effectively addressed multiple concerns regarding tracking of cases, potential duplicate cases and closure/reopening of cases. NJP procedures and practices comply with CSR Handbook (2008 Ed., as amended 2011) § 3.2 (regarding duplicate cases), § 3.3 (timely closure of cases), § 6.3 and § 6.4 (single case reporting).

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.2.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or, limited action (CSR Categories, A and B), should be reported as having been closed in the year in which the counsel and advice, limited action, or referral was provided. There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(b).

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.4.

The prior review identified significant concerns with the tracking of program cases and related protocols regarding closing and reopening of cases. The involved issues raised concerns regarding potential duplicate reporting, proper tracking of reported cases, and case management.

The September 2007 LSC letter contained two (2) ICAs related to this area: ICA 1-1 required NJP to cease the practice of re-opening files that have been reported to LSC, and that if a client returns after their case has been reported to LSC, a new case file must be opened with a new case number; and ICA 1-2 required NJP to immediately advise staff via email or written memorandum to cease re-opening files that have been previously reported to LSC.⁷

The FUR determined that NJP was fully successful in designing, then following, a system that no longer raises concerns regarding case duplication and related reopening of files. Files not yet reported to LSC may be reopened and augmented as needed - however, once reported, that case file is considered complete. Should a prior client return after their case has been reported in a CSR, a new case file will be opened by NJP. Staff interviews and observation of sampled cases evidenced that related NJP staff training appears effective.

At the time of the FUR there was one (1) ACMS feature that needed change. At that time, when program staff reopened any case not yet reported to LSC (so as to provide additional service or otherwise augment the file) the ACMS would automatically change the "case opening" date from its original date actually opened, to the date that the file was accessed by staff for update. Importantly, the initial opening date was always present within the file. In most instances, the case was closed and then reopened on a later date in the same reporting year. However, a few sampled extended cases opened for multiple years also became altered by this reopening default. *See* Closed 2010 Case No. 1179190 (The case had an original opening date of August 21, 2007, and closing date of August 18, 2010. When the case was reopened on December 30, 2010, the December 2010 date then appeared as the opening date.) Affected cases were still closed with the proper (highest) case closing category, with a single exception of a file incorrectly changing a court decision to advice and counsel. *See* Closed 2010 Case No. 09-0594241.

In communications with program management after the FUR, NJP provided screen shots of sample Legal Server pages that evidenced change of the above re-opening default. Under the new system, both the original opening date and any reopening date are recorded in a manner allowing for case lists to be generated using either.

As part of case sampling in the FUR, numerous sets or groups of cases for the same client were reviewed. This review evidenced that all cases involved separate legal issues that should be correctly reported as separate cases in the CSR. No sampled cases contained errors regarding compliance with CSR Handbook (2008 Ed., as amended 2011), § 6.3 and § 6.4, with files having been properly reported as either one (1), or more than one (1), case, according to case reporting definitions. Overall, NJP actions were found to have been effective regarding proper tracking of

⁷ The September 2007 LSC letter also included two (2) additional ICA relating solely to the program's 2007 CSR. These two (2) items, ICA 1-4 and ICA 1-5, were not part of the May 2011 FUR, but were the subject of communications between NJP and LSC in 2008. By letter from Cesar Torres, NJP Executive Director, to Danilo Cardona, Director of OCE, dated April 14, 2008, NJP reported that it had fully completed these two (2) ICA regarding review of 2007 closed cases. Also, RCA-18 required a similar, but less detailed prior review of the 2007 CSR, that was fully addressed in the actions taken pursuant to ICA 1-4 and ICA 1-5, and likewise was not part of the May 2011 FUR.

cases and avoidance of duplicate cases. Based upon the FUR team's confirmation of actions taken by NJP, ICA 1-1 and ICA 1-2 are considered closed.

Finding 7: Almost every sampled cases complied with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). NJP actions regarding documentation of legal advice were effective.

LSC regulations specifically define "case" as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a "case", reportable in the CSR data, depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise. If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed., as amended 2011), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.6.

The FR had two (2) RCA dedicated to proper documentation of legal advice: RCA-10 required that NJP train staff regarding the proper documentation of legal advice; and RCA-11 required NJP to ensure that all case files reported to LSC include documentation of legal advice. In addition, the September 2007 LSC letter contained ICA 3-1 and ICA 3-2 requiring staff training regarding documentation of legal assistance requirements. As required, NJP conducted staff training on a variety of issues, including documentation of legal advice. Advocates are responsible for documenting advice and other actions taken for the client. Also, when a CLEAR advocate sends a client advice letter, such documents are then made part of the electronic case record. In support of proper documentation, NJP developed a dedicated template for "advice" in Legal Server. This feature serves as a prompt for advocates to ensure consistent documentation practices, and also facilitates case review by supervisors. Legal Server provides ongoing guidance to staff so as to assist in the proper and full documentation of case files, including documentation of legal advice.

Legal Information

As part of the CLEAR intake and referral function, NJP staff members routinely provide legal information to persons who are not accepted for services due to various reasons, including ineligibility for services. Legal information provided is clearly documented in a standard Legal Server file, being detailed in an "Information" section of the ACMS record. A sample of 15 legal information files was reviewed and, in each, the file contained a detailed record of the information

provided. These information files were compared to legal advice files to determine the divide between legal information and advice. The sampled information-only files included discussions of various laws, forms, or general court procedures, but did not apply applicant-specific facts to those laws or procedures. In contrast, case files considered by NJP to contain legal advice had evidence that client specific facts were applied to the law with the client being provided recommendations or direction as to how to apply the law to their situation.

The need for clear delineation between what comprises legal advice, and what is considered solely legal information, was discussed with NJP upper management.⁸ This conversation included awareness of the need to ensure ongoing consistency throughout the program, regarding legal information versus legal advice. A program's practices regarding legal information need to follow ethical guidance and need to be consistently followed by all staff with the result that information and statements considered to be solely legal information by one (1) office should never be considered legal advice by another. Further, only cases containing legal advice qualify for reporting to LSC as a case. NJP management articulated a simple rule distinguishing legal information from legal advice. Legal information in Washington State can include explanation of laws that could apply to legal subject but would stop at that point. In contrast, a legal advice case must contain statements applying the laws to the client's specific facts and situation, in a manner that assists the client in advancing their objectives.

In consideration of this standard, the review of sampled legal information files indicated sufficient differentiation from cases considered to include legal advice.

Legal Advice

Almost every sampled (reported) case contained evidence of legal advice. However, a small number did not - of which most appeared to be miscoding errors. In other words, these cases were known to not have legal advice, and were to be deselected. However, a few staff did not code the files properly for deselection. The seven (7) files which were not noted for deselection, but should have been, included three (3) reported with closing category "K" (*See Closed 2010 Case Nos. 10-0620935, 10-0612041, and 10-0617862*) and four (4) files reported with closing category "A" (*See Closed 2009 Case Nos. 09-0583860, 09-0586236, 09-0589244, and 09-0589222*). When noted to management during the review, NJP management took immediate action to follow-up on these isolated errors by speaking with the staff involved.

FUR interviews of selected staff evidenced strong staff awareness of the standards required for proper documentation of legal assistance for CSR reported cases. The miscoding errors above were both isolated and limited and do not affect the overall conclusion that NJP actions regarding

⁸ It was also noted to NJP management that in contrast to NJP, other LSC recipients may consider the level of detail provided by NJP as legal information to constitute legal advice – for example if a person is told in detail about a law that could apply to them, in some states, the very act of identifying and discussing a law that could apply was determined enough to identify the work as legal advice. NJP management noted that simply telling the generic aspects of a law that could apply is not considered to be legal advice and that the distinguishing factor between legal information and advice would be that when legal advice is given, a discussion of the law will also include actual application of the law to the client's situation, such as providing recommendations for action or suggestions as to how to use the law so as to reach the client's objectives.

documentation of legal advice were effective. Based upon the FUR team's confirmation of actions taken by NJP, RCA-10, ICA 3-1, and ICA 3-2 are considered closed.

RCA-11 is also discussed below regarding case deselection.

Finding 8: A few exception cases that were incorrectly reported to LSC indicate a need for additional attention regarding proper deselection coding.

RCA-11 required NJP to ensure that all case files reported to LSC include documentation of legal advice. Legal Server allows for simple deselection of a file or case from inclusion within a CSR report. The "Close Reason" field contains a non-LSC code of "X" which, if used, will ensure that the file is not reported to LSC, as LSC can only receive cases under alphabet letters in official LSC case closing categories. As discussed above, there were a few groups of cases that were not correctly deselected by a few staff, resulting in non-cases being included in a CSR.

In addition, the ACMS allows a user to reject cases at different sections of the ACMS, and the user must indicate a reject reason. FUR interviews revealed that a few staff may be, in certain circumstances, incorrectly rejecting a case instead of deselecting it. The CSR Handbook states that cases for eligible clients that have been accepted for services cannot be subsequently coded as rejected but should instead be deselected. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.5, footnote 15.

Overall, most staff appeared to understand how to, and did, properly deselect files when necessary and the exceptions appeared to only involve a few staff. However, NJP should take additional, and targeted corrective action so that all staff properly reject and/or deselect files where necessary. In short, once a case has been accepted, and particularly if it has received service, it cannot properly then be rejected. A case accepted for, and provided, limited legal services could be subsequently rejected for higher service; however such a file, if needing to be excluded from a CSR report should not be rejected, but instead deselected.

The DL anticipated that RCA-11 could be closed after some additional targeted corrective action. Also, the DL suggested that the necessary corrective action could be accomplished through use of the existing case oversight and review system to identify cases with deselection errors, and then to provide direct instruction and oversight to the staff submitting those files, as well as a simple email communication to all staff reminding them of the proper deselection method, and explaining the difference between rejection and deselection of a case. Comments to the DL evidenced that NJP took further corrective action regarding proper use of rejection and deselection for files. NJP sent a detailed email to staff clearly setting forth the distinction between rejection and deselection of a file, and also posted this email to NJP's intranet for easy future access by staff. The email was provided as an attachment to program comments, and was a precise and informative communication that directly addressed the concerns noted by LSC. NJP also discussed its significant case oversight designed to identify and deselect cases when appropriate. Finally, comments also noted that the distinction between rejection and deselection

will be part of an upcoming training video on closing cases that will be available to all staff on the NJP intranet.

In light that the LSC observation was limited in its scope (involving only a few staff) and the additional corrective action taken by NJP, RCA-11 is now closed.

Finding 9: NJP adopted appropriate case oversight procedures that include effective and ongoing review of paralegal cases and appropriate testing and review of other advocate cases.

RCA-19 and ICA 1-3 required NJP to implement new procedures requiring consistent and systematic review of open and closed case files. RCA-1 required NJP to review its supervision of paralegals (focusing on the CLEAR paralegals), noting that the CSR Handbook (2008 Ed., as amended 2011), § 2.5 permits a non-attorney to provide legal assistance in a case under the direct supervision of a licensed attorney in accordance with the rules of practice in the jurisdiction.

Program-wide case oversight and review procedures were adopted and implemented. Various staff interviewed described ongoing case review practices consistent with NJP policy. Also, as discussed *supra*, extensive testing of reportable cases is conducted via Legal Server. The ACMS is used to conduct several tests, throughout the year, that assist in the oversight of both open and closed cases.

NJP also adopted unique and increased CLEAR case oversight procedures requiring review of every paralegal case and a substantial portion of advocate cases. The FUR found that all assistance provided by the two (2) CLEAR paralegals is now reviewed by the CLEAR Senior Attorney and CLEAR Assistant Senior Attorney pursuant to NJP's revised case review procedures. Each supervisor is assigned a paralegal and is responsible for reviewing every case closed by that paralegal. Interviews confirmed the reviews occur at least three (3) times a week and often every day. For CLEAR attorney cases, in addition to unit wide quarterly case review, the supervisors use various methods to identify a wide diversity of cases subjected to ongoing review between the quarterly reviews. For example, cases may be identified through selection of a problem code and staff codes, such as every case for a specific problem code opened on a specific day.

NJP's revised case oversight and review practices, and sophisticated use of Legal Server have clearly reduced ongoing case file mistakes and have been effective at identifying existent errors. The multiple actions taken by NJP to increase and improve case oversight appear effective. Based upon the FUR team's confirmation of actions taken by NJP, RCA-1, RCA-19, and ICA 1-3 are considered closed.

Finding 10: Most sampled cases evidenced proper use of CSR case closure categories, as required by Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011). A few limited error patterns were noted that require additional limited action.

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.1.

The FR noted that case closure categories had been incorrectly assigned to cases due to various reasons. The FR also noted that some errors were not identified due to the lack of a systematic review of closed cases. The September 2007 LSC letter contained four (4) ICAs regarding proper application of case closure categories: ICA 4-1 required NJP to provide written instruction to staff regarding case closure category definitions; ICA 4-2 required CSR Handbook (2008 Ed., as amended 2011) training for staff; ICA 4-3 requested documentation regarding the first two (2) items; and ICA 2-2 required CLEAR cases to not be closed with extended service level case closure categories, as the standard case closed by CLEAR involves a limited service type, currently “A” or “B”. The FR contained two (2) RCAs involving case closure category usage: RCA-12 required all case files to be reported with correct case closure categories codes and RCA-13 required that NJP provide staff with adequate training regarding the CSR case closure categories.

NJP took numerous corrective actions regarding proper closing code use, beginning in 2007. NJP provided needed direction to CLEAR staff and conducted comprehensive training, as discussed *supra*. Also, as discussed *supra*, improvements to case oversight were adopted and implemented.

The FUR tested the effectiveness of corrective actions efforts, including general program practices regarding closing code use. Interviews with numerous staff confirmed broad staff attendance at mandatory program trainings, and based on interviews and case review conducted during the FUR, the training appears to have been effective. Interviews also evidenced good staff awareness of available resources for proper case closure category usage, including the CSR Handbook (2008 Ed., as amended 2011) and LSC-issued Frequently Asked Questions (“FAQ”). Knowledge of case closing codes and their use was also observed as part of the interaction with intermediaries during case review, and both were found to be strong. A diversity of case types and case closure category files were selected and sampled. This review evidenced that a substantial majority of cases were assigned the proper case closure category coding.

Also, the FUR identified no misuse by CLEAR of higher level case closure categories. CLEAR case lists were reviewed for higher level case closure codes, and cases opened for longer periods of time by CLEAR were sampled. As explained by staff, it is noted that that certain CLEAR cases relating to special projects might result in extended service. These same staff evidenced the necessary awareness that any such higher level case would require additional documentation, including Part 1626 documentation for extended service cases, or limited service cases in which the client was seen in person.

There were four (4) error patterns noted in the general case sample, as described below:

- All sampled cases closed with “K” were found to have incorrectly used that code. Case closure category “K” was found to have been misused in two (2) ways. First, there were cases where the case handler misapplied “K” for cases intended to be deselected, but which failed to be deselected, as discussed *supra*. See Closed 2010 Case Nos. 10-0620935, 10-0612041; and 10-0617862. Second, there was a greater number of cases where “K” was used for a reportable case, but was an incorrect case closure category, with “A” being the correct category in all of these cases. See *e.g.* Closed 2009 Case No. 09-0595380 and Closed 2011 Case No. 0637188.
- There were a few files, fitting one (1) pattern, regarding case closure category “L”. These cases all involved instances in which program representation ended with a withdrawal of representation. In such instances, LSC has adopted a simple rule – withdrawal cases should be closed as an “L”. The FUR identified a few files in which either “K” or “Ib” had been selected in error for such files. See *e.g.* Closed 2009 Case No. 1178660 (divorce client reconciled with her husband and the case had to be dismissed); Closed 2009 Case No. 08-0562146 (client was defendant in a parenting plan case and disappeared requiring a motion to withdraw); and Closed 2010 Case No. 09-0576409 (client represented in a protection order reconsideration hearing, then disappeared so a motion to withdraw was filed.)
- There were a few files that demonstrated a need to emphasize to staff that it is the level of service *provided by the program staff or PAI attorney* that dictates the level of service to report. Whether or not a client was assisted in proceeding *pro se* is of critical importance. In Closed 2010 Case No. 08-0554056, a client was assisted on how to file the papers to obtain a U visa. No hearing was held, and the visa was obtained. As NJP did not file the papers, but assisted the client to do so *pro se*, the use of case closure category “H” was incorrect. Similarly, in Closed 2010 Case No. 10-0602654, a client was advised to act *pro se* and request a Fair Hearing and was provided related instruction. As the advice was for a *pro se* client, the case closure category of “H” was incorrect. A third case received higher assistance by an outside attorney. In Closed 2010 Case No. 09-0600123, the NJP attorney never met the client but conducted research and reviewed documents in the case. The case was then referred to an outside attorney, who was not a PAI attorney, who then negotiated a settlement. Use by NJP of case closure category “F” is inaccurate. For the three (3) cases above, and others like them, the case should be closed either as a “B” or “L” depending on the level of assistance provided by the NJP attorney.
- There were also a few cases in various offices that were closed with “A” where case closure category “B” was more accurate. In these cases, actions of NJP staff exceeded simple advice and counsel in that there was contact with a third party.

For example, if an NJP advocate speaks to a third party about the client's case, or prepares and sends a letter to a third party on behalf of the client, a "B" level of service is present. *See e.g.*, Closed 2009 Case No. 09-0577408.

The minor exception issues noted above do not change an overall finding that NJP actions regarding proper case closure category use appear effective. However, the DL noted a need to take additional targeted corrective action regarding the following: use of category "K" should be reserved only for cases that do not fit any of the other case closure categories; cases ending early with a motion to withdraw should be closed as category "L"; the case closing category that reflects the level of service provided by the program staff or PAI attorney, and not by *pro se* litigants or other non-PAI outside counsel, should be used; and whenever contacts with third parties are conducted on behalf of a client, case closure category "B" should be selected over "A".

The DL noted that, due to the limited number of the above exceptions, it is possible that effective corrective action could be accomplished through simple additional communication and use of the ongoing case review process, and suggested that NJP provide a simple communication to all staff to emphasize the above rules. In its comments to the DL, NJP described additional corrective action taken that included a detailed email to staff. The email was provided as an attachment to program comments, and was a precise and informative communication that directly addressed the concerns noted by LSC. Comments also stated that a safety check has been added for all cases using "K" that involves discussion with the attorney to determine the most appropriate case closure category.

Based upon the FUR team's confirmation of actions taken by NJP, ICA 2-2 is considered closed. Further, as ICA 4-1, ICA 4-2, and ICA 4-3 required short-term action and training by NJP – based on the FUR team's confirmation of actions taken by NJP, these three (3) ICAs are considered closed.

In light of the additional corrective actions taken by NJP, as noted in program comments, RCA-12 and RCA-13 are now closed.

Finding 11: NJP actions regarding documentation of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) appear overall to have been effective.

Except for brief service or consultation by telephone, which does not involve continuous legal representation, 45 CFR § 1626.6 requires that all applicants for legal assistance who claim to be citizens execute a written citizenship attestation. Similarly, except for brief service or consultation by telephone, aliens seeking representation are required to submit documentation verifying their eligibility as required by 45 CFR § 1626.7.

The September 2007 LSC letter discussed and affirmed the LSC requirement that full documentation under Part 1626 must be obtained for extended level cases, currently defined as those "F" through "L". Further, the letter discussed the need for enhanced detail regarding eligible alien documentation, with ICA 2-1 and ICA 2-2 requiring additional instruction to staff

regarding the proper documentation of alien eligibility as required by LSC Program Letter 99-3 (July 14, 1999). In addition, RCA-9 required NJP to ensure that all walk-in phone applicants, and contract PAI clients, attest to citizenship or provide documentation of alien status.

Regarding the requirement that all walk-in phone applicants execute an attestation, or otherwise provide documentation to support an eligible alien status, NJP sought clarification of this requirement by request of a legal opinion from the LSC OLA. OLA Advisory Opinion # AO-2009-1002, dated June 10, 2009, made clear that a recipient is required to obtain signed citizenship attestations, or to verify alien eligibility status through the review of appropriate documentation, for applicants/clients who appear in person.

Review of program changes, as well as interviews and sampled cases reviewed, evidenced that, overall, NJP's revised Part 1626 screening and documentation practices are strong. Intake practices regarding Part 1626 screening were reviewed through assessment of the intake procedures in the main CLEAR unit, specialty units (NAU and Farmworker), the four (4) sample offices visited (Bellingham, Everett, Seattle and Spokane), and in related outreach screening. NJP requires its advocates to screen for and determine eligibility under Part 1626. The screenings are supported by modifications included in the new ACMS that facilitate detailed non-citizen status recordation. Legal Server has a lengthy drop-down list of non-citizen statuses that is actively used by staff to document applicant status. The ACMS also contains several flags that trigger when Part 1626 information is incomplete that must be cleared to close the case. Interviews indicated that these improved procedures are being followed and that staff has been sufficiently trained regarding their use.

Sampled cases evidenced strong practices in this area. In many sampled cases, the client had appeared in person and the file contained a written citizenship attestation. In those cases involving brief advice and consultation solely by telephone, Part 1626 screening was noted by a computer entry in the online application form which reflects the applicant's oral response to the citizenship/alien eligibility inquiry. Interviews conducted evidenced staff training and specific knowledge that clients coming to the program in person require the higher level of documentation under Part 1626. There were only two (2) sampled cases in which a citizenship attestation was required and not present in the file. *See* Closed 2010 Case No. 09-0600123 (closed with an "F") and Closed 2012 Case No. 09-0598650 (client came to office to deliver documents in the case). Both cases were evidenced as involving an eligible US citizen client, with the only error being non-compliance with the documentation requirements of 45 CFR § 1626.7.

A component of the Part 1626 corrective action from the 2007 CSR Review was for NJP to record the dates when documentation from non-citizens seeking representation was reviewed. To facilitate the date requirement, the NJP Immigrant Eligibility Checklist was updated in 2009 to include a date line. Practically every sampled FUR case *opened after adoption of the new form* contained a necessary date. There were two (2) exception patterns. First, a few staff mistakenly continued to use the outdated form. *See e.g.* Closed 2011 Case Nos. 11-0633950 and 10-0628537. During the FUR, management was informed of this observation and they stated that all copies of the old form would be found and removed. Second, sampled Farmworker Unit cases that contained copies of a Legal Permanent Resident or H-2A status documents did not indicate

the date on which these documents were obtained. At the time of the FUR, the Senior Attorney of this unit stated that for future seasons the unit would use the revised NJP form that will allow for date recordation. Use of this form, if fully implemented, should fully address the issue. With its comments to the DL, NJP was asked to verify that the Farmworker Unit is now using the revised NJP Immigrant Eligibility Checklist. NJP comments included an email from the supervisor of the Farmworker Unit confirming that the revised eligibility form is in use.

The NJP corrective action regarding Part 1626 practices appears, overall, to have been effective. Based upon the FUR team's confirmation of actions taken by NJP, ICA 2-1 and ICA 2-2 are considered closed.

In the DL, RCA-9 remained open so as to address one (1) new and isolated issue identified during the FUR, as discussed below.

Minor Clients & Part 1626

In cases involving a client who is a minor and purports to be a U.S. citizen, the citizenship attestation has traditionally been made by a parent, legal guardian, or other legal representative of the minor; however, in the alternative, the minor's citizenship can be established by one (1) of the methods set forth in 45 CFR § 1626.6(b). Section 1626.6(b) permissible methods include having the recipient review a copy of the minor's birth certificate, baptismal certificate, or other authoritative document from a court or governmental agency, or having the recipient obtain a notarized statement by a third party attesting to the citizenship of the minor applicant. Accordingly, a court order or other authoritative document from the court which includes a court provided statement evidencing the minor's U.S. citizenship can serve as independent proof of a minor's citizenship status in satisfaction of this regulatory requirement. *See* External Opinion # EX-2008-1003 (September 10, 2008). Alternatively, a program may determine that the minor falls within LSC's alien eligibility exceptions, such as domestic violence or trafficking victims. Also, in July 2013, LSC's OLA issued Advisory Opinion # AO-2013-005 that now allows, in certain situations, minors to attest to their own citizenship.

The Spokane Managing Attorney created a Certification of Citizenship form, which he signs, attesting to a client's citizenship in cases that he is appointed by the tribal court as guardian ad litem to a minor. The Citizenship Certification form indicates that the NJP attorney has verified the client's date and place of birth and the identity of the client's biological parents; however, the form fails to identify the method used to identify this information.

The DL required that NJP take targeted corrective action regarding accurate screening and documentation with 45 CFR § 1626.6(b) to require recordation of the verification method used to determine citizenship of a minor. The DL noted that this could be accomplished by requiring that any form regarding 45 CFR § 1626.6(b) clearly requires documentation of the verification method – to include an update of the Spokane office form. The DL also recommended that, whenever possible, NJP request that courts making appointments to program attorneys include a statement regarding the citizenship of the client so as to easily satisfy the requirements of 45 CFR § 1626.6(b). Program comments to the DL explained why having a court include a statement

regarding the citizenship of the client is problematic and indicated that this would not be a viable solution for NJP. LSC finds NJP's comments to be convincing. For the full discussion provided by NJP, *see* Attachment 1.

In its comments to the DL, addressed the need for full compliance with 45 CFR § 1626.6(b) by proposing that, if asked to serve as a GAL in the future, NJP will verify citizenship from information contained in the existing court record. If citizenship cannot be verified from the court record, the program will decline the appointment. This process will ensure compliance with 45 CFR Part 1626 for accepted program cases. LSC finds this solution to be agreeable. Further, in a subsequent communication after submitting the comments, NJP management confirmed that the program will not take any GAL appointments if it cannot be determined, on the face of the record, that the person is a citizen.

As a result of the above stated corrective action, RCA-9 is now closed.

Finding 12: The FUR identified an isolated issue regarding 45 CFR § 1611.9, as several sampled Farmworker Unit cases had retainers not signed by NJP.

Sample case review identified a number of Farmworker Unit cases with retainer agreements signed by the client but not by the NJP attorney. Each retainer agreement was otherwise compliant, containing a detailed statement of the legal problem and nature of the legal services to be provided, as required by 45 CFR § 1611.9. During the FUR, the Senior Attorney of this unit was made aware of this observation, and she stated she would conduct follow-up to have program staff sign retainer agreements. It is recommended that NJP senior management follow-up on this issue to determine whether sufficient action has been taken regarding Farmworker Unit retainer agreements.

Recommendations

Consistent with the findings of the DL, it was recommended that NJP:

1. Send a communication to all staff that reiterates its adopted policy and practice requiring a proper designation of each asset as exempt or non-exempt;⁹
2. Request management to follow-up on whether Farmworker Unit retainer agreements are now being signed by program staff.¹⁰

⁹ Program comments indicated that such follow-up is being conducted with the central intake unit staff.

¹⁰ Comments to the DL stated that follow-up has occurred with the Senior Attorney of the Farmworker Unit who supervises the advocates, and that it has been assured that staff of that unit now fully execute the retainer agreement and understand the importance and practicality of doing so. Further, an email regarding this topic was included as an attachment to the comments. This email confirmed that the Farmworker Unit has taken action to have attorneys sign retainer agreements.

Draft Letter Required Corrective Actions

As a result of the FUR review, in the DL NJP was required to take four (4) corrective actions. In all four (4) instances, program actions taken as evidenced in comments to the DL have fully addressed the items, which resulted in the five (5) remaining pending RCAs being closed, as summarized below:

1. Screen all applicants for eligibility in a consistent manner. (To assist in this, it is recommended that NJP update its standard paper intake form to include the full asset screening detail found in the ACMS) (RCA-2);

As discussed in greater detail in “Finding 2” of this letter, program comments to the DL fully resolved LSC’s concern regarding the standard paper intake form by now requiring that the form be used only for a preliminary screening. NJP noted that, whenever the paper form is used, the applicant will receive a more thorough intake through Legal Server before being accepted for service. In short, no client will be accepted for service based strictly on the written intake form. Due to the program’s actions and comments to the DL, RCA-2 is now closed.

2. Take targeted corrective action so that all staff properly reject and/or deselect files where necessary (RCA-11);

As discussed in greater detail in “Finding 8” of this letter, program comments to the DL detailed further corrective action regarding proper use of rejection and deselection for files. In light of these actions and the limited scope of LSC’s underlying observations (involving only a few staff), RCA-11 is now closed.

3. Take additional corrective action regarding the following: use of category “K” should be reserved only for cases that do not fit any of the other case closure categories; cases ending early with a motion to withdraw should be closed as category “L”; the case closing category that reflects the level of service provided by the program staff or PAI attorney, and not by pro se litigants or other non-PAI outside counsel should be used; and whenever contacts with third parties are conducted on behalf of a client, case closure category “B” should be selected over “A” (RCA-12, RCA-13); and

As discussed in greater detail in “Finding 10” of this letter, in program comments to the DL, NJP described additional corrective action taken to address the proper use of the above three (3) case closure codes. In light of these actions, RCA-12 and RCA-13 are now closed.

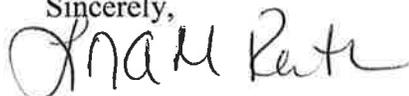
4. Take targeted corrective action regarding accurate screening and documentation with 45 CFR § 1626.6(b) to require recordation of the verification method used to determine citizenship of a minor in court appointments (RCA-9).

Cesar E. Torres, Executive Director
Northwest Justice Project
March 19, 2014
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As discussed in greater detail in "Finding 11" of this letter, program comments stated that, in the future, NJP will either verify citizenship in court appointed cases from the information contained in the existing court records or will decline the case. In light of this, RCA-9 is now closed.

I appreciate the courtesies you extended to the team during the visit. I would like to extend an offer, through OCE, to continue to be available to you as a resource regarding the subjects addressed in this letter or any other compliance-related matters.

Sincerely,

A handwritten signature in black ink that reads "Lora M. Rath". The signature is written in a cursive style with a large initial "L" and "R".

Lora M. Rath, Director
Office of Compliance and Enforcement



Northwest Justice Project

Toll Free 1-888-201-1012
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César E. Torres
Executive Director

January 30, 2014

Ms. Lora M. Rath
Director, Office of Compliance and Enforcement
Legal Services Corporation
3333 K. Street, NW 3rd Floor
Washington, D.C. 20007-3522

Re: NJP's Response to Draft Follow Up Review Report, October 24, 2013

Dear Ms. Rath:

First, thank you for providing the Northwest Justice Project (NJP) an opportunity to review and respond to the Draft Follow Up Review (FUR) Report of October 24, 2013. The draft report addresses the May 2011 FUR visit to NJP to assess NJP's implementation of requested actions following OCE's Case Service Report (CSR)/Case Management System (CMS) review conducted in June 2007. Thank you also for your gracious consideration of our needs by extending the time period for this response to January 31 of this year. We are extremely gratified that OCE has determined that NJP has addressed virtually all of the concerns raised in the 2007 review and has closed out the substance of the outstanding matters. Nevertheless, OCE has set out four "required corrective actions", made three "recommendations" and asked for program comment to be included with this response on three additional matters. These items, respectively, are discussed below.

A. Required Corrective Action

1. Screen all applicants for eligibility in a consistent manner. To assist with this it is recommended that NJP update its standard paper intake form to include the full asset screening detail found in the ACMS (RCA-2).

Response: This recommendation appears to stem from OCE's review of NJP's paper intake form that is used on occasion for intakes taken during outreach or outreach events. For all of NJP's off-site "clinic" locations, *i.e.*, Medical-Legal Partnership, Seattle Debt Clinic, Seattle Domestic Violence, Integrated Rural Legal Assistance Project, NJP staff directly access the ACMS (Legal Server) for intakes through program provided Laptops or computers on-site. Written intake forms are primarily used when there is a lack of internet access (e.g. Farmworker outreach in rural areas) or when internet access is precluded due to security

restrictions (*e.g.* Veterans Project). Even when the intake form is used, a more thorough intake is conducted through Legal Server before a client is accepted for service. In order to address OCE's concern, NJP proposes to strictly limit the use of the written intake form in future off-site intake, and to require all intake to be conducted strictly through Legal Server, whenever internet access is available. Toward this end, NJP has obtained additional laptops and will continue to increase "hot spot" access as needed. We will use the written intake form only for intake conducted during an outreach event when there is no internet access or security restrictions prevent internet access. In such cases, the written intake will be used only as a preliminary screen for client eligibility and priority. No client will be accepted for service based strictly on the written intake and all clients will be put through a full eligibility screening through Legal Server prior to case acceptance.

2. Take targeted corrective action so that all staff properly reject or deselect files where necessary (RCA-11).

Response: This corrective action concerns the FUR finding that "a few" cases were "rejected" after they were accepted due to some deficiency in the case record or other reason as opposed to "deselecting" the case record. While not stated in the Corrective Action, the body of the report at page 18 states that the "corrective action could be accomplished through use of case oversight and review system to identify deselection errors, and then to provide direct instruction and oversight to the staff submitting those files." The report further states that it would be useful to send a "simple email communication to all staff reminding them of the proper deselection method, and explaining the difference between rejection and deselection."

NJP has sent and attaches (Attachment No. 1) the suggested "simple email communication to all staff" regarding the proper deselection method, and further explaining the difference between rejection and deselection of a case, and including guidance when to use one over the other. The email has also been posted to NJP's intranet for easy future access by all staff. NJP will also include discussion of the distinction between rejection and deselection as part of an upcoming training video on closing cases that will be available to all staff on the NJP intranet. Further, NJP currently conducts significant oversight to identify and deselect cases when appropriate after they have otherwise been opened and accepted for service. We anticipate that NJP's response will further reduce even isolated instances of improper case deselection.

3. Take additional corrective action regarding the following: use of category "K" should be reserved only for cases that do not fit any of the other case closure categories; cases ending early with a motion to withdraw should be closed as category "L", the case closing category that reflects the level of service provided by the program staff or PAI attorney, and not by pro se litigants or other non-PAI counsel should be used; and whenever contacts with third parties are conducted on behalf of a client, case closure category "B" should be selected over "A" (RCA-12, RCA-13).

Response: This corrective action seems to stem from the FUR finding that there were a "limited number of exceptions" that create "minor exception issues". Again, while not stated

in the corrective action, the body of the report indicates that “effective correction action” could be accomplished through “a simple communication to all staff regarding the accurate use of closing codes and use of the ongoing case review process to identify any staff, units or offices that have a pattern of error for targeted additional oversight.” (Page 21).

NJP has sent and attaches (No. 2) the “simple email communication” to all staff regarding the proper use of the “K”, “L” and “B” closing codes. The email has also been posted to the NJP intranet for future access by all staff. We will also continue our review of all cases in which the “K” appears as the service level in a closed case. Specifically, our Director of Administration has added a safety check report for all “K” cases. In any closed case in which “K” is indicated as the closing code, the Director of Administration contacts the assigned attorney to explain the need to change the code to one that is more appropriate. We believe that this has by and large addressed the issue and that “K” is now reserved for those few cases in which NJP either provided services that do not fall within any of the other codes or a problem arose which made use of any other code unfeasible.

4. Take targeted corrective action regarding accurate screening and documentation with 45 CFR § 1626.6(b) to require recordation of the verification method used to determine citizenship of a minor (RCA-9).

Response: This corrective action arises from a system set up by a former NJP attorney who as a member of Native American Unit was asked by tribal court judges to serve as a guardian ad litem (GAL) for Native American children in Child in Need of Care proceedings initiated by the tribes. The “clients” for whom he was appointed to serve as GAL, were all very young Native Americans, including several infants, whose parents were not available to attest to their citizenship status. Mindful of the need to have documentation on file that verified the child’s citizenship, the attorney would certify that as GAL appointed by the tribal court in a Child in Need of Care proceeding, for which child’s date of birth and place are a matter of court record, he had verified the child’s date and place of birth and the identity of the child’s parents, if known. The draft report finds the form deficient because it failed to identify the precise method by which the attorney verified this information. No finding was made that the attorney was not conscientious or truthful in his certification. Nor does the finding take into account the political and cultural issues involved if NJP were required to specifically question the citizenship status of Native children before the tribal court.

The body of the draft report suggests that a “court order or other authoritative document from the court which includes a court provided statement evidencing the minor’s U.S. citizenship can serve as independent proof of a minor’s citizenship status in satisfaction of the regulatory requirement.” With all due respect for the concerns associated with the citizenship attestation requirement of 1626.6(b), NJP has determined that it would be highly inappropriate for its attorneys to make such a request of a sovereign tribal court in a proceeding involving a Native American child. NJP has determined that there are strong reasons to no longer accept GAL appointments from tribal courts. In addition, the attorney who had served as a GAL pursuant to tribal court appointments is no longer employed by NJP. As NJP will not accept such appointments in the future, this issue is moot with respect to tribal courts.

Furthermore, taking the proposed corrective action would also be problematic in the event NJP is asked to accept court appointment as a GAL in other courts for either a child or incapacitated adult. As noted, a tribal court would take strong offense to asking it to verify a Native American child's or incapacitated tribal elder's citizenship, if it can't otherwise be determined from court records, *e.g.*, place of birth. Other courts may not be offended but the requirement implicates a new Comment to Washington's Rules of Professional Conduct 4.4.¹ The Comment precludes express or implied communication that a party or witness will report a person to immigration authorities and recognizes that such an implication can arise from a simple inquiry into the immigration status of litigants. The Code of Judicial Conduct would seem to similarly preclude a court from inquiring into citizenship or immigration status of a party before the court.² Therefore, NJP proposes that in such instances should it be faced with having been asked to serve as a GAL, we will verify citizenship status from information contained in the court record. If we cannot verify citizenship by place of birth and/or parentage (or other eligibility status) from the court record, we will not independently inquire or ask a court to inquire into the citizenship of the person for whom the appointment is sought. Instead, we will simply and politely decline appointment.

B. Recommendations

1. Send a communication to all staff that reiterates (NJP's) adopted policy and practice requiring proper designation of each asset as exempt or non-exempt.

Response: This recommendation stems from an observation that "some screeners do not consistently mark excluded assets as such when the amount of excluded assets, even if included, would not render the person ineligible." The report notes that this is a "new but minor" asset recordation issue. The "minor" nature of this issue does not affect eligibility and the practice is not inconsistent with the increase of the NJP asset limits to \$20,000 and \$40,000 (for persons over 60), respectively.

Since this appears to be a screener only issue, NJP proposes to address the issue by sending the recommended communication to the Screener Unit and Supervisor (v. all staff) to clarify and ensure that screeners are identifying all exempt assets, including for persons otherwise eligible. (We assume this would not include persons who are eligible by virtue of receiving needs based benefits, which excludes the need for further inquiry). An email to this effect was sent on and is also posted on NJP's intranet for access by all staff. See attached No.3, email dated 1/28/2014. Asset limit issues are also now discovered in the safety check asset report and corrected as appropriate.

2. Request that courts making appointments to program attorneys include a statement regarding the citizenship of the client so as to easily satisfy the requirement of 45 CFR § 1626.6(b).

¹ RPC 4.4 Comment [4] states in relevant part: "Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. [case citation omitted]"

² Washington's Code of Judicial Conduct 2.3 prohibits a judge to manifest bias or prejudice "by words or conduct."

Response: Given that this same topic is identified as a corrective action, we are unsure whether the recommended action is intended to be a separate recommended action or a corrective action. In either event, NJP's response set out above under corrective action no. 4 is the same. NJP does not currently make a practice of accepting any court appointments (minors or otherwise) and would follow above-referenced practice in the event we determined to do so in the future.

3. Request management to follow-up on whether Farmworker Unit retainer agreements are now being signed by staff.

Response: NJP has indeed followed up with the Senior Attorney of the Farmworker Unit (FWU) who supervises the advocates and has been assured that the staff now fully executes the retainer agreements and understands the importance and practicality of doing so. See attached No. 4, email dated 1/13/2014.

C. Additional Information Requested With Program Comments

1. Provide an update as to further revisions to its group eligibility form that may be planned.

Response: The Draft FUR states that “[s]ubsequent to the FUR, NLJ [*sic*] adopted a group eligibility form that did accurately follow the language of the revised regulation.” At this time, no changes to the current form are planned. Should NJP determine to update its income eligibility policies, NJP will then review the group eligibility form as appropriate and consider the need to include any additional detail per the sample form provided by OCE.

2. Provide an update regarding actions taken since the May, 2011 FUR to address standardization of prospective income screening and how the corrective action was implemented and discuss whether, why or why not, NJP management has confidence that prospective income is now routinely screened for all CLEAR applicants.

Response: NJP adopted a mandatory field in its ACMS that requires eligibility screeners to ask a person seeking legal assistance whether they anticipate a change in their income in the near future. If a person answers “yes”, the screener is then prompted to ask the potential source and circumstances of the possible future income. As this is a mandatory field, which must be answered “yes” or “no”, with details explained if “yes” before the client can get passed a screener, we are confident that prospective income is routinely screened for all CLEAR cases. As we have previously indicated, one can never be 100% sure of anything, so we will have to settle for 99.9% confidence in our case management and screening systems regarding the prospective income inquiry.

3. Verify that the Farmworker Unit is using the revised NJP Immigrant Eligibility Checklist that includes a date line, and that Farmworker Unit intakes conducted after the May, 2011 FUR contain dates to reflect when documentation for non-citizens was reviewed.

Response: The Farmworker Unit assures us that the current NJP Immigrant Eligibility Checklist is the only one now available for use by the FWU and that that current practice is to use the form. See attached No. 4.

Thank you for the opportunity to comment on this draft FUR report. We look forward to receiving a final report that takes into account our responses to OCE's concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Perluss".

Deborah Perluss
Director of Advocacy/General Counsel

C: César E. Torres, Executive Director

Debi Perluss

From: Debi Perluss
Sent: Wednesday, January 29, 2014 4:05 PM
To: All NJP
Subject: GUIDANCE FOR COMPLIANCE WITH USE OF (1) CASE REJECTION AND (2) DESELECTION

Importance: High

Colleagues: This is the first of two messages we are sending to provide guidance on important LSC Case Service Reporting compliance issue. NJP has been asked by LSC's Office of Compliance and Enforcement to clarify two items identified as having been problems during a review of our CSR (Case Statistical Report) and proper use of Legal Server, our case management system. We realize that some of the nuances in this system are confusing and that it is important to clarify these issues for all staff.

Whether to Reject or De-Select a Case?

1. **WHEN TO REJECT A CASE:** A client file is properly **rejected** when NJP does accept a case and takes no action in regard to a prospective client. This occurs either because the person seeking assistance is (a) not eligible for legal assistance by NJP; (b) is not within NJP priorities; (c) is not able to be contacted as a callback; (d) is a dropped call prior to receiving any legal assistance; (e) receives **ONLY** legal information, e.g. publication or general information, or has some other issue that results in **NO** advocate taking or providing any legal assistance on the client's behalf. In a case in which CLEAR has provided legal assistance (Advice or Limited Action), but is thereafter not accepted for more extended service by an NJP field office or Unit, the proper closing code is the level of CLEAR assistance provided – these cases should **NOT** be REJECTED.
2. **WHEN TO DE-SELECT A CASE:** A client file is properly **de-selected** from Legal Server when a problem arises or is identified *after* the case is accepted for legal assistance by an advocate. This will occur if after we have provided some legal assistance to a client, we discover that there is some problem with eligibility and the client is in fact not eligible for LSC or any other funding that could support the work. An example might be that after we initially determined that a client is eligible for NJP, we learn that they failed to disclose a source of income and they are in fact ineligible for our services. This case cannot be reported to LSC as part of our case statistical reports. In order for us to not capture the case in our reports, it must be **de-selected**.

Please make sure that you are properly distinguishing between these two actions, when the case is closed. If you have any questions, please do not hesitate to contact me. Please retain this email with other directions regarding use of Legal Service and CSR issues. Thank you.

Debi Perluss
Northwest Justice Project
(206) 464-1519 ext. 251



NJP? Please consider the environment before printing.

Debi Perluss

From: Debi Perluss
Sent: Wednesday, January 29, 2014 4:05 PM
To: All NJP
Subject: Guidance on Proper Use of Closing Categories K, L and B

Colleagues: This is the second of two messages NJP has been asked by LSC's Office of Compliance and Enforcement to send to all staff to clarify two items identified as having been problems during a review of our CSR (Case Statistical Report) and proper use of Legal Server, our case management system. We thank you for your attention to these issues and your commitment to being as conscientious as possible in efforts to ensure our compliance with the LSC Case Reporting requirements.

When to use "K" (Other), "L" (Extensive Service) and "B" (Limited Action) as the closing code in a case?

It is important to make sure in that all cases the case is closed with the correctly identified level of service. When to use of "K", "L" and "B" can be confusing, especially when the case activity could also fit into other categories. We are proud of what we do, and we want to make sure LSC, Congress and other funders are aware of the correct scope and intensity of our services. Please review these specific closing categories and comply with the below instruction:

1. **"K" (Other)** – This closing code should be used rarely. It should only be used when the service level cannot fit into one of the other categories. For example, if we have provided any advice or limited assistance for a client but then lost contact, the case should be closed as an A or a B as appropriate. If we have engaged in administrative agency representation or litigation on behalf of the client, but we end up having to withdraw from representation before completion of the agency administrative process or litigation, assuming we have in fact engaged in extended services for the client, the should be closed with the "L" (Extensive service) closing category. Other examples are writing an Indian Will or reviewing a contract for a client, both of which come with the definition of "extensive service" and should be closed with the "L" code. If the client never showed up for an initial appointment and or otherwise withdrew from services, if the client received no legal assistance, the case should be rejected. See Guidance on Compliance with use of (1) Rejection and (2)De-selection.
2. **"L" (Extensive Services)** – L is the correct closing category to use when the work done for a client is beyond B (Limited Assistance), but did not involve direct representation in an administrative agency case or a matter in litigation. This includes providing self-help assistance services to persons we do not represent that extend beyond a brief period of time. It includes extensive discussions with third parties outside of litigation, preparation of wills, advance directives, contracts, real estate related and other legal documents, again, outside litigation. E.g., documents are being prepared as part and parcel of litigation, such as drafting a quit claim deed or QDRO to facilitate an award to a domestic violence victim we represented in a dissolution action. In such a case the correct closing code would be I (Court Decision).

When a case requires a K or L service category, please make sure that the citizenship attestation/immigrant eligibility documents and the retainer agreement have been completed and uploaded to the file.

3. **"B" (Limited Action)** – B is the correct closing code to use when we have interacted with a third party on behalf of a client, including communicated by letter, email, or other means. It is also to be used when we have drafted documents for a client who is otherwise proceeding pro se, if our assistance is limited in nature. If we provide pro se assistance over an extended period, then L is the proper closing code.

Many advocates engage in informal negotiations with third parties to quickly resolve a client problem and/or draft simple pleadings. Please use B as the closing category for these activities. Category "A" (Counsel and Advice) should be limited to cases where communications took place solely with a client concerning his or her legal problem.

If you have any questions, please do not hesitate to contact me. Please retain this email with other directions regarding use of Legal Service and CSR issues.

Debi Perluss
Northwest Justice Project
(206) 464-1519 ext. 251



NJP Please consider the environment before printing.

Debi Perluss

From: Debi Perluss
Sent: Wednesday, January 29, 2014 4:36 PM
To: Margaret van Reuth
Cc: Screeners
Subject: Resending Guidance on Recording of Assets

Margaret and Screener: We have been asked by LSC's Office of Compliance and Enforcement to reiterate our program policy on assets screening. Specifically, we seek to clarify that when screening for a prospective client's financial eligibility based on the assets limits, all of a caller's assets must be identified in Legal Server as either exempt or non-exempt. **Exempt assets do not get counted toward the asset limit for purposes of financial eligibility.** The designation of assets as exempt or non-exempt should occur in every case, even though a prospective client's total assets are within the asset eligibility limits. As provided by NJP policy, if a client is on one of the Board designated needs-based programs, asset eligibility can continue to be skipped based on receipt of those benefits. If you have any questions, please feel free to ask. Thank you for your hard work and efforts to ensure that our program compliance requirements are met.

Debi Perluss
Northwest Justice Project
(206) 464-1519 ext. 251



Please consider the environment before printing.

Debi Perluss

From: Michele Besso
Sent: Monday, January 13, 2014 2:44 PM
To: Debi Perluss
Subject: RE: LSC OCE Follow Up Review Report

Debi: Yes, we have reviewed in the unit the requirement that attorneys sign retainer agreements. The current, dated eligibility checklist is the one in use in our office. We will review its use at our next unit meeting.

Michele

From: Debi Perluss
Sent: Monday, January 13, 2014 1:47 PM
To: Michele Besso
Subject: LSC OCE Follow Up Review Report

Hi Michele: I need to know your answer to the below two questions that were cited as problematic in the OCE (not OPP) Follow Up Report (FUR) to our 2007 OCE compliance review visit. This the OCE visit that goes back to May, 2011. We are now reviewing the report and two areas of concern that came up for the FWU were (1) retainer agreements not signed by the attorneys; and, (2) undated non-citizen eligibility document review.

Can you please let me know if you took steps to make sure FWU attorneys sign all new retainer agreements; and that FWU uniformly uses the current Eligibility Checklist, which includes a date on which documents demonstrating eligibility were reviewed. Thanks

Debi Perluss
Northwest Justice Project
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