LEGAL SERVICES CORPORATION

Board of Directors Meeting

July 20 - 22, 2014

Location:

Des Moines Marriott Downtown
700 Grand Avenue
Des Moines, Iowa 50309

Table of Contents

I. Schedule 1

II. Operations & Regulations Committee

- Agenda 6
- Draft Minutes of the Committee's Open Session Meeting of April 7, 2014 8
- Private Attorney Involvement Proposed Rule CFR Part 1614 13
- 2015 Grant Assurances 20
- Proposed Rulemaking Agenda 95
- Service Eligibility Options for Persons Covered by the Convention Against Torture 110

III. Institutional Advancement Committee

- Agenda 113
- Draft Minutes of the Committee's Open Session Meeting of April 6, 2014 115
- In-kind Contributions Protocol 119

IV. Governance & Performance Review Committee

- Agenda 126
- Draft Minutes of the Committee's Open Session Meeting of April 6, 2014 128
- GAO 2010 Report Tracking Document 132
- LSC Equal Opportunity, Non-Discrimination & Anti-Harassment Policy 140
  Resolution 2014-XXX 148
- Board Member Attendance on Program Visits 150
  Resolution 2014-XXX 152

This table does not reflect all *agenda items*. Instead, it lists all *documents* contained in this book.
For a complete listing of agenda items, see each individual agenda.

Table of Contents

V. Delivery of Legal Services Committee

- Agenda 157
- Draft Minutes of the Committee's Open Session Meeting of April 7, 2014 159
- Panel Presentation: Board Governance: 45 CFR Part 1607 and Panelist Bios 162

VI. Audit Committee

- Agenda 170
- Draft Minutes of the Committee's Open Session Meeting of April 7, 2014 173
- Draft Minutes of the Committee's Open Session Telephonic Meeting of May 22, 2014 177
- Risk Management Matrix 180
- Management Representation Letter 193
- Office of Inspector General Referrals to the Office of Compliance & Enforcement 198
- LSC 403(b) Thrift Plan Update 209

VII. Finance Committee

- Agenda 214
- Financial Report for the First Eight Months of FY 2014 216
- Revised Consolidated Operating Budget FY 2014 230
- Temporary Operating Authority for FY 2015 233
  - ***Resolution 2014-XXX*** 234
- Adopting LSC's Appropriation Report for FY 2016 235
  - ***Resolution 2014-XXX*** 236

This table does not reflect all *agenda items*. Instead, it lists all *documents* contained in this book.
For a complete listing of agenda items, see each individual agenda.

Table of Contents

VIII. Board of Directors

- Board Agenda.....238
- Draft Minutes of the Board's Open Session Meeting of April 8, 2014.....241
- Draft Minutes of the Board's Open Session Telephonic Meeting of May 22, 2014 246
- Recognition and Appreciation of Outstanding Service by John C. Meyer 247-a
  Resolution 2014-XXX
- Recognition of Charles De Monaco of Fox Rothschild 249
  Resolution 2014-XXX
- Pro Bono Task Force Report & Pro Bono Innovation Fund Implementation Update.....252

IX. Drake Law School Events

- Justices and Judges Panel Bios.....257
- Community Partnerships Panel Bios 262

This table does not reflect all *agenda items*. Instead, it lists all *documents* contained in this book.
For a complete listing of agenda items, see each individual agenda.

Schedule

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS
MEETING SCHEDULE
JULY 20-22, 2014
Meeting Location:
Des Moines Marriott Downtown
700 Grand Avenue
Des Moines, Iowa 50309
Tel: (515) 245-5500

SUNDAY, JULY 20, 2014			
Start	End	Meeting/Event	Location
1:30pm	3:30pm	Operations & Regulations Committee	Salon D Marriott Downtown
3:45pm	4:45pm	Institutional Advancement Committee	Salon D Marriott Downtown
4:45pm	6:00pm	Governance & Performance Review Committee	Salon D Marriott Downtown

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS
MEETING SCHEDULE
JULY 20-22, 2014
Meeting Location:
Des Moines Marriott Downtown
700 Grand Avenue
Des Moines, Iowa 50309
Tel: (515) 245-5500

MONDAY, JULY 21, 2014			
Start	**End**	**Meeting/Event**	**Location**
9:00am	**12:00pm**	**Introductory Remarks** *John G. Levi*, Board Chair, Legal Services Corporation *Jerry R. Foxhoven,* Executive Director, Drake Legal Clinic *Former Congressman Neal Smith* **Panel 1: The Importance of Access to Justice to the Judiciary** *Justice Daniel J. Crothers*, North Dakota Supreme Court *Justice Thomas L. Kilbride*, Illinois Supreme Court *Judge Robert W. Pratt*, U.S. District Court, Southern District of Iowa *Justice David R. Stras*, Minnesota Supreme Court *Judge Richard B. Teitelman*, Supreme Court of Missouri *Justice David Wiggins*, Iowa Supreme Court *Justice John F. Wright*, Nebraska Supreme Court *Dean Martha Minow*, Harvard Law School and LSC Board Vice Chair *(Moderator)* **Panel 2: The Importance of Community Partnerships** *Joan Boles*, Deputy Director, Bay Area Legal Services, Inc. *Neal S. Dudovitz*, Executive Director, Neighborhood Legal Services of Los Angeles County *Dennis Groenenboom*, Executive Director, Iowa Legal Aid *Mindy Murphy*, President & CEO, The Spring of Tampa Bay *Barbara Siegel,* Lecturer in Law, University of Southern California Gould School of Law *Eric Tabor*, Chief Deputy Attorney General, Iowa Attorney General *James J. Sandman*, President, Legal Services Corporation *(Moderator)*	**Drake Law School** **Neal & Bea Smith Legal Clinic** **2400 University Avenue**
1:45pm	**2:30pm**	**Presentation by Iowa Legal Aid** *Dennis Groenenboom*, Executive Director, Iowa Legal Aid	**Salon D** **Marriott Downtown**
2:30pm	**3:45pm**	**Delivery of Legal Services Committee** *Susan Cae Barta*, Board of Directors, Iowa Legal Aid *Dennis Groenenboom*, Executive Director, Iowa Legal Aid *Linda J. Morris*, Board Member, Laurel Legal Services, Inc. *Cynthia J. Sheehan*, Executive Director, Laurel Legal Services, Inc.	**Salon D** **Marriott Downtown**

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS
MEETING SCHEDULE
JULY 20-22, 2014
Meeting Location:
Des Moines Marriott Downtown
700 Grand Avenue
Des Moines, Iowa 50309
Tel: (515) 245-5500

MONDAY, JULY 21, 2014			
3:45pm	**4:45pm**	**Audit Committee**	**Salon D** **Marriott Downtown**
4:45pm	**5:45pm**	**Finance Committee**	**Salon D** **Marriott Downtown**
6:00pm	**7:30pm**	**Pro Bono Awards Reception** *Speakers* *Joseph M. Feller,* President, The Iowa State Bar Association *Gene R. La Suer,* President, Board of Directors, Davis Brown Law Firm *George Wittgraf,* Wittgraf Law Firm and former LSC Board President *Awardees* *Davis Brown Law Firm* *Steve Jackson, Sr.* *Tommy Lynn Miller* *Brian Peters* *Timothy Tripp*	**Davis Brown Law Firm** **The Davis Brown Tower** **215 10th Street**

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS
MEETING SCHEDULE
JULY 20-22, 2014
Meeting Location:
Des Moines Marriott Downtown
700 Grand Avenue
Des Moines, Iowa 50309
Tel: (515) 245-5500

TUESDAY, JULY 22, 2014			
Start	End	Meeting/Event	Location
9:00am	11:00am	OPEN Board Meeting	Salon D Marriott Downtown
11:00am	12:00pm	CLOSED Board Meeting	Salon D Marriott Downtown

Operations & Regulations Committee

OPERATIONS & REGULATIONS COMMITTEE

July 20, 2014

Agenda

OPEN SESSION

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on April 7, 2014
3. Report on risk item: Acquisitions Management (higher contract costs and possible areas of fraud, waste and abuse)
   - Ron Flagg, General Counsel
4. Report on 45 CFR Part 1614—Private Attorney Involvement
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
5. Report on 2015 Grant Assurances
   - Jim Sandman, President
   - Public Comment
6. Consider and act on Proposed Rulemaking Agenda
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
   - Mark Freedman, Senior Assistant General Counsel
   - Laurie Tarantowicz, Assistant Inspector General & Legal Counsel
7. Consider and act on request for Management to explore service eligibility options for persons covered by the Convention Against Torture
8. Other public comment
9. Consider and act on other business
10. Consider and act on adjournment of meeting

Draft Minutes of April 7, 2014
Open Session Meeting

Legal Services Corporation
Meeting of the Operations & Regulations Committee

Open Session

Monday, April 7, 2014

DRAFT

Committee Chairman Charles N.W Keckler convened an open session meeting of the Legal Services Corporation's ("LSC") Operations and Regulations Committee ("the Committee") at 3:02 p.m. on Monday, April 7, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Charles N.W. Keckler, Chairman
Robert J. Grey, Jr.
Laurie I. Mikva
John G. Levi, *ex officio*

Other Board members present:
Sharon L. Browne
Victor B. Maddox
Father Pius Pietrzyk
Julie A. Reiskin
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Lynn Jennings	Vice President for Grants Management
Richard L. Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig Cohen	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs (OLA)
Mark Freedman	Senior Assistant General Counsel, Office of Legal Affairs (OLA)
Stefanie Davis	Assistant General Counsel, Office of Legal Affairs (OLA)
Diane Camosy	Post Graduate Fellow, Office of Legal Affairs (OLA)
Flor Gardea	Intern, Office of Legal Affairs (OLA)
David L. Richardson	Comptroller and Treasurer
Traci Higgins	Director, Office of Human Resources
Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Wendy Long	Executive Assistant, Office of Government Relations and Public Affairs (GRPA)

Jeffrey E. Schanz	Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General (OIG)
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General (OIG)
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
Daniel Sheahan	Program Evaluation Analyst, Office of the Inspector General
Magali Khalkho	Resource Management Specialist, Office of the Inspector General
Lora M. Rath	Director, Office of Compliance and Enforcement (OCE)
Janet LaBella	Director, Office of Program Performance (OPP)
Herbert S. Garten	Non-Director Member, Institutional Advancement Committee
Allan J. Tanenbaum	Non-Director Member, Finance Committee
Thomas Smegal	Non-Director Member, Institutional Advancement Committee
Don Saunders	National Legal Aid and Defenders Association (NLADA)
Robin Murphy	National Legal Aid and Defenders Association (NLADA)
Berish Anver	National Immigrant Women's Advocacy Project
Dominique Martin	Law99.com
Terry Brooks	American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
LaVon Smith	Office of Information Technology

The following summarizes actions taken by, and presentations made to, the Committee:

Committee Chairman Keckler noted the presence of a quorum and called the meeting to order.

MOTION

Mr. Grey moved to approve the agenda. Mr. Mikva seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Mr. Grey moved to approve the minutes of the Committee meetings of March 3, 2014. Ms. Mikva seconded the motion.

VOTE

The motion passed by voice vote.

President Sandman and Ms. Higgins provided reports on LSC's progress in performance management and human capital management. President Sandman and Ms. Higgins answered Committee members' questions.

Ms. Davis updated the Committee on the proposed final rule amending 45 CFR Part 1613, Restrictions on Legal Assistance in Criminal Proceedings. Ms. Davis answered Committee members' questions.

Committee Chairman Keckler invited public comment and received none.

MOTION

Ms. Mikva moved to recommend approval of proposed final rule, as amended to reflect a change in the preamble. Mr. Grey seconded the motion.

VOTE

The motion passed by voice vote.

Ms. Davis updated the Committee on the proposed final rule and program letter amending 45 CFR Part 1626, Restrictions on Legal Assistance to Aliens, and answered Committee members' questions. Committee Chairman Keckler invited public comment on additional amendments to Part 1626 rule. The Committee received comments from Don Saunders, National Legal Aid and Defender Association (NLADA).

MOTION

Mr. Grey moved to recommend approval of the proposed final rule, as amended to reflect the substance of the Committee's discussion. Ms. Mikva seconded the motion.

VOTE

The motion passed by voice vote.

Committee Chairman Keckler then discussed public comments received regarding 45 CFR § 1626.5, and provision of assistance to aliens subject to withholding of removal under the Convention Against Torture (CAT) and deferral of removal under the CAT. Committee members requested additional information. Mr. Flagg agreed to present a memo addressing the issues at the next Committee meeting.

Mr. Flagg provided an overview on the revised draft text for the Private Attorney Involvement proposed rule, 45 CFR Part 1614. Ms. Davis presented additional information regarding proposed revisions to the rule. Mr. Flagg, Ms. Davis and Mr. Freedman answered Committee members' questions.

Committee Chairman Keckler invited public comments on the proposed revised rule. The Committee received public comments from Robin Murphy, National Legal Aid and Defender Association (NLADA) and Terry Brooks, American Bar Association, Standing Committee on Legal Aid and Indigent Defendants (SCLAID).

MOTION

Ms. Mikva moved to recommend approval of the revised draft notice of proposed rulemaking, as amended to reflect the substance of the Committee's discussions. Mr. Grey seconded the motion.

VOTE

The motion passed by voice vote.

Committee Chairman Keckler invited public comment and received none.

There was no other business to consider.

MOTION

Ms. Mikva moved to adjourn the meeting. Mr. Grey seconded the motion.

VOTE

The motion passed by voice vote.

The meeting of the Committee adjourned at 5:27 p.m.

Private Attorney Involvement Proposed Rule 45 CFR Part 1614

OFFICE OF LEGAL AFFAIRS

To: Operations and Regulations Committee

From: Mark Freedman, Senior Assistant General Counsel
Stefanie K. Davis, Assistant General Counsel

Date: June 26, 2014

Re: Summary of Comments Received in Response to the Notice of Proposed Rulemaking on 45 C.F.R Part 1614—Private Attorney Involvement

---

LSC published proposed revisions to 45 C.F.R. Part 1614—Private Attorney Involvement (PAI) as a Notice of Proposed Rulemaking (NPRM) on April 15, 2014. 79 Fed. Reg. 21188 (Apr. 15, 2014). LSC received eight comments prior to the close of the comment period on June 16, 2014. Commenters generally voiced support for LSC's proposed changes to the rule, particularly the expansion of the rule to cover involvement by law students, law graduates, retired attorneys, and other professionals. Commenters also recommended that LSC reconsider some aspects of the rule, primarily the definition of "private attorney" and the new provision governing support to clinics. All comments are available on LSC's PAI rulemaking page at http://www.lsc.gov/rulemaking-lscs-private-attorney-involvement-pai-regulation.

Commenters

Organization	Commenter	Date Submitted
American Bar Association, through its Standing Committee on Legal Aid and Indigent Defense ("ABA")	Lisa C. Wood	June 6, 2014
California Rural Legal Assistance ("CRLA") and Legal Services Association of Michigan ("LSAM") (joint)	Jose R. Padilla & Ann Routt	June 13, 2014
Northwest Justice Project ("NJP")	Deborah Perluss	June 13, 2014
LSC Office of the Inspector General ("OIG")	Laurie Tarantowicz & Matthew C. Glover	June 16, 2014

California Commission on Access to Justice ("CCAJ")	Hon. Ronald B. Robie	June 16, 2014
National Legal Aid and Defender Association ("NLADA")	Dennis Groenenboom, Silvia Argueta, Don Saunders & Robin C. Murphy	June 16, 2014
Legal Aid Society of Northeastern New York ("LASNNY")	Michele Sleight	June 16, 2014
Legal Services of New York City ("LSNYC")	Adam J. Heintz	June 16, 2014

Summary of Comments

A. The Definition of "Private Attorney"

Four commenters expressed concern about LSC's proposed definition of the term "private attorney." The majority of the comments focused on the exception to the definition contained in proposed § 1614.3(h)(2)(ii). This provision specifically excludes from the definition of "private attorney" an "attorney employed by a non-LSC-funded legal services provider acting within the terms of his or her employment with the non-LSC-funded provider." 79 Fed. Reg. at 21199. Although there was not a consensus about how LSC should revise the definition, the commenters generally objected to the definition's effect of limiting who could be considered a "private attorney" for purposes of the PAI rule. Additionally, one commenter objected to the exclusion of attorneys who were employed by a recipient for at least 1,000 hours in a calendar year from the definition of "private attorney."

Through their joint submission, CRLA and LSAM expressed strong opposition to § 1614.3(h)(2)(ii). CRLA and LSAM were concerned that this limitation would make it more difficult for recipients in rural areas to design PAI plans that meet the rule's requirements. As an example, both organizations stated that a significant portion of their PAI plans involves co-counseling cases with non-LSC-funded legal services and other non-profit organizations engaged in helping the poor. They suggested that LSC define "private attorney" as "any person authorized to provide legal services who is not an employee of [an] LSC grantee," and limit the applicability of § 1614.3(h)(2)(ii) to subgrantees of recipients.

CCAJ also expressed concern "that the proposed private attorney exclusion set forth in 45 C.F.R. 1614.3(h)(2)(ii) is overly broad." While it "understands LSC's desire to encourage pro bono participation by attorneys who do not generally serve low income clients," CCAJ believes that the exclusion "may unnecessarily restrict the pool of attorneys eligible to volunteer. . . ." The PAI rule needs to "be flexible enough to encourage the participation of" such attorneys "while permitting LSC-funded legal services programs to recruit and work with available attorneys and

organizations in their local communities." CCAJ suggests a narrower limitation that would exclude "an attorney employed by a non-profit organization whose primary purpose is the delivery of civil legal services to the poor during any time that attorney is acting within the terms of his or her employment. . . ." Such an attorney could, however, participate in a PAI program outside of his or her employment.

The ABA likewise expressed concern about the scope of § 1614.3(h)(2)(ii). The ABA commented that the term legal services provider "is so broad that it could include a private law firm, which is clearly not the intent." The ABA recommended that LSC clarify that the term "legal services provider" within the PAI rule means "an entity whose primary purpose is the delivery of free legal services to low-income individuals."

NJP expressed concern about proposed § 1614.3(h)(2)(i), which excludes any attorney who was employed by a recipient for at least 1,000 hours in a calendar year from the definition of "private attorney." NJP asserted that this provision would exclude attorneys who, for any reason in a given year, left a recipient's employ after working 1,000 hours, such as recently retired attorneys; the limit may also exclude recipients' volunteers who are occasionally employed to fill temporary needs. NJP concluded that, because recipients cannot allocate non-PAI activity to PAI costs, "there seems little reason to limit who is considered a 'private attorney'" for PAI purposes—as long as the costs of the attorney "are not allocated for time spent while they are employed by the recipient."

B. PAI Clinics

Five commenters addressed aspects of the new provision governing the treatment of PAI clinics, 45 C.F.R. § 1614.4(b)(4). The comments highlighted ambiguities in the text of the rule as written.

According to CCAJ, proposed § 1614.4(b)(4)(ii) and 1614.4(b)(4)(ii)(C) bar recipients from participating in any clinics that do not screen for LSC eligibility. CCAJ objected that "[t]his ban exists even for 'hybrid' clinics where legal information is provided to groups and individual legal information is provided separately." As an alternative, CCAJ suggested that recipients be allowed to allocate the costs associated with providing support to the unscreened legal information portion of a clinic to PAI. Thus, recipients "would be permitted to provide legal information during clinics, but not legal assistance to clients who have not been screened for eligibility."

The ABA made similar observations and recommendations to those provided by CCAJ. Because legal information can be provided without screening for LSC eligibility, the ABA argued, "it follows logically that such screening should continue to be unnecessary [for legal information clinics] even if the clinic has a separate component that provides legal assistance" to unscreened individuals. The ABA asserted that an LSC recipient "should be able to assist the pro bono lawyer participating in the legal information portion of the clinic and allocate to PAI costs associated with any support provided," even for hybrid clinics that also provide legal assistance to unscreened individuals.

The ABA additionally noted that the text of proposed § 1614.4(b) failed to include other types of clinics that recipients support. One example was a clinic in which "LSC-eligible clients are provided pro bono advice by one group of lawyers, and another component in which non-[LSC-]eligible individuals are provided service by either staff of the clinic or a separate group of pro bono lawyers." This type of clinic operates by screening clinic participants in advance and directing them to the LSC recipient's portion of the clinic if the individual is LSC-eligible, and to the other pro bono attorneys if the individual is not. The other example was of a court or bar association asking an LSC recipient for assistance planning a pro bono clinic. The ABA recommended that LSC recipients be permitted to allocate to the PAI requirement costs associated with helping to set up a pro bono clinic, regardless of whether the clinic ultimately serves only LSC-eligible individuals.

NLADA submitted comments objecting to the screening requirement for PAI clinics providing individualized legal assistance. NLADA asserted that this requirement "will make it practically impossible for many programs to support important pro bono clinics," the sponsors of which—such as courts—"do not want to limit services solely to clients eligible for LSC funding." NLADA recommended that where "legal education activities are distinct and separate from the legal assistance activities of the clinic, an LSC program should be permitted to support the legal education activities and count the resources used to support these activities toward their PAI requirement." NLADA also recommended that LSC revise the rule to allow a form of limited screening, plus procedures to be developed by recipients, "to allocate expenses for activities that are permissible" under the LSC Act, "thereby ensuring that LSC funds are not used to provide legal assistance to ineligible clients." Further, if the clinic is set up in a way that ensures a recipient only provides legal assistance to LSC-eligible clients, "recipients should be able to count their participation in the clinic as PAI activities."

Finally, LASNNY also objected to the screening requirements for PAI clinics providing legal assistance to individuals, arguing that the requirements would restrict its participation in its own programs. The inability to allocate the resources spent on a clinic that does not screen, LASNNY notes, "limits the time that we can spend on this very important program, as well as the PAI personnel who are permitted to assist." LASNNY suggested that an alternative to screening would be for LSC to allow recipients to use non-LSC funds to provide legal assistance to unscreened clients.

The OIG recommended simplifying the eligibility standards described in proposed § 1614.4(b). The OIG referenced a comment offered by a Committee member at the April Committee meeting noting that LSC could substitute "language pointing to generally applicable standards governing the use of LSC funds as the operative constraint on PAI activities, thereby reducing the complexity [of] the proposed rule." The OIG advocated this approach because the OIG "favors a systematic approach to rulemaking that avoids duplication of regulatory standards across LSC's regulatory apparatus." Alternatively, the OIG recommended that LSC accompany proposed § 1614.4(b)(4) with a statement in the general policy section of the rule "to the effect that notwithstanding any other provision or subsection of the rule, a grantee may only count toward its PAI requirement funds spent in support of activities that the grantee would itself be able to undertake with LSC funds."

C. 1614.7 Failure to Comply

Two commenters raised concerns regarding proposed changes to § 1614.7, which governs sanctions for a recipient's inability to comply with, or seek a waiver of, the PAI requirement. NLADA wanted to ensure that, although LSC does not consider withholding of funding under Part 1614 to be equivalent to a suspension or termination of funding or a questioned cost, "LSC will follow normal procedures of due process, including allowing recipients the ability to appeal a decision to withhold funds to LSC's President."

The ABA expressed concern that the revisions to § 1614.10(c), which gave LSC discretion about how to use any funds withheld from a recipient for failure to meet the PAI requirement, are "contrary to the purposes of the regulation to encourage PAI." The ABA opined that "[i]f the consequence of failing to use funds for PAI is that the funds become available for basic field services, this provides a disincentive to comply with the PAI requirement." Instead, the ABA recommended that LSC retain the current language, but add language authorizing LSC to redirect the funds to another service area for PAI in the event that the program from which funds are being withheld is the only LSC recipient applying for the funds.

D. Other Comments

The OIG restated a number of concerns that it originally raised in a prior memo to LSC Management regarding potential changes to the PAI rule. The OIG expressed concern that the proposed rule's expansion to allow recipients to involve law students, law graduates, and other professionals "may divert resources away from private attorneys who participate in . . . PAI programs designed in accordance with current requirements." This is because the proposed rule "do[es] not increase the overall amount grantees are required to spend on PAI," while it expands the activities covered by the PAI rule. The OIG also noted that subsections of § 1614.7 "should be revised to account for the expanded focus of the PAI rule," including recordkeeping requirements about payments and reimbursements.

Because the approach proposed in the NPRM "has yet to be tested by experience," the OIG asserted that it is "very important to have in place mechanisms for measuring the performance of the revised PAI rule from its inception." These mechanisms should "consist largely of reporting requirements that, at a minimum, break out the number of private attorneys (as distinguished from other service providers) involved. . . ."

Finally, the OIG recommended that "LSC should retitle the Private Attorney Involvement rule to reflect its expanding focus."

NJP expressed concern that the proposed rule excluded existing § 1614.3(e)(4). Section 1614.3(e)(4) requires recipients to make any records which do not contain client confidences or client secrets, as defined by applicable state law, available to LSC's auditors and monitors. NJP was concerned that removing this section would serve as a disincentive to PAI because private attorneys might believe that they would be required to share client confidences and secrets with LSC in contravention of state rules of professional responsibility. NJP also recommended that

LSC raise the amount at which payments of PAI fees become subgrants for purposes of the prior approval requirement in Part 1627. NJP recommended that LSC adjust the current threshold of $25,000, established in 1983, to $60,000 in order to reflect increases in the cost of living.

LSNYC objected to proposed § 1614.3(b)(1), which would exclude from PAI activities "work done on behalf of an organization, rather than a client." LSNYC stated that the proposed rule "estranges LSC regulations from the pro bono community's definition of donated legal work." LSNYC cited § 6.1 of the ABA Rules of Professional Conduct, as well as the definitions of "pro bono" from the Pro Bono Institute and New York Court of Appeals, to show that nonprofit organizations can have their representation by an attorney termed "pro bono" if the matter furthers their purposes, and where paying standard legal fees would significantly deplete their resources. Nonprofits need pro bono legal assistance, LSNYC argued, because without it "organizations that serve the poor simply would not be able to function." LSNYC also noted that the proposed § 1614.3(b)(1) would "ignore[] contributions of many transactional attorneys . . . who might not otherwise find an avenue of pro bono assistance to the poor that is in keeping with their skill set." Allowing PAI attorneys to represent organizations would be a much-needed "indirect service[]" to clients of a recipient.

2015 Grant Assurances

1. 2015 Grant Assurances Memo
2. Statement of Purpose – LSC Grant Assurances (2007)
3. Detailed Summary of Proposed Changes for the 2015 Grant Assurances
4. Summary Regarding Grant Assurances 10, 11, & 15
5. Draft 2015 Grant Assurances – Track Changes Version
6. Draft 2015 Grant Assurances – Without Track Changes
7. Grant Assurances 10 and 11 – Public Comments Non-LSC Recipients
8. Grant Assurances 10 and 11 – Public Comments, LSC Recipients
9. Grant Assurance 15 – Public Comments, Non-LSC Recipients
10. Grant Assurance 15 – Public Comments, LSC Recipients

MEMORANDUM

TO: Operations and Regulations Committee

FROM: James J. Sandman, President

DATE: July 2, 2014

SUBJECT: Grant Assurances for LSC 2015 Grant Awards

This memorandum addresses the LSC Grant Assurances that LSC management intends to use for 2015 grant awards. The revised assurances incorporate changes that affect six of the current (2014) Grant Assurances, i.e., Grant Assurances 8, 9, 10, 11, 15, and 16. *(The Grant Assurances, with the changes in redline format, are at Attachment 4.)*

The changes incorporated in the attached 2015 Grant Assurances were reviewed by the LSC Grant Assurances Committee (Committee) using the "Statement of Purpose - Grant Assurances," which is the guide LSC uses in considering revisions to the Grant Assurances. *(Please see Attachment 1.)*

LSC published proposed 2015 Grant Assurances for an initial thirty-day public comment period and, following a request for an extension, extended the comment period for an additional 21 days for Grant Assurances 10 and 11. LSC received a total of twelve comments pertaining to Grant Assurances 10, 11, and 15. *(The comments appear in the board book after this memo and attachments.)* The attached 2015 Grant Assurances reflect modifications from our initial, published proposals in response to the comments we received. In their final form, we believe that the 2015 Grant Assurances make only minor modifications to the 2014 Grant Assurances that do not require committee or board approval.

Background:

Grant Assurances are standard for all grantees and are required to be executed by each LSC grantee when it applies for and when it accepts a grant from LSC. They include certifications by the grantee and delineate certain responsibilities of the grantee. Grant Assurances 1–6 address applicable legal requirements; Grant Assurances 7–9 address programmatic requirements; Grant Assurances 10–19 address records and information, recordkeeping, and notification requirements; and Grant Assurances 20–21 address the grantee's responsibility to assist in resolving outstanding audit or compliance issues and the use of the LSC logo.

The Grant Assurances are periodically updated or revised based on LSC's experience and on suggestions received from the Office of Inspector General (OIG) and third parties. They are reviewed annually by the Committee, which is comprised of representatives from the Offices of Compliance and Enforcement, Information Management, Legal Affairs, and Program Performance. Representatives from the OIG provided recommendations and participated in Committee discussions. The National Legal Aid and Defender Association also provided input.

To ensure transparency in the grants process, LSC published the proposed 2015 Grant Assurances on the "LSC Grants" website on April 30, 2014, for public comment. A Federal Register notice informed the public of the changes proposed for the 2015 Grant Assurances, the location for reviewing the proposed 2015 Grant Assurances, and the options for submitting comments to LSC. LSC also emailed the notice of the proposed changes and the link to the proposed 2015 Grant Assurances to all LSC recipients. Of the twelve comments received, eight pertained to the change proposed for Grant Assurances 10 and 11. The remaining four comments pertained to the change proposed for Grant Assurance 15.

Grant Assurance 10 requires LSC recipients to give LSC and the U.S. Comptroller General access to records they are entitled to under the provisions of the LSC Act and other applicable law. The change to the Grant Assurance that LSC initially proposed and published for comment would have required LSC recipients to provide access to records in accordance with federal law rather than "applicable law," consistent with the 2013 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *United States v. Cal. Rural Legal Assistance*, 722 F.3d 424 (D.C. Cir. 2013) (*United States v. CRLA).*

Grant Assurance 11 currently requires LSC recipients to provide LSC and federal agencies or independent auditors or monitors reviewing the recipient access to financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld under "applicable law." As with Grant Assurance 10, the initial proposed change would have required LSC recipients to provide access to reports and records in accordance with federal law.

The comments regarding the proposed changes to Grant Assurances 10 and 11 urged LSC to withdraw the proposed change, or to revise the language to permit access to records based on "applicable laws and rules," or pursuant to court order. In particular, the comments noted that "in some states the [LSC recipient] lawyer may be required to test the validity of a demand for disclosure to avoid a disciplinary infraction." *(See comments from the American Bar Association, page 2).* LSC management believes that the potential unintended consequences of the initial proposed change to Grant Assurances 10 and 11 outweighed the benefits of the proposed change to these Grant Assurances. LSC currently requires, and has required for more than a decade, through the LSC Certification that its recipients consent to the exclusive jurisdiction of the United States District Court for the District of Columbia regarding disputes involving a grant, including this grant assurance. Thus, *United States v. CRLA* provides controlling law on this issue. As a result, LSC

management has decided to retain the longstanding language regarding access based on "applicable law" and to make only minor changes for clarity. (*The revised language is shown in redline format at Attachment 4.)*

Grant Assurance 15 currently requires LSC recipients to notify the OIG when it has "reason to believe it has been the victim of a loss of $200 or more as a result of any crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when local, state, or Federal law enforcement officials are contacted by the program about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes, that could lead to a loss of $200 or more." The change to the Grant Assurance is intended to make explicit to LSC recipients that fraudulent timekeeping is covered by this grant assurance and must also be reported to the OIG. The initial change proposed added the word "time" so that the first clause would have read "any crime, fraud, misappropriation, embezzlement, or theft involving property, *time*, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance . . . ." (Emphasis added.)

With regard to the change to Grant Assurance 15 that LSC initially proposed, the comments expressed concern that inadvertent, unintentional timekeeping errors would be subject to mandatory reporting to the OIG. That was not LSC's intention. LSC has since clarified Grant Assurance 15 to make clear that the reporting obligation applies to "willful misrepresentation of theft" of time having a value of $200 or more. (*The revised language is shown in redline format at Attachment 4.)*

Please see attachment three for a more detailed summary regarding Grant Assurances 10, 11, and 15.

This memorandum includes the following six attachments:

- **Attachment 1** is the LSC *"Statement of Purpose* - Grant Assurances," which is the guide LSC uses in considering revisions to the Grant Assurances.

- **Attachment 2** contains the rationale for the proposed revisions for the 2015 Grant Assurances. Revisions are proposed for Grant Assurances 8, 9, 10, 11, 15, and 16.

- **Attachment 3** provides a more detailed summary regarding Grant Assurances 10, 11, and 15.

- **Attachment 4** is a copy of the 2015 Grant Assurances shown in redline format from the current Grant Assurances.

- **Attachment 5** is a clean copy of the 2015 Grant Assurances.

I do not believe that the 2015 Grant Assurances require action by the Operations and Regulations Committee, or the full Board. In recent years; however, Grant Assurances have been presented to this Committee. Consistent with that practice I am submitting them to the Committee.

I would be happy to answer any questions you may have or provide any additional information you would like.

ATTACHMENT – 1

LSC

Statement of Purpose - LSC Grant Assurances
(Final - January 18, 2007)

The purpose of the LSC Grant Assurances is to delineate the rights and responsibilities of LSC and the recipient pursuant to the provisions of the grant.[1]

As a grant making agency created by Congress, LSC has Grant Assurances that are intended to reiterate and/or clarify the responsibilities and obligations already applicable through existing law and regulations and/or obligate the recipient to comply with specific additional requirements in order to effectuate the purposes of the LSC Act and other applicable law.

LSC Grant Assurances must serve one or more of the following objectives:

1) Ensure or support compliance with applicable law

2) Protect the legal and financial interests of LSC as grantor

3) Enable LSC to administer its grants effectively and efficiently

4) Promote the effective delivery of high quality legal services to eligible clients in an efficient manner

5) Prevent disputes and promote the expeditious resolution of any disputes that do occur

In addition, if a potential Grant Assurance serves one or more of the objectives stated above, in order for it to be included, it must meet the following requirements:

1) It is reasonably related to the purpose of the grant

2) It is appropriate for uniform application to all recipients

3) It is not duplicative of another existing Grant Assurance

[1]There are substantive distinctions between Grant Assurances and special grant conditions. Grant assurances apply to all grantees. Special grant conditions are specific in application to an individual grantee.

Further, a potential Grant Assurance which appears appropriate for inclusion because it fulfills the criteria set forth above should also:

4) be drafted in simple and straightforward terms, to the extent possible, and

5) the value of its objectives should outweigh any additional burden that the Grant Assurance imposes on grantees (does not apply to reiteration of statutory or regulatory requirements)

If a Grant Assurance reiterates a statutory or regulatory requirement, one or more of the following applies:

1) It clarifies the requirement in order to provide additional guidance

2) It provides specific notice of the requirement which might not be otherwise readily known to the grantee

3) LSC is required by statute or regulation to include the requirement in the Grant Assurances

ATTACHMENT – 2

Summary of proposed changes for the 2015 Grant Assurances

Grant Assurances 8, 9, 10, 11, 15, and 16 *are affected. To facilitate your review, the updates are shown in redline format at Attachment 4 and as a clean copy with changes accepted at Attachment 5.*

Grant Assurance 8 *(This Grant Assurance requires LSC recipients to have an information security system, the capacity to conduct program-wide conflicts checking, a system for backing up program data, the capacity to digitally transmit data to LSC, and appropriate computer hardware and software for case handlers.)*

The proposed change is a technical edit in the last sentence of Grant Assurance 8, paragraph (e). It provides the numeric form of the number that is spelled out in the text.

Rationale: The technical edit further clarifies the Grant Assurance.

Grant Assurance 9 *(This Grant Assurance requires LSC recipients to work with other LSC and non-LSC funded legal services providers in the state to ensure that there is a statewide website that publishes a full range of legal information covering the common issues facing the client community.)*

The proposed change requires LSC recipients to notify statewide website visitors that LSC recipients' participation in the website is consistent with the LSC Act and regulations, and provides recipients with sample disclaimer language to that effect.

Rationale: The proposed change helps ensure that the LSC brand is not associated with programs engaged in activities that are restricted by the LSC Act and regulations.

Grant Assurance 10 *(This Grant Assurance requires LSC recipients to provide LSC and the U.S. Comptroller General access to records, to which they are entitled under the provisions of the LSC Act and other applicable law.)*

The proposed changes are technical edits in the last two sentences.

Rationale: The proposed changes further clarify the Grant Assurance.

Grant Assurance 11 *(This Grant Assurance requires LSC recipients to provide LSC and federal agencies or independent auditors or monitors reviewing the recipient access to financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law.)*

The proposed changes are technical edits in the last two sentences.

Rationale: The proposed changes further clarify the Grant Assurance.

Grant Assurance 15 *(This Grant Assurance requires LSC recipients to notify the OIG when it has "reason to believe it has been the victim of a loss of $200 or more as a result of any crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when local, state, or Federal law enforcement officials are contacted by the program about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes, that could lead to a loss of $200 or more.")*

The proposed change notifies LSC recipients that fraudulent timekeeping must be reported to the OIG.

Rationale: The Grant Assurance emphasizes that willful misrepresentation of time is as serious as taking property or funds, and that time is something that can be stolen and must be reported.

Grant Assurance 16 *(This Grant Assurance requires recipients to notify LSC of a receipt of any notice of a claim for attorney's fees from the recipient; any monetary judgment, sanction, or penalty entered against the recipient; or a force majeure event.)*

The proposed change to the Grant Assurance requires LSC recipients to notify LSC if any of the recipient's key staff officials have been charged with fraud, misappropriation, embezzlement, theft, or any similar offense, or is subjected to suspension, loss of license, or other disciplinary action by a bar or other professional licensing organization.

Rationale: The factors noted above regarding key staff officials, may signal a potential risk as the staff member might be facing significant pressures or significant debt.

ATTACHMENT – 3

Detailed Summary Regarding Grant Assurances 10, 11, and 15

Grant Assurance 10 requires LSC recipients to give LSC and the U.S. Comptroller General access to records they are entitled to under the provisions of the LSC Act and other applicable law. The longstanding language in this provision has provided consent by applicants that as grantees they will provide materials requested by LSC except as "properly withheld due to applicable law or rules." Separately, all applicants/grantees agree in the grant certifications to the exclusive jurisdiction of the U.S. District Court for the District of Columbia. Last year, the Court of Appeals for the District of Columbia Circuit ruled that only federal law, such as federal attorney-client privilege, applies to LSC access to grantee information. *United States v. Cal. Rural Legal Assistance*, 722 F.3d 424 (D.C. Cir. 2013) (*United States v. CRLA).* That case involved an action to enforce an OIG subpoena for documents held by an LSC recipient. The court rejected arguments that, under the LSC Act, state laws and rules regarding client secrets and attorney-client privilege limit LSC's access to information. The D.C. Circuit's decision determines the applicable law. The OIG recommended changing references to "applicable law and rules" in this Grant Assurance to refer to "federal law." LSC included that language in the draft provided for public comment.

LSC received eight comments – four from non-grantees and four from grantees – on the proposed changes to Grant Assurances 10 and 11. The non-grantees are the American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), the Office of Disciplinary Counsel of the Washington State Bar Association, and Legal Services of New Jersey. The four grantees are Legal Aid of Western Missouri, Northwest Justice Project (Washington State), Legal Services of North Florida, and Community Legal Services of Mid-Florida. The comments appear in the board book after this memo and attachments. After review of the comments, LSC determined that the existing "applicable law" language incorporates the *United States v. CRLA* decision and that changing it could create unnecessary and unintended problems. The proposed language retains the phrase "applicable law." LSC does not agree with the comments that question the applicability of *United States v. CRLA.* The proposed change also includes technical edits in the last two sentences, which further clarify the Grant Assurance. *The revised language is shown in redline format at Attachment 4.*

Grant Assurance 11 requires LSC recipients to provide LSC and federal agencies or independent auditors or monitors reviewing the recipient access to financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law. As with Grant Assurance 10, we proposed changes from reference to "applicable law" to reference to "federal law" based on the decision in *United States v. CRLA*, but, after reviewing the comments, decided not to make them. The only changes we now propose are technical edits, which further clarify the Grant Assurance. *The revised language is shown in redline format at Attachment 4.*

Grant Assurance 15 requires LSC recipients to notify the OIG when it has "reason to believe it has been the victim of a loss of $200 or more as a result of any crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when local, state, or Federal law enforcement officials are contacted by the program about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes, that could lead to a loss of $200 or more."

The original change proposed added the word "time" so that the first clause would read, "any crime, fraud, misappropriation, embezzlement, or theft involving property, *time*, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance . . . ." (Emphasis added.) Management's intent was to make explicit to LSC recipients that fraudulent timekeeping is a form of theft and must be reported to the OIG.

The comments received, which were from three LSC recipients and NLADA, indicated that the change was unnecessary, could create uncertainty about what actions are subject to mandatory reporting, and could be misinterpreted as involving LSC in the recipients' internal timekeeping policies or personnel matters. The comments appear in the board book after this memo and attachments.

Management agrees that the change initially proposed for the grant assurance might not have been sufficiently clear based on the four comments received, and has since clarified the proposed change in the Grant Assurance. The clarification emphasizes that recipients are to report "willful misrepresentation or theft of time." The proposed change is not intended to involve LSC in recipients' internal timekeeping policies or personnel matters, nor is it intended to require recipients to report mere timekeeping mistakes to LSC. *The revised language is shown in redline format at Attachment 4.*

ATTACHMENT – 4

LSC Grant Assurances
Proposed for Calendar Year 2015 Funding

If Applicant is successful and receives an LSC grant or contract,

APPLICANT HEREBY ASSURES THAT:

1. It will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide (2010 Edition), the CSR Handbook (2008 Edition, as amended 2011), the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant. It will comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. It understands that a successful Applicant may be required to agree to special grant conditions as a condition of receiving the grant. Multi-year grants must be renewed each year. Upon renewal, new terms and conditions may apply.

2. It agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1). It understands that if Applicant violates any Federal laws identified in 45 C.F.R. Part 1640, it may be subject to civil, criminal and/or administrative penalties. It represents that it has informed employees and board members of the Federal laws and their consequences both to the recipient and to themselves as individuals as required in 45 C.F.R. § 1640.3.

3. It agrees that all derivative income from these grant funds shall also be subject to the terms and conditions of this grant as authorized by 45 C.F.R. Part 1630.

4. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, sexual orientation, or any other basis prohibited by law against: (1) any person applying for employment or employed by the Applicant; or (2) any person seeking or provided assistance from the Applicant or other program(s) supported in whole or in part by this grant. The governing body has adopted or will adopt in a timely manner Equal Opportunity and Sexual Harassment Policies, each of which must include an effective mechanism for processing complaints.

5. It will notify the LSC Office of Inspector General (OIG) within thirty (30) calendar days after replacement of the Independent Public Accountant (IPA), termination of the IPA, or any other occurrence resulting in a new IPA performing the grantee's annual financial audit. No audit costs may be charged to the LSC grant when the audit required has not been made in accordance with the guidance promulgated by the OIG. It understands that if it fails to have an audit acceptable to the OIG in accordance with the OIG's audit guidance (including the Audit Guide for Recipients and Auditors), LSC may impose sanctions in addition to those specified by statute, which are: (1) withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (2) suspension of the recipient's funding until an acceptable audit is completed. Other possible sanctions that LSC may impose for not having an acceptable audit include special grant conditions and/or corrective actions.

6. It understands that Congress may reduce, rescind or sequester LSC funding or may impose additional requirements or restrictions on the use of LSC funding. An award of a grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress, nor preclude the imposition of additional Congressional requirements on any funds that are so disbursed. Such requirements or reductions as implemented by LSC shall not constitute a termination or suspension of funding.

7. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with LSC, and agrees to provide high quality, economical, and effective legal assistance, as measured by the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, and consistent with any applicable code or rules of professional conduct, responsibilities, or ethics.

8. With respect to its office technology:

   (a) it has an information security system that ensures confidentiality and security of its operations, assets, data, and files.

   (b) it will conduct program-wide conflicts checking contemporaneously with intake using a case management system with an electronic database, including when intake is conducted outside its offices and contemporaneous access to the case management system is available.

   (c) it has a plan for backing up case management data, financial data, documents and other critical data. It performs these backups at least weekly and checks their integrity by restoring test files. Further, it stores electronic or physical copies of these backups in a safe, offsite location.

   (d) it has the capacity to convert paper documents into Portable Document Format (PDF) and the capacity to transmit those documents as electronic files.

(e) each case handler has a computer at her or his work area that can perform all of the following functions: word processing, access to the case management system, access to time-keeping, access to the Internet, including the ability to download files from the Internet, and e-mail capability with the capacity to send and receive messages and attachments both internally and externally. It understands that the above functions describe the minimum functionality of existing computers only. It further agrees that any new computer, monitor, or printer purchased to perform the above functions will have a capacity to exceed the demands of current operating systems and software so that it can reasonably be expected to perform adequately with few upgrades for at least three (3) years.

9. It will work with other LSC and non-LSC-funded legal services providers in the State to ensure that there is a statewide website that publishes a full range of relevant and up-to-date community legal education/pro se related materials and referral information, at least covering the common topics facing the client communities on the subject matters that are the Applicant's priorities. It will contribute to sustaining said website according to the plan for the development and maintenance of the website adopted by the statewide website Stakeholders Committee of which it will be a member. As a member of the Committee it will work to ensure that: 1) outreach is conducted for members of the client community to inform them of the website and about how to use it, 2) the website is periodically evaluated and updated for ease of use and accessibility to meet the needs of as many consumers as possible, ~~and 3) the LSC logo is used on at least the homepage of the website~~3) the LSC logo is included on the website, at least on the homepage, and 4) the website indicates that LSC funded programs participate in the website consistent with LSC restrictions. *Sample disclaimer language for the homepage or other prominent location: LSC's support for this website is limited to those activities that are consistent with LSC restrictions* (see Grant Assurance 21 for further instructions and clarification on terms of usage). If a Technology Initiative Grant (TIG) was awarded to start the website using either the LawHelp or Open Source template, it will maintain the scope of functionality of the template it was using, including the capability of having separate sections on the website for clients, legal services advocates, and pro bono attorneys; adhering to the "National Subject Matter Index"; and the ability to use the LawHelp interactive HotDocs server.

10. During normal business hours and upon request, it will give any authorized representative of LSC, including the OIG, or the Comptroller General of the United States (which includes the Government Accountability Office (GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent ~~possible~~ consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy ~~rights~~interests of the Applicant's staff members. For ~~those records~~each record subject to the attorney-client privilege, it will identify in writing the specific record~~(s)~~ or portion thereof not being provided and the legal justification for not providing the record~~(s).~~ or portion thereof.

11. Notwithstanding any other Grant Assurance, §1006(b)(3) of the LSC Act, 42 U.S.C. § 2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC, including the OIG, and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For ~~those reports or records~~each record subject to the attorney-client privilege, it will identify in writing the specific record~~(s)~~ or portion thereof not being provided and the legal justification for not providing the record~~.~~ or portion thereof. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.

12. It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, including the OIG, or its agents. Such cooperation shall include making staff available to LSC, including the OIG, or its agents for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. § 3. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.

13. It will not take or threaten to take any disciplinary or other retaliatory action against any person because of any appropriate cooperation with or the appropriate release of information to LSC, including the OIG, or other entity authorized to receive such cooperation or information pursuant to applicable procedures and consistent with any applicable law, code of ethics, or rule of professional responsibility. It will notify its employees and volunteers in writing that it will not take any disciplinary or other retaliatory action against an employee or volunteer (including board members) for any appropriate cooperation with LSC, including the OIG, or other entity authorized to receive such cooperation.

14. It will notify the LSC Office of Information Management within thirty (30) calendar days after any of the following occurrences that involve activities funded by the grant:

    a. a decision to close and/or relocate any main or staffed branch office;
    b. change of chairperson of the governing/policy body (including the new chairperson's name, telephone number, and e-mail address);
    c. change of chief executive officer (including the new chief executive officer's name, telephone number, and e-mail address);
    d. change in its charter, articles of incorporation, by-laws, or governing body structure; or
    e. change in its main e-mail address or its website address (URL).

15. It will notify the LSC OIG Hotline (Telephone: 800-678-8868 or 202-295-1670; E-mail hotline@oig.lsc.gov; Fax 202-337-7155) within two (2) business days of the discovery of any information that gives it reason to believe it has been the victim of a loss of $200 or more as a result of any: willful misrepresentation or theft of time, crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, ~~as well as~~and/or non-LSC funds used for the provision of legal assistance; or when the grantee has contacted local, state, or Federal law enforcement officials ~~are contacted by the program~~ about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes that could lead to a loss of $200 or more. The required notice shall be provided regardless of whether the funds or property are recovered. Once it has determined that a reportable event has occurred, it agrees it will contact the OIG before conducting its own investigation into the occurrence.

16. It will notify the LSC Office of Compliance and Enforcement ~~(OCE)~~ within twenty (20) calendar days whenever:

(a) under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f), the Applicant receives any notice of a claim for attorneys' fees. The Applicant also will forward, upon receipt, a copy of the pleading requesting these attorneys' fees;

(b) any of the following events likely to have a substantial impact on its delivery of services occur:

(i) a monetary judgment, sanction or penalty has been entered against it;
(ii) it enters into a voluntary settlement of an action or matter which involves the payment of a monetary judgment, sanction or penalty;
(iii) it experiences a *force majeure* event.

(c) any of a grantee's key officials (executive director, chief financial officer, or other key financial official) is charged with fraud, misappropriation, embezzlement, theft, or any similar offense, or is subjected to suspension, loss of license, or other disciplinary action by a bar or other professional licensing organization.

17. It will maintain all records pertaining to the grant during the grant year and for such period(s) of time as prescribed by the Accounting Guide for LSC Recipients, Appendix II (2010 Edition) after expiration of the grant year. With respect to financial records, it will maintain originals (or digital images thereof unless otherwise required by applicable law) of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. LSC retains the right to perform an audit, or engage independent auditors to do so, whether during or subsequent to the grant period.

18. It will, in accordance with internal policies, retain and preserve closed client files for a period of not less than five (5) years from the date the file is closed or for the period set by Federal, state, or local rules on maintenance of records, whichever is longer.

19. In the event that the Applicant merges or consolidates with another LSC grantee, changes its current identity or status as a legal entity, or ceases to be a direct recipient of LSC grant funds at the end of the grant term or during the grant term for whatever reason, it agrees:

    a. to provide the LSC Office of Program Performance (OPP) with written notice at least sixty (60) calendar days prior to any of the above events (except when the LSC grant relationship changes as a result of LSC action);

    b. not to transfer its interests in its LSC grant to another entity without prior approval from LSC for such transfer, including submission to LSC and approval by LSC of a Successor in Interest Agreement;

    c. to ensure that any successor entity maintains the Applicant's records, including financial records, for a period of six (6) years after expiration of the grant year to which they pertain and maintains client files for a period of not less than five (5) years after the closure of the case to which they pertain;

    d. to submit to the LSC OPP, either at the time that it provides the written notice in (a) above, or within fifteen (15) calendar days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the Applicant as a recipient of LSC funds. Detailed instructions for preparing this plan are at www.grants.lsc.gov under the title "Planning the Orderly Conclusion of the Role and Responsibilities of a Recipient of LSC Funds." Once at the website, click "RIN," then locate the instructions under "Grantee Guidance."

20. It agrees to cooperate with LSC in its efforts to follow up on audit findings, recommendations, significant deficiencies or material weaknesses, and corrective actions by LSC, including the OIG, or the GAO, and/or with the findings, recommendations or significant deficiencies or material weaknesses found by the Applicant's IPA to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. It agrees to expeditiously resolve all such reported audit findings, significant deficiencies or material weaknesses, and corrective actions, including those of sub-recipients, to the satisfaction of LSC.

21. It will use the LSC logo on any Internet website page that may serve as a "homepage" for the Applicant, and on its Annual Report, press releases, and official letterhead, and may use the logo on other official documents such as business cards, newsletters, telephone directory listings or other advertisements or announcements about services provided by the Applicant and supported with LSC funds. It understands that the LSC logo is a registered service mark of LSC and that permission to use the logo is provided to Applicant under a limited license such that the logo may be used: (1) only while Applicant is receiving LSC funds; (2) only for the purposes described above; and (3) only in accordance with such size, format and color instructions as LSC provides. Other uses of the logo are not permitted unless expressly authorized in writing by LSC. Electronic and camera-ready versions of the logo are available at www.grants.lsc.gov. Once at the website, click "Resources," then click "Reference Materials" to access the logo.

_____	_____
Name of Executive Director	Name of Governing/Policy Board Chairperson (or other organization official authorizing this application)
_____	_____
Title	Title
_____	_____
Signature	Signature
_____	_____
Date	Date

ATTACHMENT – 5

LSC Grant Assurances
Proposed for Calendar Year 2015 Funding

If Applicant is successful and receives an LSC grant or contract,

APPLICANT HEREBY ASSURES THAT:

1. It will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide (2010 Edition), the CSR Handbook (2008 Edition, as amended 2011), the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant. It will comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. It understands that a successful Applicant may be required to agree to special grant conditions as a condition of receiving the grant. Multi-year grants must be renewed each year. Upon renewal, new terms and conditions may apply.

2. It agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1). It understands that if Applicant violates any Federal laws identified in 45 C.F.R. Part 1640, it may be subject to civil, criminal and/or administrative penalties. It represents that it has informed employees and board members of the Federal laws and their consequences both to the recipient and to themselves as individuals as required in 45 C.F.R. § 1640.3.

3. It agrees that all derivative income from these grant funds shall also be subject to the terms and conditions of this grant as authorized by 45 C.F.R. Part 1630.

4. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, sexual orientation, or any other basis prohibited by law against: (1) any person applying for employment or employed by the Applicant; or (2) any person seeking or provided assistance from the Applicant or other program(s) supported in whole or in part by this grant. The governing body has adopted or will adopt in a timely

manner Equal Opportunity and Sexual Harassment Policies, each of which must include an effective mechanism for processing complaints.

5. It will notify the LSC Office of Inspector General (OIG) within thirty (30) calendar days after replacement of the Independent Public Accountant (IPA), termination of the IPA, or any other occurrence resulting in a new IPA performing the grantee's annual financial audit. No audit costs may be charged to the LSC grant when the audit required has not been made in accordance with the guidance promulgated by the OIG. It understands that if it fails to have an audit acceptable to the OIG in accordance with the OIG's audit guidance (including the Audit Guide for Recipients and Auditors), LSC may impose sanctions in addition to those specified by statute, which are: (1) withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (2) suspension of the recipient's funding until an acceptable audit is completed. Other possible sanctions that LSC may impose for not having an acceptable audit include special grant conditions and/or corrective actions.

6. It understands that Congress may reduce, rescind or sequester LSC funding or may impose additional requirements or restrictions on the use of LSC funding. An award of a grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress, nor preclude the imposition of additional Congressional requirements on any funds that are so disbursed. Such requirements or reductions as implemented by LSC shall not constitute a termination or suspension of funding.

7. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with LSC, and agrees to provide high quality, economical, and effective legal assistance, as measured by the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, and consistent with any applicable code or rules of professional conduct, responsibilities, or ethics.

8. With respect to its office technology:

   (a) it has an information security system that ensures confidentiality and security of its operations, assets, data, and files.

   (b) it will conduct program-wide conflicts checking contemporaneously with intake using a case management system with an electronic database, including when intake is conducted outside its offices and contemporaneous access to the case management system is available.

   (c) it has a plan for backing up case management data, financial data, documents and other critical data. It performs these backups at least weekly and checks their integrity by restoring test files. Further, it stores electronic or physical copies of these backups in a safe, offsite location.

(d) it has the capacity to convert paper documents into Portable Document Format (PDF) and the capacity to transmit those documents as electronic files.

(e) each case handler has a computer at her or his work area that can perform all of the following functions: word processing, access to the case management system, access to time-keeping, access to the Internet, including the ability to download files from the Internet, and e-mail capability with the capacity to send and receive messages and attachments both internally and externally. It understands that the above functions describe the minimum functionality of existing computers only. It further agrees that any new computer, monitor, or printer purchased to perform the above functions will have a capacity to exceed the demands of current operating systems and software so that it can reasonably be expected to perform adequately with few upgrades for at least three (3) years.

9. It will work with other LSC and non-LSC-funded legal services providers in the State to ensure that there is a statewide website that publishes a full range of relevant and up-to-date community legal education/pro se related materials and referral information, at least covering the common topics facing the client communities on the subject matters that are the Applicant's priorities. It will contribute to sustaining said website according to the plan for the development and maintenance of the website adopted by the statewide website Stakeholders Committee of which it will be a member. As a member of the Committee it will work to ensure that: 1) outreach is conducted for members of the client community to inform them of the website and about how to use it, 2) the website is periodically evaluated and updated for ease of use and accessibility to meet the needs of as many consumers as possible, 3) the LSC logo is included on the website, at least on the homepage, and 4) the website indicates that LSC funded programs participate in the website consistent with LSC restrictions. *Sample disclaimer language for the homepage or other prominent location: LSC's support for this website is limited to those activities that are consistent with LSC restrictions* (see Grant Assurance 21 for further instructions and clarification on terms of usage). If a Technology Initiative Grant (TIG) was awarded to start the website using either the LawHelp or Open Source template, it will maintain the scope of functionality of the template it was using, including the capability of having separate sections on the website for clients, legal services advocates, and pro bono attorneys; adhering to the "National Subject Matter Index"; and the ability to use the LawHelp interactive HotDocs server.

10. During normal business hours and upon request, it will give any authorized representative of LSC, including the OIG, or the Comptroller General of the United States (which includes the Government Accountability Office (GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy interests of the Applicant's staff members. For each record subject to the attorney-client privilege, it will identify in writing the specific record or portion thereof

not being provided and the legal justification for not providing the record or portion thereof.

11. Notwithstanding any other Grant Assurance, §1006(b)(3) of the LSC Act, 42 U.S.C. § 2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC, including the OIG, and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For each record subject to the attorney-client privilege, it will identify in writing the specific record or portion thereof not being provided and the legal justification for not providing the record or portion thereof. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.

12. It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, including the OIG, or its agents. Such cooperation shall include making staff available to LSC, including the OIG, or its agents for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. § 3. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.

13. It will not take or threaten to take any disciplinary or other retaliatory action against any person because of any appropriate cooperation with or the appropriate release of information to LSC, including the OIG, or other entity authorized to receive such cooperation or information pursuant to applicable procedures and consistent with any applicable law, code of ethics, or rule of professional responsibility. It will notify its employees and volunteers in writing that it will not take any disciplinary or other retaliatory action against an employee or volunteer (including board members) for any appropriate cooperation with LSC, including the OIG, or other entity authorized to receive such cooperation.

14. It will notify the LSC Office of Information Management within thirty (30) calendar days after any of the following occurrences that involve activities funded by the grant:

    a. a decision to close and/or relocate any main or staffed branch office;
    b. change of chairperson of the governing/policy body (including the new chairperson's name, telephone number, and e-mail address);
    c. change of chief executive officer (including the new chief executive officer's name, telephone number, and e-mail address);

d. change in its charter, articles of incorporation, by-laws, or governing body structure; or
e. change in its main e-mail address or its website address (URL).

15. It will notify the LSC OIG Hotline (Telephone: 800-678-8868 or 202-295-1670; E-mail hotline@oig.lsc.gov; Fax 202-337-7155) within two (2) business days of the discovery of any information that gives it reason to believe it has been the victim of a loss of $200 or more as a result of any: willful misrepresentation or theft of time, crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, and/or non-LSC funds used for the provision of legal assistance; or when the grantee has contacted local, state, or Federal law enforcement officials about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes that could lead to a loss of $200 or more. The required notice shall be provided regardless of whether the funds or property are recovered. Once it has determined that a reportable event has occurred, it agrees it will contact the OIG before conducting its own investigation into the occurrence.

16. It will notify the LSC Office of Compliance and Enforcement within twenty (20) calendar days whenever:

(a) under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f), the Applicant receives any notice of a claim for attorneys' fees. The Applicant also will forward, upon receipt, a copy of the pleading requesting these attorneys' fees;

(b) any of the following events likely to have a substantial impact on its delivery of services occur:

(i) a monetary judgment, sanction or penalty has been entered against it;
(ii) it enters into a voluntary settlement of an action or matter which involves the payment of a monetary judgment, sanction or penalty;
(iii) it experiences a *force majeure* event.

(c) any of a grantee's key officials (executive director, chief financial officer, or other key financial official) is charged with fraud, misappropriation, embezzlement, theft, or any similar offense, or is subjected to suspension, loss of license, or other disciplinary action by a bar or other professional licensing organization.

17. It will maintain all records pertaining to the grant during the grant year and for such period(s) of time as prescribed by the Accounting Guide for LSC Recipients, Appendix II (2010 Edition) after expiration of the grant year. With respect to financial records, it will maintain originals (or digital images thereof unless otherwise required by applicable law) of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. LSC retains the right to perform an audit, or engage independent auditors to do so, whether during or subsequent to the grant period.

18. It will, in accordance with internal policies, retain and preserve closed client files for a period of not less than five (5) years from the date the file is closed or for the period set by Federal, state, or local rules on maintenance of records, whichever is longer.

19. In the event that the Applicant merges or consolidates with another LSC grantee, changes its current identity or status as a legal entity, or ceases to be a direct recipient of LSC grant funds at the end of the grant term or during the grant term for whatever reason, it agrees:

    a. to provide the LSC Office of Program Performance (OPP) with written notice at least sixty (60) calendar days prior to any of the above events (except when the LSC grant relationship changes as a result of LSC action);

    b. not to transfer its interests in its LSC grant to another entity without prior approval from LSC for such transfer, including submission to LSC and approval by LSC of a Successor in Interest Agreement;

    c. to ensure that any successor entity maintains the Applicant's records, including financial records, for a period of six (6) years after expiration of the grant year to which they pertain and maintains client files for a period of not less than five (5) years after the closure of the case to which they pertain;

    d. to submit to the LSC OPP, either at the time that it provides the written notice in (a) above, or within fifteen (15) calendar days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the Applicant as a recipient of LSC funds. Detailed instructions for preparing this plan are at www.grants.lsc.gov under the title "Planning the Orderly Conclusion of the Role and Responsibilities of a Recipient of LSC Funds." Once at the website, click "RIN," then locate the instructions under "Grantee Guidance."

20. It agrees to cooperate with LSC in its efforts to follow up on audit findings, recommendations, significant deficiencies or material weaknesses, and corrective actions by LSC, including the OIG, or the GAO, and/or with the findings, recommendations or significant deficiencies or material weaknesses found by the Applicant's IPA to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. It agrees to expeditiously resolve all such reported audit findings, significant deficiencies or material weaknesses, and corrective actions, including those of sub-recipients, to the satisfaction of LSC.

21. It will use the LSC logo on any Internet website page that may serve as a "homepage" for the Applicant, and on its Annual Report, press releases, and official letterhead, and may use the logo on other official documents such as business cards, newsletters, telephone directory listings or other advertisements or announcements about services provided by the Applicant and supported with LSC funds. It understands that the LSC logo is a registered service mark of LSC and that permission to use the logo is provided to Applicant under a limited license such that the logo may be used: (1) only while Applicant is receiving LSC funds; (2) only for the purposes described above; and (3) only in accordance with such size, format and color instructions as LSC provides. Other uses of the logo are not permitted unless expressly authorized in writing by LSC. Electronic and camera-ready versions of the logo are available at www.grants.lsc.gov. Once at the website, click "Resources," then click "Reference Materials" to access the logo.

_____	_____
Name of Executive Director	Name of Governing/Policy Board Chairperson (or other organization official authorizing this application)
_____	_____
Title	Title
_____	_____
Signature	Signature
_____	_____
Date	Date

Grant Assurances 10 and 11

Public Comments – Non-LSC Recipients

1. Washington State Bar
2. National Legal Aid and Defender Association
3. Legal Services of New Jersey
4. ABA

WSBA
OFFICE OF DISCIPLINARY COUNSEL

Douglas J. Ende
Chief Disciplinary Counsel

direct line: 206-733-5917
fax: 206-727-8325

June 9, 2014

Mr. Reginald J. Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

Re: Comments on Proposed Revisions to 2015 Grant Assurances 10 and 11

Dear Mr. Haley:

The proposed revisions to Grant Assurances 10 and 11 put Legal Services Corporation (LSC) grant recipients who employ lawyers in Washington State in the untenable position of having to assume disclosure obligations to LSC that appear to violate state law ethical obligations to clients. For this reason, I urge the LSC to reconsider the language of those assurances in a way that will accommodate these grant recipients.

I serve as the Chief Disciplinary Counsel for the Washington State Bar Association (WSBA). The WSBA is the mandatory licensing and disciplinary authority for lawyers in Washington State. The Washington Rules of Professional Conduct (RPC), as adopted by the Washington Supreme Court, constitute the code of ethical conduct applicable in Washington.[1] The rules are enforced by the WSBA Office of Disciplinary Counsel acting under the authority of the Washington Supreme Court in accordance with the state Rules for Enforcement of Lawyer Conduct (ELC).

As the WSBA Chief Disciplinary Counsel, I frequently interpret and apply Washington's RPC in the course of evaluating lawyer conduct. I have reviewed the proposed changes to the Legal Service Corporation's 2015 Grant Assurances.[2] It is my opinion that the proposed revisions to Grant Assurances 10 and 11, as applied to LSC grant recipients who employ lawyers in Washington, would create a conflict with obligations imposed upon these lawyers under Washington's RPC.

---

[1] The Washington RPC are available at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC

[2] 79 Fed. Reg. 24,454 (Apr. 30, 2014).

In my view, the proposed changes appear to create an untenable and unfair dilemma for lawyers employed by our statewide LSC-funded provider of civil legal aid, the Northwest Justice Project (NJP). If the proposed changes are adopted, NJP and its lawyers would potentially have to choose between receiving LSC funding by agreeing to comply with the disclosure provisions of Grant Assurances 10 and 11, or abiding by the Washington Rules of Professional Conduct. This is because NJP lawyers may be ethically prohibited from revealing information designated as confidential in Washington's RPC 1.6 in some situations where the Washington rule makes the information confidential but federal law and/or the federal attorney-client privilege does not protect the information from disclosure.

Like most U.S. jurisdictions, Washington's RPC are modeled on the American Bar Association's Model Rules of Professional Conduct (ABA Model Rules). This includes RPC 1.6, which, in short, ethically prohibits lawyers from revealing any "information relating to the representation," subject to narrow and specific exceptions contained in the rule. Unlike the ABA Model Rules, and unlike Rule 1.6 as adopted in most U.S. jurisdictions, Washington's rule *does not* include an exception permitting a lawyer to disclose information "to comply with other law." *Compare* ABA Model Rule 1.6(b)(6)[3] *with* Washington RPC 1.6(b)(6).[4]

As I understand it, the proposed revisions to Grant Assurances 10 and 11 reflect a position about how current federal law affectds disclosures by LSC funding recipients, i.e., that the only permissible grounds for nondisclosure are those available under federal law. It is for this specific reason that the proposed changes to the Grant Assurances are problematic. Again, based on an interpretation of federal law, it appears that the changes would require NJP lawyers to agree to unethically disclose certain client information (if not otherwise protected by federal law or federal attorney-client privilege) or risk loss of LSC funding.

---

[3] Model Rules of Prof'l Conduct R. 1.6 (2013 ed.), *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html

[4] When Washington's rules were amended in 2006, the Washington Supreme Court expressly declined to adopt the "other law" exception, which had been added to the ABA Model Rules in 2001. The reason is stated in the Comment to Washington's Rule 1.6, as follows:

> [24] Washington has not adopted that portion of Model Rule 1.6(b)(6) permitting a lawyer to reveal information related to the representation to comply with "other law." Washington's omission of this phrase arises from a concern that it would authorize the lawyer to decide whether a disclosure is required by "other law," even though the right to confidentiality and the right to waive confidentiality belong to the client. The decision to waive confidentiality should only be made by a fully informed client after consultation with the client's lawyer or by a court of competent jurisdiction. Limiting the exception to compliance with a court order protects the client's interest in maintaining confidentiality while insuring that any determination about the legal necessity of revealing confidential information will be made by a court. It is the need for a judicial resolution of such issues that necessitates the omission of "other law" from this Rule.

This view of Washington's RPC not only is evident in the plain language of Rule 1.6 itself, but also is consistent with a long line of Washington state ethics advisory opinions interpreting a lawyer's ethical obligations under RPC 1.6. For example, in 2008, the Washington State Bar Association's Rules of Professional Conduct Committee issued an ethics opinion that evaluated whether not-for-profit public defender agencies may disclose to a county funding authority information relating to individual client cases, including client names, cause numbers and outcomes. The opinion concluded that when information is subject to Rule 1.6, it may not ethically be disclosed under such circumstances. WSBA Ethics Advisory Opinion 2185 (2008). That opinion was in part based on an earlier advisory opinion in which the Committee concluded that RPC 1.6 prohibits legal services lawyers from disclosing original records or any other information relating to the representation of a client to the Legal Services Corporation without first obtaining the informed consent of the client to disclose it. *See* WSBA Ethics Advisory Opinion 183 (1990). Also of significance is Opinion 195, which opined that a lawyer cannot reveal to a third-party insurer confidential information relating to the representation without the client's informed consent. In that opinion, the Committee observed that a lawyer cannot be contractually obligated to seek and obtain informed consent to such a disclosure, because the arrangement would create a conflict of interest with the interests of the client and place the lawyer in an "impossible situation." The Committee explained that "a 'requirement' to seek or obtain the client's consent to disclosure would put defense counsel in an ethical dilemma requiring withdrawal from the representation." WSBA Ethics Advisory Opinion 195 (1999).

NJP lawyers will be cornered by this same ethical dilemma if NJP is required to agree to disclose client information under proposed Grant Assurances 10 and 11 as a condition of receiving its LSC funding in 2015.

Finally, I note that there may be a way for the LSC Grant Assurances to accommodate the special circumstances faced by Washington State lawyers endeavoring to comply with their ethical obligations. Notwithstanding the absence of an "other law" exception, Washington's RPC 1.6 does permit a lawyer to reveal information relating to the representation of a client when reasonably believed necessary "to comply with a court order." RPC 1.6(b)(6).[5] This solution to the ethical dilemma faced by Washington lawyers was discussed at length in an ethics advisory opinion discussing lawyer compliance with the U.S. Treasury Department IRS Form 8300, which requires the disclosure of the identity of a client making cash payments of more than $10,000 to the lawyer. According to that opinion (which notes the absence of an "other law" exception in RPC 1.6), the lawyer must not disclose to the Treasury Department, through

[5] Comment [13] to Washington RPC 1.6 provides as follows:

> A lawyer may be ordered to reveal information relating to the representation of a client by a court. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

the filing of IRS Form 8300 or otherwise, any information pertinent to the client's identity when the client has not given informed consent to the disclosure. The opinion continues as follows:

> If a summons is served upon a lawyer, the lawyer must continue to decline to disclose confidential client information except in compliance with RPC 1.6. If the government then seeks enforcement of the summons through the federal courts, the lawyer must respond properly and litigate fully the issue of disclosure, and raise all nonfrivolous claims that the information is protected from disclosure by lawyer-client privilege or other applicable law. . . . If ordered to disclose by a judge, a lawyer may then do so in compliance with RPC 1.6(b)(6), which permits a lawyer to reveal client confidential information to the extent the lawyer reasonably believes necessary "to comply with a court order."

WSBA Ethics Advisory Opinion 194 (1997) (citations omitted).

Thus, an NJP lawyer could ethically agree to disclose client-specific information in response to a federal subpoena and a directive to comply by court order, after asserting any non-frivolous protections against disclosure. I suggest the LSC consider crafting the Grant Assurances to authorize use of this procedure by Washington grant recipients and others similarly situated.

Thank you for the opportunity to comment on the proposed changes to the 2015 LSC Grant Assurances.

Sincerely,

Douglas Ende
Chief Disciplinary Counsel
Washington State Bar Association

cc: Patrick A. Palace, President, Washington State Bar Association
Paula C. Littlewood, Executive Director, Washington State Bar Association
Deborah Perluss, Northwest Justice Project

NLADA
National Legal Aid &
Defender Association

Sent via e-mail to: *LSCGrantAssurances@lsc.gov*

Memorandum:

To: Reginald Haley

From: Dennis Groenenboom; Chair, NLADA Civil Policy Group
Silvia Argueta, Chair; NLADA Regulations and Policy Committee
Robin C. Murphy; NLADA Chief Counsel for Civil Programs

Re: **Comments Concerning Proposed Revisions to LSC 2015 Grant Assurances, Paragraphs 10 & 11 (**79 Fed. Reg. 24454-24455 (April 30, 2014))

Date: June 20, 2014

NLADA would like to thank the Legal Services Corporation ("LSC") for the opportunity to comment on the proposed revisions to the 2015 Grant Assurances. These comments are submitted on behalf of NLADA by its Civil Policy Group, the elected representative body that establishes policy for the NLADA Civil Legal Services Division, and by its Regulations and Policy Committee. NLADA offers the following comments to Paragraphs 10 and 11 in the Notice of Proposed Revisions for the LSC Grant Assurances for Calendar Year 2015 Funding, published on April 30, 2014 in the Federal Register at 79 FR 24454.

We appreciate LSC's efforts to clearly set out in its annual grant assurances the duties and obligations of its grant recipients and LSC, thereby ensuring oversight for taxpayer dollars provided to organizations that provide civil legal assistance to eligible low income clients. However, the proposed revisions to paragraphs 10 and 11 do not serve to appropriately clarify recipients' responsibilities and obligations with respect to access to records issues.

In our view, the proposed changes in the assurances are unnecessary and raise concerns regarding how LSC intends to handle recipients' legitimate ethical questions on behalf of their clients regarding the proper scope or application of an administrative request or subpoena. We are concerned that the revisions might be misread to suggest that LSC could change its current practice and begin to address any differences it may have with a grantee over applicable ethical and legal rules through enforcement of grant assurances rather than by long-established procedures, initiated in 2004, that respect critical interests in the attorney-client relationship while also meeting LSC's need for appropriate oversight.

Elaborating on these concerns, first of all the proposed changes are simply unnecessary. LSC cites the decision in *U.S. v. California Rural Legal Assistance, Inc.,* 722 F.3d 424 (D.C. Cir. 2013) ("the *CRLA* decision") as necessitating a change from the current language allowing

access to client records under "applicable law" to access based on "Federal law." The *CRLA* decision, as well as other previous federal court decisions (e.g. *U.S. v. Legal Services New York*, 249 F. 3d 1077 (D.C. Cir. 2001)), are already "applicable law," and therefore are already covered by the current grant assurances. The proposed revisions attributed to the CRLA decision are thus not necessary.

Second, the changes are confusing, and might be misread to suggest that LSC intends to penalize grantees merely for asserting colorable client and other protections in good faith. Not only would such a policy comprise a sudden and unprecedented change in longstanding practice, it would exceed LSC's authority under governing law.

In the *CRLA* case, LSC-OIG and CRLA engaged in mediation before a magistrate judge, where it was determined that the OIG would voluntarily withdraw portions of its requests, including requests for all client telephone numbers, all client-identifying information in juvenile and domestic relations matters, and certain information within CRLA's database that contained attorney notes. The parties agreed that the court should only resolve "the general issue of whether, and if so, which California state privileges apply." *U.S. v. CRLA,* 824 F.Supp.2d at 39.

Despite the district court ruling against CRLA's assertions of state privilege and confidentiality, it made clear that CRLA "raised legitimate concerns about the privacy of their clients' confidential information." *U.S. v. CRLA,* 824 F.Supp.2d at 47. Therefore, the court issued a protective order establishing protocols for discovery consistent with the agreement of the parties. *Id* (reversed in part by the Court of Appeals, but leaving most of the protective order intact). These steps demonstrate both the court's and the OIG's recognition that recipient claims to protect client information under federal/applicable law may be properly raised and resolved in a district court. The decision clearly indicates that a number of colorable claims might still be raised, even in the overall context of federal law supremacy.

Decided case law and LSC Office of Legal Affairs ("OLA") External Opinion #EX-2004-1001 also establish that colorable claims can be made based on the federal attorney-client privilege (and, by extension, the federal attorney work-product doctrine), even for the specific records that LSC and the OIG are able to request under §509(h). In analyzing *U.S. v. LSNY,* 100 F.Supp.2d 42 (D.D.C. 2000), OLA determined that "while the courts rejected [the] blanket claims, they recognized that there *may* be specific cases in which a client name connected to a problem code would reveal privileged communications."

OLA drew this analysis directly from the *U.S. v. LSNY* district court decision: "This ruling does not mean that there is no case in which disclosure of the combination of a client's name and a problem code would reveal a client's 'motive' for seeking representation. This ruling is not intended to foreclose specific claims of privilege as to individual clients." *U.S. v. LSNY*, 100 F.Supp.2d at 46. Based on this decision, OLA concluded that "recipients may be able to make colorable 'specific claims of privilege as to individual clients' that providing such information would breach the privilege… we cannot foreclose the possibility that situations might arise in which the privilege would apply to these types of information." Similarly, "a recipient could raise a colorable specific claim of privilege as to §509(h) information in particular cases if the

information requested in the format requested would reveal genuinely privileged information about that case or client." OLA EX-2004-1001, p 5.

For all these reasons, the proposed amendments are both unnecessary and could be misinterpreted in ways inconsistent with prevailing law and current practice. We respectfully suggest that they be deleted.

If LSC nevertheless decides to go forward with these revisions, however, we strongly urge the inclusion of the following language to ensure that grant recipients and their staff attorneys are assured that they are able to meet their ethical obligations and protect the interests of their clients without the fear that doing so may jeopardize program funding:

> "Nothing in these Grant Assurances is intended to limit a grantee's right or duty to assert any colorable ground under applicable Federal law to withhold or prevent disclosure of any document or information, and present any such ground to an appropriate court for adjudication."

This language acknowledges an appropriate balance between LSC powers under the *CRLA* decision and other applicable law to obtain client records, and the critical duties that programs and their staff attorneys have to protect client information.

We appreciate your consideration of our comments.

LSNJ
Just Justice

Legal Services of New Jersey
100 Metroplex Drive at Plainfield Avenue
Suite 402, P.O. Box 1357
Edison, New Jersey 08818-1357
Phone: (732) 572-9100
Fax: (732) 572-0066
www.lsnj.org
www.lsnjlaw.org

Melville D. Miller, Jr.
President and General Counsel

BOARD OF TRUSTEES

Deborah T. Poritz, Esq.
Drinker Biddle & Reath LLP
Chairperson

James H. Coleman, Jr., Esq.
Porzio, Bromberg & Newman
Immediate Past Chairperson

Zulima V. Farber, Esq.
Lowenstein Sandler PC
Vice Chairperson

Cynthia M. Jacob, Esq.
Fisher & Phillips LLP
Vice Chairperson

Stephen M. Orlofsky, Esq.
Blank Rome LLP
Vice Chairperson

Karol Corbin Walker, Esq.
LeClairRyan
Vice Chairperson

Robert C. Holmes, Esq.
Rutgers School of Law, Newark
Secretary

Ivette R. Alvarez, Esq.
Einhorn, Harris, Ascher,
Barbarito & Frost

Richard J. Badolato, Esq.
Connell Foley

Robert J. Del Tufo, Esq.
Skadden, Arps, Slate,
Meagher & Flom LLP

Douglas S. Eakeley, Esq.
Lowenstein Sandler PC

Michael K. Furey, Esq.
Riker, Danzig, Scherer,
Hyland & Perretti LLP

Alan B. Handler, Esq.
Wilentz, Goldman & Spitzer

Ross A. Lewin, Esq.
Drinker Biddle & Reath LLP

Regina C. Little, Esq.
National Treasury Employees Union

Virginia A. Long, Esq.
Fox Rothschild LLP

Edwin J. McCreedy, Esq.
McCreedy & Cox

John L. McGoldrick, Esq.
Princeton

Lisa Rodriguez, Esq.
Schnader Harrison Segal & Lewis LLP

Robert G. Rose, Esq.
Day Pitney LLP

John E. Wallace, Jr., Esq.
Brown & Connery, LLP

Paul Wilson
Monmouth Junction

James R. Zazzali, Esq.
Zazzali, Fagella, Nowak,
Kleinbaum & Friedman

PAST BOARD CHAIRS

James H. Coleman, 2006-2010
Michael R. Cole, 1996-2005
William D. Hardin, 1989-1996
Douglas S. Eakeley, 1981-1989

By regular and electronic mail – Rhaley@lsc.gov

June 20, 2014

Mr. Reginald J. Haley
Office of Program Performance
Legal Services Corporation
3333 K St. N.W.
Washington, D.C. 20007

Re: Comments Concerning Proposed Revisions to LSC 2015 Grant Assurances, Paragraphs 10 & 11 (79 Fed. Reg. 24454-24455) (April 30. 2014))

Dear Mr. Haley:

Legal Services of New Jersey ("LSNJ"), not an LSC recipient, coordinates the statewide Legal Services system for New Jersey, including the six regional Legal Services offices which are LSC recipients. LSNJ is the conduit for the majority of the system's funding, subgranting state, IOLTA, Campaign for Justice and some foundation dollars, most to the regional programs. On behalf of the statewide system and its constituents we submit these comments in regard to the proposed changes to the 2015 LSC 2015 Grant Assurances, Paragraphs 10 and 11 published on April 20, 2014 in the Federal Register at 79 FR 24454.

The proposed revisions would change the current exceptions to the case and client records disclosure requirements, from those materials that may be properly withheld "due to applicable law or rules," to those protected solely "under Federal law."

Legal Framework

Two statutory provisions frame this issue. The LSC Act, made applicable to the LSC each year through the appropriation process notwithstanding its lack of express authorization since 1978, references the ABA Model Code of Professional Responsibility, stating that the LSC will not interfere with recipient's professional responsibilities under the ABA Code:

> "The Corporation shall not…interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canon of Ethics and Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as "professional responsibilities") or *abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction.* The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities."
>
> 42 U. S.C. 2996e(b)(3) (Emphasis supplied.)

Riders to annual LSC appropriations, however, have since 1995 recognized an exception to this privilege in section 509(h):

> Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient shall be made available to any auditor or monitor of the recipient, including any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation, except for reports or records subject to the attorney-client privilege.

See, for example, Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-234 § 509 (h) (carried forward in successive LSC appropriations).

Under fundamental canons of statutory construction, two potentially conflicting statutory provisions are, to the extent possible, to be read together in order to be harmonized, *in pari materia,* to the extent possible. While 509(h) unquestionably constitutes a more specific exception to the LSC Act section, in particular situations the federal law pertaining to privilege may suggest or require referring to ABA or state rules or law. The "applicable law" verbiage in past grant assurances poses no threat to this statutory construction. The proposed "federal law" wording seriously clouds the landscape.

U.S. v. LSNY, 249 F. 3d 1077 (D.C. Cir. 2001) presented the issue of whether the production of client files, specifically client names, for an LSC Inspector General investigation of a Legal Services program. The D.C. Court of Appeals found that the federal subpoena to provide information was valid and not unduly burdensome to fulfill the requirements of an OIG's audit. Specifically, it recognized that the ABA Code exempts disclosures required by court order, and that because the subpoena was within the OIG's power, the disclosure is consistent with LSNY's ethical obligations to its clients.

Recognizing the *LSNY* ruling, and the need to read together the LSC Act and 509 (h), the LSC Protocol Regarding Access to Information in Grant Recipients' Files was issued on April 25, 2002. Harmonizing the LSC Act and the exception delineated in the Omnibus Consolidated Appropriations Act 509 (h), the LSC Protocol appropriately balances the LSC's access to records in a manner consistent with

the attorney-client privilege. In its General Principles, the Protocol explicitly states that "Recipients and LSC will work together in good faith regarding issues of access to records that may contain information protected by rules of professional responsibility or the law on attorney-client privilege." The LSC recognized its statutory responsibility to comply with the LSC Act and 509 (h) of the Omnibus Consolidated Appropriations Act by asserting a commitment to seek and accommodate reasonable approaches, acknowledge the uniqueness of state ethics rules, and in effect work collaboratively through ongoing communication and meetings with LSC recipients to come to acceptable resolutions.

The proposed revisions open the door to overriding the spirit and mandate of the 2002 LSC Protocol. While the proposed changes may be seen as more expeditious, in fact they only obfuscate the issue. The proposed grant changes are premised expressly upon the decision in *United States of America v. California Rural Legal Assistance, Inc.,* 722 F. 3d 4242 (U.S. App. D.C. 2013). *CRLA* broadly held the supremacy of federal law over state law when a federal administrative subpoena was involved, but did not address, let alone delineate guidelines for, the underlying substantive issue of how federal law on privilege should apply to *CRLA* or other grantee situations. The proposed changes can be read to compel an LSC grantee to waive the right to assert a colorable claim regarding professional conduct and attorney-client privilege. Such a waiver is not required under *CRLA.*

In the *CRLA* decision, the Court of Appeals accepted the District Court conclusions that it was compelled to enforce an administrative subpoena where it had been issued for a lawful purpose, the documents requested were relevant to that purpose, and the demand was reasonable and not unduly burdensome, merely affirming that federal attorney-client privilege governs LSC grantees where a federal subpoena is issued. In contrast, the LSC's proposed revision simply references federal law, without the *CRLA* context and predicate of a subpoena and court order, and, more importantly, without any reference to the particulars of applicable precedent, the LSC Act provision, the LSC Protocol, or the potential for colorable claims concerning the applicability of state law to the determination of need for the subject records and the reasonableness and burdensomeness of the demand.

In the past, LSC grantees have asserted colorable claims regarding privilege. In *LSNY,* a LSC grantee asserted a claim of privilege concerning individual clients, contending that the subpoenas were unduly burdensome. Similarly, in *Bronx Legal Svcs and Queens Legal Svcs v. LSC*, LSC grantees brought forth a claim regarding the disclosure of client names. 2003 U.S. Dist. LEXIS 695. While neither case involved a favorable outcome for the grantees, a claim was still able to be raised.

New Jersey Law Concerning Professional Responsibility

In New Jersey, client names and other identifiable information are protected and confidential under New Jersey's RPC 1.6. The New Jersey Supreme Court has observed that *RPC 1.6* "expands the scope of protected information to include all information relating to the representation, regardless of the source or whether the client has requested it be kept confidential or whether disclosure of the information would be embarrassing or detrimental to the client." *In re Advisory Opinion No. 544 of N.J. Sup. Court*, 103 *N.J.* 399, 406 (1986). The range of information protected by the confidentially requirement is broad:

it extends from substantive information relating to representation to information that merely identifies the client, such as the client's name and address. *Id.*

Comments

1. **The proposed grant assurance, in effect if not intent, may be interpreted as narrowing current client and recipient rights under current precedent.**

   By its unqualified reference to federal law, by failing to admit and acknowledge the two applicable statutory provisions and the current practice under the LSC Protocol, and by its sole reference to the *CRLA* case, which addressed only the principles attending enforcement of a subpoena, the proposed assurance threatens the narrowing of recipient rights, on behalf of client and attorneys, to raise colorable claims. Currently, state statutory law, rules and precedent unquestionably would be points of reference in the balancing effort called for by the LSC Protocol, and supported by the language of the LSC Act.

2. **The proposed change is unnecessary.**

   The current "applicable law" formulation amply protects the LSC's full powers and duties under 509 (h) and other law. The LSC view consistently has prevailed in reported precedent. At the same time, to LSNJ's knowledge the record access procedures under the current protocol also work effectively, resolving initial disagreements to the mutual satisfaction of the parties. The proposed language is unnecessary.

3. **The assurance arguably creates a new contractual requirement for disclosure, which ultimately could be deemed to exist independent of the statutory grounds for record and name access, with the foreseeable consequence of waiving colorable recipient claims, defenses and protections, producing several adverse consequences.**

   A. This coerced waiver in effect could be adjudged to bar assertion of any colorable claims and defenses. The LSC is not required to take such a step, and as a matter of policy it should not do so.

   B. Entering into such an agreement would put recipients, and their professional staff, at risk of subsequent disciplinary proceedings initiated by disaffected clients or state licensing authorities, for failure to protect confidents (a grant assurance is unlikely to constitute an "other law" exception to RPC 1.6).

   C. Clients who proceed to be represented by a recipient that has signed such an assurance may, under applicable state law, be deemed to have waived their rights of confidentiality and privilege for all other purposes, an unintended, undesirable, unnecessary and major consequence of this proposed Assurance. Our research suggests most states have expansive and aggressive implied waiver rules. This result, in turn, could thus open such previously protected information to the grasp and eyes of other public and private funders, and eventually

the public as a whole. Conversely, depending upon their political and philosophical viewpoints, other potential or current public and private funders might be appalled by the implied waiver of confidentiality, and decline to provide future funding.

D. Ensuing lack of confidentiality and privacy, as it becomes more widely known, would be likely to undermine client trust in, and utilization of, Legal Services programs

Insertion of Additional Language

If the LSC nonetheless proceeds to adopt the proposed revisions, the following additional language should be included to ensure the protection of client interests without jeopardizing program funding:

> "Nothing in these Grant Assurances is intended to limit a grantee's right or duty to assert any colorable ground under applicable Federal law to withhold or prevent disclosure of any document or information, and present any such ground to court for adjudication."

In conclusion, LSNJ does not want regional Legal Services programs in its system to be compelled to waive client protections simply by signing the grant assurances.

We urge the Board of the LSC to reject this proposed change, or, in the alterative, to add the proposed language.

Very truly yours,

Legal Services of New Jersey

Melville D. Miller, Jr.
President and General Counsel

MDM/mg

Defending Liberty
Pursuing Justice

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
1050 Connecticut Avenue, NW - Suite 400
Washington, DC 20036
(202) 662-1760
FAX: (202) 662-1762

June 20, 2014

Reginald J. Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW.
Washington, DC 20007
via email: LSCGrantAssurances@lsc.gov

Re: Proposed Changes to LSC Grant Assurances for FY2015

Dear Mr. Haley:

I write to submit comments on behalf of the American Bar Association (ABA) in response to the request by the Legal Services Corporation (LSC) for comments on proposed changes to the Grant Assurances to be used by LSC in entering into grant agreements with LSC recipients in FY2015. The ABA appreciates the opportunity afforded by the LSC to submit these comments and express our views on this important topic. Because the proposal implicates the professional responsibilities of lawyers across the nation and a variety of ABA policies/models, we write to suggest several changes in the proposed grant assurances. These include suggested modifications of grant assurances #10 and addition of a clause protecting a recipient and its clients during the pendency of any dispute.

Policy and Legal Considerations Argue Against Modifying Grant Assurance #10 to Specify that Access Must be Provided to All Materials Not Protected from Disclosure by Federal Law or the Federal Attorney-Client Privilege

LSC has historically been very respectful of the professional responsibilities of attorneys who are employed by LSC grant recipients. It has always recognized the value of attorney-client relationships where legal aid clients can have complete confidence that their attorneys will fully protect their clients' interests. LSC has recognized that undue government interference in such relationships has the potential to transform legal aid clients into second-class citizens, who are no longer afforded the same protections that are available to clients of private lawyers. LSC has therefore consistently respected the right of states to regulate the practice of law in state courts, including those legal services provided to the clients of LSC grant recipients. Thus, even though it may arguably have the power under some circumstances to require information that is otherwise protected as confidential under the rules of professional conduct, LSC has adopted appropriate protocols to assure that improper intrusions into confidential information do not occur.

It is not necessary for LSC to incorporate language into its Grant Assurances that may be read to signal a desire to reverse those longstanding accommodations, including the proposed changes in language in grant assurance #10. The current Grant Assurance language is sufficiently broad to permit LSC access to materials subject to protections of "applicable" law. In circumstances where LSC has cause to conduct a more in-depth investigation, it has adequate authority already in place to enforce its full array of rights to access relevant materials.

The essence of the lawyer's duty of confidentiality is a proscription on a lawyer's voluntary disclosure of confidential client information, as set forth in ABA Model Rule of Professional Conduct 1.6 dealing with "Confidentiality of Information" and the many binding state rules of professional conduct that closely track the ABA Model Rule.

In this respect, an advance, voluntary waiver of a lawyer's future obligation to protect client confidences through entry into a contract with a funding source (a "Grant Assurance"), without any context or consideration of the particular circumstances that may be involved in a disclosure, is a very different situation than a lawyer's compliance with a subpoena or court order. We have consulted disciplinary counsel in several states in considering this matter, and have been told that at least in some states the lawyer may be required to test the validity of a demand for disclosure to avoid a disciplinary infraction. These lawyers would, arguably, be unable to sign an advance waiver of their duty of confidentiality.

An Argument Can be Made That the Law Governing Disclosure of Materials Remains Unsettled

Some may argue that *United States v. California Rural Legal Assistance*, 722 F.3d 424 (D.C. Cir. 2013) (*US v CRLA*) is fully dispositive of the issue whether state law is in any way implicated where disclosure of grantee materials is involved. Unfortunately, the decision in that case did not explicate its reasoning fully in holding that:

> …[T]he general issue submitted to the district court by the parties…is, "whether, and if so, which California state privileges and protections apply." Because the district court determined that the answer to the "whether" issue is "no," and because we affirm that holding, the "if so, which" half of the issue is no longer germane. Federal law exclusively governs.

The opinion by the court in *U.S. v CRLA* does not provide details regarding how it factored several relevant provisions of federal law into its decision. The opinion does not discuss the extent to which its holding is based upon the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-234 §509(h), 110 Stat. 1321 (Section 509(h)), which dictates that certain enumerated materials must be disclosed to LSC. By the terms of Section 509(h), such specified materials are explicitly exempted from any protection provided by lawyers' professional responsibility codes or canons. Clearer guidance would have been provided if the court had articulated whether its decision was based in whole or in part on that federal law. Presumably the holding reaches beyond the materials enumerated in Section 509(h), but that is not absolutely clear.

There are a number of materials that LSC might request that are not among those enumerated in Section 509(h). If the holding of *US v. CRLA* means that these, too, are subject only to the provisions of federal law, not state law, that still does not fully resolve whether in some manner, at least in some states, the state ethics rules are relevant. An important applicable federal law is the LSC Act, which continues to provide protection for materials protected by professional responsibility codes. The Act is less than a model of clarity, stating, at §2996e(b)(3):

> The Corporation shall not, under any provision of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as "professional responsibilities") or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities.

The Act does not make clear how the ABA Canons and Code are to be applied, since they are merely models to be adopted as each state sees fit and do not prescribe lawyer behavior. Rather, the practice of law in state courts is regulated by each state, usually by the state supreme court, through rules of lawyer conduct that are enforced by state disciplinary authorities. Even if the ABA models are somehow relevant, those referenced in the LSC Act have long since been superseded, having been replaced by the 1983 ABA Model Rules of Professional Conduct.

The court in *U.S. v CRLA* notes that the LSC grantee was not seeking the protection of the ABA Canons or Code (indeed, as noted above, how could it?), but instead was seeking protections of California law. The court states that only federal law applies, but it does not discuss the fact that the most relevant federal law, the LSC Act quoted above, specifies that LSC “shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys’ professional responsibilities.” Thus, that federal law seems to turn to the state professional responsibility rules for its content, since only the states dictate “attorneys’ professional responsibilities” (at least for practice in state courts, where much of an LSC grantee’s work is performed).

Many states, including California where the CRLA case arises, have adopted a version of ABA Model Rule of Professional Conduct 1.6(b) that states, in relevant part, that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted, among other situations, *where the lawyer reasonably believes it to be necessary to comply with other law or a court order*. In those states, reference to the state professional responsibility rules would not yield a result different than achieved in the *U.S. v CRLA* decision. The state rules of professional responsibility specifically permit the lawyer to make the disclosure. The same is true in a large majority of states, though a number of states do not include the exemption in the black letter of their rules, but instead – like California – include a statement in the commentary to the same effect.

The situation is different in the professional responsibility rules of other states. Some states include language permitting lawyers to divulge confidential information if required by other law, but not if required by a court order. *See, e.g.*, NJ RULES OF PROF'L CONDUCT R. 1.6(d)(4). Some other states require lawyers to divulge confidential information if required by a court order, but not if required by "other law." *See, e.g.*, WA. RULES OF PROF'L CONDUCT R. 1.6(b)(6). And at least two other states omit the exemption entirely, but include a statement in their commentary that "Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession." FLA. RULES OF PROF'L CONDUCT R. 4-1.6; ALA. RULES OF PROF'L CONDUCT R. 1.6. Pennsylvania takes a similar approach: "Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4" PENN. RULES OF PROF'L CONDUCT R. 1.6 CMT. [18].

In some of these states that did not adopt the ABA Model Rule verbatim, if a case were to arise where LSC sought confidential materials, an argument could be made that the federal law (*i.e.*, the LSC Act) prohibits LSC from interfering with attorneys in carrying out their professional responsibilities to their clients as established by their state professional responsibility rules, and the state rules do not permit the lawyer to disclose the material sought by LSC. Whether a subsequent case presenting this different set of facts would be decided in the same manner as *U.S. v CRLA* is arguably an open question.

Even if the decision in *U.S. v CRLA* means that only federal professional responsibility law applies, such an approach is not sufficient to provide clarity regarding what rules apply and what materials are protected. The court in *U.S. v CRLA* did not discuss the meaning of the terms in the LSC Act "standards of professional responsibility" and "attorneys' professional responsibilities." The LSC Act itself seems to define them as rooted only in the model ABA Canons and Code, but those (now superseded) model documents are not binding on any attorney, anywhere. For the Act to have meaning, it must refer to some ethical rules that are actually binding on attorneys. If the court did not interpret those terms in the LSC Act to refer to state rules of professional responsibility, then did it assume that they refer to a federal code of lawyer conduct? What is the relevant federal law that governs the conduct of lawyers employed in LSC-funded programs, and what constraints does the applicable federal code of federal conduct impose upon lawyers with regard to divulging client confidences? There are no national, federal rules of professional responsibility. Each federal court uses its own code of lawyer conduct, with some courts using the state versions of the rules in which they sit, and others using their own written or unwritten rules. Given this ambiguity, a reference in the proposed LSC Grant Assurances to "federal law" is no more illuminating to those concerned than the reference in the current version to "applicable law."

Though we have limited our comments above to Grant Assurance #10, it is worth noting that Grant Assurance #11 may suffer from exactly the same type of circularity as described above regarding the rules of professional conduct. In many federal districts, the court adopts as applicable federal law the state laws of attorney-client privilege in effect in the jurisdiction where the court sits.

Some Form of "Savings Clause" is Essential in the Grant Assurances

Given the ambiguities of the law, we urge that the Grant Assurances should include language to state explicitly that they are not intended to prevent or penalize good-faith objections to disclosure and presentation of any dispute to an appropriate adjudicator.

In addition to the legal analysis above, there are other important considerations that support addition of such a clause in the Grant Assurances. LSC's mission to provide representation to clients in poverty obligates it to avoid any unnecessary interruptions in service to such clients. Where a recipient of LSC funds is using those funds to provide legal services to clients, it would be inconsistent with its mission for LSC to place in jeopardy the ongoing representation of such clients while a legitimate dispute over grantee compliance is pending – either based in the ambiguities respecting attorneys' professional responsibilities or uncertainty regarding the extent of protection provided by federal attorney-client privilege. It would be most appropriate for LSC to include within the Grant Assurances a clause stating that it will not be considered a violation of the agreement for a recipient to assert a colorable claim to withhold certain confidential client information under provisions of applicable law.

The concept that financial sanctions, with the unavoidable harm they will cause to clients, should not be imposed on a recipient for certain types of good faith non-compliance is reflected in LSC's own regulations. Part 1606 addresses situations where reductions in funding are appropriate and requires that such reductions only occur when there has been a "substantial violation."

The requirement in the proposed (and existing) Grant Assurances that a grantee wishing to withhold materials must identify in writing the bases for withholding seems to presume that there will be some due process accorded to the grantee prior to LSC's withholding of funding. It would be inappropriate for LSC to peremptorily suspend or discontinue the objecting program's funding, conceivably before the objection was even heard or ruled on by an appropriate adjudicator. This is especially true in those states where the applicable rules of professional responsibility may obligate the grantees' attorneys to assert and test their good faith objection to an information request that calls for privileged or confidential client information as defined by the applicable state court's rules. Nothing in the LSC Act authorizes LSC to condition its monetary grants to legal aid programs on the programs' waiver of this right and their attorneys' duty to object and submit to adjudication.

For these reasons, we urge that the Grant Assurances include specific language permitting a grantee to assert and test in good faith any colorable objection to any aspect of LSC's request for documents or information. Such a process seems implicit in the language of the existing and proposed Assurances, and is explicit in the regulations. The proposed savings clause simply removes any doubt in this regard.

Summary and Conclusion

We urge that LSC adopt language for Grant Assurances #10 that is sufficiently broad so as not to rely upon unsettled law or principles. Further, we urge LSC to include a clause stating that a violation will not be presumed to have automatically occurred if a recipient withholds certain documents under a colorable claim that they are protected under applicable law.

Suggested further edits to proposed Grant Assurance #10 (with further changes highlighted for clarity) are:

> During normal business hours and upon request, it will give any authorized representative of LSC, including the OIG, or the Comptroller General of the United States (which includes the Government Accountability Office (GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicableunder Federal applicable law or rulesor rules.. It agrees to provide LSC with the requested materials (excluding those which may be properly withheld) in a form determined by LSC while, to the extent possible consistent with this requirement, preserving the confidentiality of client informationapplicable client secrets and confidences and respecting the privacy rightsinterests of the Applicant's staff members. For those recordseach record subject to the Federal attorney-client privilege that is withheld, itthe Applicant will identify in writing the specific record(s) or portion thereof not being provided and the legal justification for not providing the record(s). or portion thereof.

The above proposed edits return the assurance to use of the term "applicable" instead of "Federal" law. They also clarify that an Applicant does not agree to provide all "requested" materials, but may exclude some in certain circumstances. Another change substitutes the current ABA model and widely adopted state rules' language of "confidentiality of client information" for the now-superseded Code language of "client secrets and confidences."

We do not offer specific edits or language to ensure that grant recipients can continue to receive funding and provide representation to clients during the pendency of a dispute regarding production of records, but leave it to LSC to properly express that concept in the Grant Assurances.

Thank you for the opportunity to comment on the proposed Grant Assurances for FY2015.

Sincerely,

Thomas M. Susman
Director, ABA Governmental Affairs Office

cc: James R. Silkenat, President, American Bar Association
Lisa Wood, Chair, ABA Standing Committee on Legal Aid & Indigent Defendants

Grant Assurances 10 and 11

Public Comments – LSC Recipients

1. Legal Aid of Western Missouri
2. Northwest Justice Project
3. Legal Services of North Florida
4. Community Legal Services of Mid-Florida

I am writing on behalf of Legal Aid of Western Missouri ("LAWMO"), a grantee of federal funding through the Legal Services Corporation ("LSC"), to express my concern about Grant Assurances #10 and #11of LSC's proposed new grant conditions, as referenced in 79 CFR 24454. I very much appreciate the opportunity to make these comments.

1. Introduction and Overview

At the outset I would note that I am a proponent of making client files open and available to LSC for its inspection. LSC provides approximately $2 million per year to LAWMO. That's roughly 21% of our budget and allows us to serve close to 2,000 additional clients per year. We are mindful that this is taxpayer money and that LSC has the responsibility of making sure that the money is well spent. We want to facilitate LSC's work in this regard in every way that we can. Accordingly, to the extent that we are allowed to do so, under applicable laws and without adverse consequences to our clients, we welcome LSC's review of all of our files and other records.

Indeed, we are very proud of the work that we do for our clients and to the extent that LSC reviewers can make suggestions for either improving that work or better complying with the regulations that apply to our work, we want to hear it.

So, in principal, I welcome the concept of LSC obtaining greater access to our client files and all of our other documentation. As discussed below, however, the proposed grant conditions appear to have many unintended adverse consequences. These range from waiving the attorney client privilege for our work (thereby making our privileged communications with our clients discoverable by opposing counsel in all our cases), to subjecting our staff and our program to disciplinary action that could result in serious consequences up to the loss of their right to practice law.

In light of these consequence, I respectfully submit that LSC should withdraw the proposed grant conditions.

2. The Unintended Consequences of the Grant Assurances

My primary concern about the draft grant assurances is that, even if LSC has a legal right to demand that its grantees produce confidential documents, the consequences of LSC exercising that right would be severely detrimental to its grantees and their clients.

The proposed Grant Assurances #10 and #11 would require LAWMO and all other LSC grantees in Missouri to produce documents that are clearly confidential under the Missouri Rules of Professional Responsibility, which state in pertinent part: "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation." Rule 4-1.6(a) Missouri Rules of Professional Responsibility.

Rule 4-1.6(a) is an ethical rule and not an evidentiary rule or a rule of civil procedure. The Rules of Professional Responsibility themselves do not provide the basis for a motion to

quash a subpoena or for objection to an otherwise properly propounded discovery request. That protection is provided by Missouri's law of the attorney-client privilege.

If LSC statutes or regulations are deemed to pre-empt state law on the issue of attorney-client privilege, allowing LSC to secure production of confidential client communications, attorneys and programs that end up producing the information may find themselves the subject of enforcement actions under the state rules of professional conduct. Again, these are two distinct rules. The abrogation of the Missouri attorney-client privilege may have no impact on our attorney's ethical obligations under Rule 4-1.6(a). The attorney-client privilege governs third party requests for production of information. While there may be arguments that federal law pre-empts that state law, there is a serious risk that the Missouri Office of Ethics Counsel and the Missouri Supreme Court may still find that any attorney who produces that information has committed an ethical violation under Rule 4-1.6(a).

Even if the state Supreme Court or the U.S. Supreme Court ultimately found that it was not an ethical violation for a grantee to produce those documents, it is likely to take hundreds of hours of attorney time to litigate the issue. And there is a serious risk that the ultimate determination would be that the grantee was required to produce the documents under federal law and that, nonetheless, it was an ethical violation of state law for the grantee to do so. A state court could determine that it was the grantee's decision to accept the federal funding and with it the contractual obligation to disclose confidential client communications. The argument that we had to commit an ethical violation to obtain federal funding is not a valid defense to allegations of an ethical violation. Nothing forces an LSC grantee to accept the funding and (if the new grant conditions were in effect) in doing so, the grantee would knowingly subject itself and its attorneys to disciplinary proceedings, potentially including the loss of their license, for having violated the Missouri Rules of Professional Responsibility.

In determining whether to move forward with these grant conditions, LSC should analyze the cost and benefits of the proposed grant conditions. Currently, whenever requested to do so, LAWMO provides LSC access to every page of every client file in its possession. The only limitation on the review of files is that client names and other client identifying information are redacted. So, LSC site review teams are allowed to see all file notes, all documentation of our client interaction, everything in the file, except client-identifying information. LAWMO has had two OCE site visits in the last six years and LSC staff members have never expressed any frustration at the minor limitations that we have put on their file review. So, the benefit of the new grant assurances would be small.

The cost to the programs, however, would be gigantic. The risk of subjecting our staff to state disciplinary actions would, at a minimum, greatly harm morale and could actually result in disciplinary action, even potentially the loss of law licenses for our staff. If LAWMO tried to obtain client consent for every client, that would take a tremendous amount of time. The rules of Professional Conduct require that the consent be "after consultation". So, just putting the consent in a retainer agreement would not make for an effective waiver.

Given that many of our clients are skeptical of lawyers to begin with, having to start our relationship with our clients with a demand that they waive their right of confidentiality would

damage the attorney-client relationship for many of our clients. Furthermore, many of our clients have mental health issues, including paranoia. So, the explanation to obtain the informed consent could take 10-20 minutes per case and still not be effective. Given that we serve over 5,000 clients per year, even 10 extra minutes per client would take an additional 833 hours of staff time.

Furthermore, there are likely to be many clients in substantial need who refuse to consent to waive the privilege. Would we then be required to deny them representation? I have serious concern that the denial of representation based on a client's refusal to waive their legal right to confidentiality may, in itself, be an ethical violation. Even if conditioning representation on waiver of their rights is ethical, should we really be turning away victims of domestic violence and homeless Veterans with serious mental health issues just because they want to preserve their right to confidentiality?

Also, once the attorney-client privilege is waived, it is waived for all time and if all our clients agree at the outset of representation that we can show their entire file to LSC at any time, there is a good argument that they have waived the privilege at the outset of representation. Savvy opposing counsel may start demanding that we produce all of our attorney notes and client communications for their cases and legally, we may have no ground for objecting.

Adopting Grant Assurances #10 and #11 would be opening a Pandora's Box of legal issues and to what benefit—being able to see client names, instead of having them covered up?

LAWMO has grants with HUD and with the IRS. Both of these federal government entities allow us to produce client files with client identifying information redacted. So do all of our state, local and private funders. All these other funders have no problem monitoring our work in spite of these minor constraints.

Given that our current system works for everyone else (and indeed from all indications still works for LSC) and given that the costs of change would be gigantic and the benefits few, I would respectfully submit that the proposed new assurances should be withdrawn.

3. <u>Legal Concerns</u>

I would also note a secondary and lesser concern—which is that the proposed grant assurances might not have a proper basis in the law.

The Court in *U.S. v. California Rural Legal Assistance, Inc.*, 722 F.3d 424 (D.C. Cir. 2013) ruled that LSC's Office of Inspector General—not LSC as a whole—have the power under federal law to compel the disclosure of confidential client communications. The *CRLA* decision relied on specific language contained in the OIG Act to "conduct, supervise and coordinate audits and investigations relating to the programs." *Id.* at 428 (citing 5 U.S.C. app. 3, Section 4(a)(1)).

The specific, special statutory authority provided to the OIG under the Act allowed the Court to overcome CRLA's argument that "'[f]ederal law may not be interpreted to reach into

areas of State sovereignty unless the language of the federal law compels the intrusion.'" *Id*. (citing *American Bar Association v. FTC*, 430 F.3d 457 (D.C. Cir. 2005)).

To my knowledge, there is no comparable statutory or regulatory language allowing LSC to see confidential client communications. Accordingly, unlike OIG, there is a valid argument that LSC does not have the right to abrogate state laws of attorney-client privilege. Thus, as a matter of law, LSC does not appear to have the legal right to demand the production of documents and other materials that it seeks in Grant Assurances #10 and #11.

Thank you for your consideration.

--Sincerely,

Gregg Lombardi
Executive Director
Legal Aid of Western Missouri

401 Second Ave S. Suite 407
Seattle, WA 98104
Tel. (206) 464-1519
Fax (206) 903-0526

Northwest Justice Project

Toll Free 1-888-201-1012
www.nwjustice.org

César E. Torres
Executive Director

June 16, 2014

President James Sandman
Mr. Reginald Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

VIA Email to *LSCGrantAssurances@lsc.gov*

Re: Comments on Proposed Revision to 2015 Grant Assurance Nos. 10 and 11

Dear President Sandman and Mr. Haley:

The Northwest Justice Project (NJP) is the statewide LSC grantee for Washington State, including the Native American and Migrant grants. We submit these comments in regard to the proposed changes to the 2015 Grant Assurances Nos. 10 and 11. The proposed changes appear to compel an LSC grant recipient to waive the opportunity to assert a legitimate claim to non-disclosure of client information under any rule of professional conduct or law applicable in the recipient's service area or risk loss of LSC funding. The proposed revisions create an untenable dilemma for NJP and its attorneys and we urge LSC to maintain the current language of the Grant Assurances.

Background

The proposed revisions to the 2015 Grant Assurances change the current exceptions to the case and client records disclosure requirements from those materials that may be properly withheld "due to applicable law or rules", to those protected solely "under Federal law", with specific reference to the "Federal attorney-client privilege."

The stated reason for the change stems from the decisions in *United States of America v. California Rural Legal Assistance, Inc.* 824 F. Supp.2d 31 (D.C.D.C. 2011) and *United States of America v. California Rural Legal Assistance, Inc.,* 722 F.3d 424 (U.S. App. D.C. 2013). Importantly, those cases concern federal court enforcement of a federal subpoena sought by the LSC Office of the Inspector General. In these cases the District Court determined that section 509(h) of the 1996 Appropriations Act, Pub. L 104-134, 110 Stat. 1321m 1321-59, modifies the client protections of the LSC Act, 42 U.S.C. § 2996e(b)(3). The District Court also determined that disclosure of client information did not conflict with

Board of Directors: Rima Alaily • Vicente Omar Barraza • Diana Bob • Carolyn Estrada • Celia Guardado • Richard Harrison • Abeda Jafar • David Keenan • Monica Langfeldt • A'Lesha Markee • Andrea Poplawski • Russell J. Speidel • Heather R. Straub • John S. Tracy • Joanne M. Whitehead • Claude M. Pearson, President Emeritus

California law as those rules allow lawyers to disclose otherwise protected client information to comply with "other law." Neither court ruled that the LSC Act has no continuing effect or applicability to this issue.

In pertinent part, the LSC Act provides:

> The Corporation shall not, under any provision of this title, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canon of Ethics and the Code of Professional Responsibility of the American Bar Association...*or abrogate as to attorneys in programs assisted under this title the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction.*
>
> 42 U.S.C. § 2996e(b)(3), emphasis added.

This statutory provision generally implements the Statement of Findings and Declaration of Purpose set out by Congress in establishing the Legal Services Corporation in the first instance. See 42 U.S.C. § 2996(6), 88 Stat. 378, Sec. 1001(6) (1977):

> The Congress finds and declares that-
>
> ...
>
> (6) attorneys providing legal assistance must have *full freedom to protect the best interests of their clients* in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.
>
> Emphasis added.

As we read the CRLA cases, neither court addressed the above Statement of Findings and Declaration of Purpose and it is impossible to know how the courts deem their decisions to carry out the stated purposes. While the D.C. Circuit Court of Appeals held that a federal subpoena is governed by the federal law on privileges, 722 F.3d at 427, the District Court looked to California law and found no conflict with the federal law, referencing CCPR Discussion paragraph [2] and State Bar Formal Opinions: "Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, *or other law*." 824 F.Supp.2d 42-43.

The District Court and the D.C. Circuit both found that the LSC Act provisions are still applicable to protect LSC recipient attorneys from disclosures that would violate professional obligations, but that nothing in the California rules would prevent enforcement of the federal subpoena against CRLA. 824 F.Supp.2d 42-43; 722 F.3d. at 429. Specifically, the District Court stated:

> "The Court further finds that California state law does not preclude CRLA from disclosing to LSC–OIG any information not covered by Section 509(h). *Respondent and the attorney-intervenors are correct that the LSC Act specifically recognizes the*

> *authority of a state to enforce its own standards of professional responsibility.* However, the Court is not persuaded that California professional responsibility standards *require* non-disclosure of the subpoenaed information in this case. [Citing Rule 3–100 of the California Rules of Professional Conduct and Discussion paragraph [2]] .... Accordingly, the Court finds that disclosing non-privileged confidential client information in response to a duly authorized subpoena is *not inconsistent* with CRLA attorneys' professional responsibilities under state law"
>
> Emphasis added.

Similarly, the D.C. Circuit Court recognized the continuing applicability of the LSC Act protections, but did not "burden" itself with discussing details of differences in state and federal law, finding those differences to be "ultimately irrelevant". 722 F.3d at 427. While the D.C. Circuit upheld the subpoena based on the non-abrogation of states' authority to enforce the standards of professional responsibility, as the District Court noted, the California rules do not provide the protection sought in any event.[1]

Washington Rules of Professional Conduct

In substantial contrast, the Washington Rule of Professional Conduct (RPC) 1.6 expressly ***does not*** allow disclosure of client information pursuant to "other law" and ***requires*** non-disclosure absent a court order. See http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc1.06 Washington Rules contain a specific comment that reads:

> [24] Washington has not adopted that portion of Model Rule 1.6(b)(6) permitting a lawyer to reveal information related to the representation to comply with "other law." Washington's omission of this phrase arises from a concern that it would authorize the lawyer to decide whether a disclosure is required by "other law," even though the right to confidentiality and the right to waive confidentiality belong to the client. The decision to waive confidentiality should only be made by a fully informed client after consultation with the client's lawyer or by a court of competent jurisdiction. Limiting the exception to compliance with a court order protects the client's interest in maintaining confidentiality while insuring that any determination about the legal necessity of revealing confidential information will be made by a court. It is the need for a judicial resolution of such issues that necessitates the omission of "other law" from this Rule.

The Washington Comments further expressly state that in response to a court order compelling disclosure:

---

[1] The D.C. Court of Appeals saw some relevance in CRLA's failure to "seek the protection of the ABA Rules"; however, the ABA rules are model rules to be adopted or modified as any state jurisdiction or bar licensing authority sees fit and the ABA has no enforcement authority whatsoever.

> [13] [**Washington revision**] A lawyer may be ordered to reveal information relating to the representation of a client *by a court*. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. *In the event of an adverse ruling, the lawyer must consult with the client* about the possibility of appeal to the extent required by Rule 1.4.[2] Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.
>
> Emphasis added.

At minimum, the Washington rules require a subpoena and court order to reach NJP client information absent a client's informed consent, with the accompanying affirmative obligation of NJP to assert "all non-frivolous claims that the information sought is protected against disclosure by .... other applicable law."

If the appropriations act language in §509(h) bars any and all application of state rules of professional conduct, LSC recipient lawyers are in a no-win situation. This is because subsection (i) of §509 authorizes LSC, monitors, and auditors, including the OIG to disclose client information to "an official of an appropriate bar association for the purpose of enabling the official to conduct an investigation of [a violation] of a rule of professional conduct." Neither the District Court nor the D.C. Circuit Court in the *CRLA* cases discuss subsection (i) or its implications when LSC required disclosures would in fact violate state rules of professional conduct. Even if there would be no violation of federal privilege law when otherwise protected client information is disclosed, direct entanglement occurs should LSC or any monitor, auditor or agent thereof, chooses to report the disclosure violation to the state enforcement authority pursuant to sub-section (i).

LSC has always understood the strictures of the Washington RPCs in this regard, and has consistently accommodated NJP by allowing disclosure of client case information through unique identifiers and staff intermediaries pursuant to established protocols to this effect. LSC has further respected NJP's duty to not disclose client identifying information in the absence of client informed consent. NJP typically obtains client informed consent to disclosure of the §509(h) information through the retainer agreement in extended representation cases. NJP proposes to continue to obtain client informed consent to disclosure through this process, but is constrained from voluntarily waiving the duty of non-disclosure through a Grant Assurance. Should LSC adopt the proposed change and not accommodate NJP's ethical duty, NJP would face the untenable dilemma of either adhering to applicable ethical mandates or risk the loss or suspension of LSC funds.

---

[2] Washington RPC 1.4 relates to lawyer-client communication and requires a lawyer to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions about the representation.

Application of the LSC Grant Assurances to Non-LSC funds

It is unfair to ask a recipient program in a jurisdiction that is not authorized to do so to waive the requirements of the state Rules of Professional Conduct through a Grant Assurance. A Washington lawyer cannot provide a blanket pre-client consent to disclosure even if such waiver is ultimately required by federal law and may not in good faith waive client protections against disclosure of information absent informed consent. Given that Washington RPC 1.6(b) does allow a Washington lawyer to reveal client information to comply with a court order, the opportunity to assert non-frivolous claims to non-disclosure on behalf of the client is required.

In addition, it is unclear how broad the proposed Grant Assurance change is intended to apply and whether is it intended to be limited to §509(h) required disclosures or to apply more broadly to other client information. Also unclear is the relationship of the waiver of client protections under an LSC Grant Assurance to a recipient's work that is funded by state and other non-LSC funds. A recipient's use of state and other non-federal funds (*e.g.* City, County contracts, State Attorney General Office or private grants), is clearly also subject to state law. See *Linde Thompson Langworthy Kohn & Van Dyke, P.C.,* 5 F.3d 1508 (D.C. Cir. 1993)(as to state claim matters Federal Rule of Evidence 501 mandates the application of state privileges in civil proceedings for which state law applies the rules of decision).[3]

Based on our review of the applicable law, including case decisions, it appears that relevant federal cases only govern the enforcement of a federal subpoena by a federal court to ensure compliance with statutory restrictions on federal funding. The cases do not support compelling a recipient to abrogate state law and rules as a condition of receiving LSC funds absent a federal court subpoena and court order. LSC should not preclude the ability of recipient programs to assert legitimate claims to non-disclosure under applicable state or local law without the opportunity for a judicial determination of what law applies and how.

LSC could accomplish both the general purpose of the Grant Assurances to apply uniform standards to all recipients and avoid the dilemma for any given recipient created by the proposed change by ensuring recipients retain the ability to assert claims to non-disclosure without penalty. One way to do this is by revising Grant Assurance No.10 to provide as follows: "This requirement does not apply to any such materials that may be properly withheld *under Federal law* or other applicable rules *in the absence of a court order.*"

---

[3] Fed. Rule of Evidence 501 provides, in pertinent part:

The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision. Emphasis added.

Similarly, Grant Assurance No. 11 could be revised to read: "Notwithstanding any other Grant Assurance, §1006(b)(3) of the LSC Act, 42 U.S.C. 2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld *under Federal law* governing attorney-client privilege *or other law absent a court order* .... For each record *withheld from disclosure*, it will identify in writing the specific record *or portion thereof* not being provided and the legal justification for not providing the record *or portion thereof*."

We sincerely hope that LSC will consider the significant and untenable implications of the proposed revision to these Grant Assurances. Again, we urge LSC to reconsider this matter in light of these and other comments and to not adopt the changes as proposed. Thank you for the opportunity to comment on the proposed changes to the 2015 LSC Grant Assurances.

Sincerely,

Deborah Perluss
Director of Advocacy/General Counsel

C César E. Torres, Executive Director
Monica Langfeldt, NJP Board President

Legal Services
of NORTH FLORIDA
HOPE. JUSTICE. FOR ALL.
www.lsnf.org

LSC

May 26, 2014

Mr. Reginald Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

Re: Comments on Proposed Revision to 2015 Grant Assurances Nos. 10 and 11

Dear Mr. Haley:

I am writing to comment on proposed revisions to grant assurances 10 and 11 resulting from the litigation involving *United States of America v. California Rural Legal Assistance, Inc.*, hereinafter referred to as *USA v. CRLA*.

As was acknowledged by the court, the LSC Act (in section 1006(b)(3)) provides that LSC shall not "interfere with any attorney in carrying out his professional responsibilities . . . or abrogate . . . the authority of a state or other jurisdiction to enforce the standards of professional responsibility generally applicable to the attorneys in such jurisdiction." Also acknowledged was the modification in 1996 that provides that notwithstanding that language, "financial records, time records, retainer agreements, client trust fund and eligibility records and client names, for each recipient shall be made available to any auditor or monitor of the recipient . . . except for reports or records subject to the attorney-client privilege."

This modification has been the subject of considerable interpretation over the years through both internal/external opinions of LSC and through development of protocols intended to balance the competing interests of the principles delineated in the two sections of the law referenced above. Those competing interests are based on long-established protections afforded to clients to ensure they can and will confide freely in their legal representatives. The rules of professional responsibility apply to the lawyer's conduct while attorney-client privilege attaches to proceedings in which a claim of evidentiary privilege may be made. Such was the case in *USA v. CRLA* where the OIG requested information in response to a complaint against CRLA, found substantial evidence that CRLA violated federal law, and could not make final determinations about the allegations without additional information (which CRLA refused to provide), leading to service of a subpoena. In the context of this proceeding, the application of attorney-client privilege was appropriate, requiring information that may otherwise be protected by professional rules of responsibility to be made available with court oversight on whether certain documents were protected by privilege or not. However, in cases in which there is no suspicion that the program is operating in substantial violation of the law, the rules of professional responsibility should control (unless and until a reasonable suspicion is identified). Such an approach would honor the Congressional finding in section 1001(6) that "attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the code of Professional

HOME OFFICE
☑ 2119 DELTA BOULEVARD
TALLAHASSEE, FL 32303-4220
850-385-9007 • FAX 850-385-7603
ADMINISTRATIVE FAX 850-205-6540
DEVELOPMENT FAX 850-385-5684

BRANCH OFFICES
☐ 121 NORTH JACKSON STREET
QUINCY, FL 32351-2316
850-875-9881 • FAX 850-875-2008

☐ 211 EAST 11TH STREET
PANAMA CITY, FL 32401-2938
850-769-3581 • FAX 850-785-2041

☐ 133 STAFF DRIVE, SUITE B
FT. WALTON BEACH, FL 32548-5050
850-862-3279 • FAX 850-862-6327

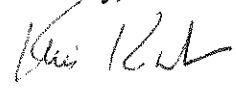
☐ 1741 NORTH PALAFOX STREET
PENSACOLA, FL 32501-2138
850-432-8222 • FAX 850-432-2329

Responsibility, the Canons of Ethics, and the high standards of the legal profession." (The fact that the 1996 amendments specifically require client names to be disclosed suggests a recognition that the other records could be provided unconnected to the names—otherwise there would be no need to specifically reference those.)

Engaging in this approach allows an appropriate balance of confidential protections afforded to clients and assurance that funds are spent for their intended purpose. It also prevents or reduces the use of precious resources, that are grossly insufficient, to address the overall purpose of providing equal access to the courts, through high quality representation, to vulnerable indigent people. To require programs, as part of regularly scheduled monitoring visits, to review all documents requested in hundreds, and often thousands, of cases to identify purported privileged information would waste an incredible amount of resources in preparation for each visit. It is clear from an examination of the case law necessary to determine the common law "requirements" to establish privilege, that the requisite determination of what constitutes whether a communication is make in confidence for the purposes of obtaining legal help, as was the standard laid out in *Linde v. Thomson*, 5F.3d 1508 and other cases, is murky at best. And, unless a legal action is triggered in each monitoring visit, there is no third party tribunal to resolve disputes regarding what is privileged and what is not. For example, analysis has been undertaken regarding retainer agreements. To the extent the retainer describes general services, there appears to be opinion that no privilege attaches. But LSC requires that retainers "shall clearly identify the matter in which representation is sought and the nature of the legal services to be provided" and the courts have recognized that the combination of a client's name with a description of legal services sought may be privileged. To compound the problem, a recipient attorney who makes the wrong judgment and discloses privileged information is subject to disciplinary action.

In addition to preventing waste of resources, a balanced approach does not place lawyers' licenses at risk nor apply different rules to people who are poor than to people with means. It continues to allow reasonable investigations into alleged improprieties of programs who are fortunate to receive federal tax dollars. In short, all of these interests can be accommodated by following the protocols that LSC has developed to engage in monitoring visits while requiring additional information (protected by privilege) in cases where the OIG has reason to believe improprieties exist. As such, grant assurances 10 and 11 should remain unchanged.

Sincerely,



Kristine E. Knab
Executive Director

COMMUNITY LEGAL SERVICES of MID-FLORIDA

122 E. Colonial Drive, Suite 200
Orlando, FL 32801-1219
Ph: (407) 841-7777 | Fax: (407) 246-1661
www.clsmf.org

June 13, 2014

Mr. Reginald Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, DC 20007

Re: Comments on Proposed Revision to 2015 Grant Assurances Nos. 10 and 11

Dear Mr. Haley:

I am writing on behalf of Community Legal Services of Mid-Florida to submit the following comments regarding the proposed changes to 2015's Grant Assurances Numbers 10 and 11 that came about as a result of *United States v. California Rural Legal Assistance, Inc.*, 722 F.3d 424 (D.C. Cir. 2013) and *United States v. California Rural Legal Assistance, Inc.*, 824 F. Supp. 2d 31 (D.D.C. 2011). We believe these changes should not be enacted, and Grant Assurances 10 and 11 should remain as they are currently written.

Under the current grant assurances, attorneys can withhold client information and records from disclosure to LSC if applicable law or rules so requires; this includes state and local laws. The proposed changes, however, would extend the protection only to records protected under federal law. This policy would conflict with the LSC Act, which reads in part:

> The Corporation shall not, under any provision of this title, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association . . . or abrogate as to attorneys in programs assisted under this title the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. *The Corporation shall ensure that activities under this title are carried out in a manner consistent with attorneys' professional responsibilities.*

42 U.S.C. § 2996e(b)(3) (2014) (emphasis added). The LSC Act therefore acknowledges that LSC cannot require the disclosure of confidential information if doing so would conflict with an attorney's duties under the rules of professional responsibility. Both the LSC Act and the D.C. Circuit Court in *California Rural Legal Assistance, Inc.*, 722 F.3d 424, however, are silent on the fact that the American Bar Association's Code of Professional Conduct is only a model code and is not used in any jurisdiction. Each state adopts its own Code of Professional Conduct, and in

federal proceedings, the Code of the state in which the tribunal is located governs. A provision in a state's Code might differ from the ABA's Model Code, and an attorney can be disciplined for violations of the state Code even if the action would be permissible under the ABA's Model Code.

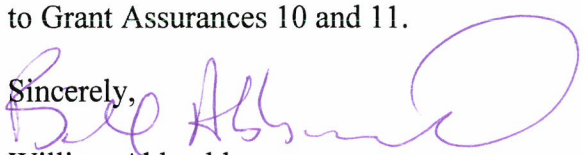
Unlike the ABA's Model Code, in Florida, Rule 1.6 of the Rules of Professional Conduct do not provide an exception for "other law." *See* R. Regulating Fla. Bar 4-1.6. It should be noted that the comments to Rule 1.6, mention "required . . . by law" as providing an exception, along with the Rules Regulating the Florida Bar. *See* R. Regulating Fla. Bar 4-1.6, comment 5. Given that "required . . . by law" is not mentioned in the actual rule, however, it is not clear that an attorney releasing client information to LSC, without consent from the client, would not be subject to discipline from the Florida Bar. Furthermore comment 21 states that "a lawyer may be obligated or permitted by other provisions of law to give information about a client. *See* R. Regulating Fla. Bar 4-1.6, comment 21. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but *a presumption should exist against such a supersession.*" R. Regulating Fla. Bar 4-1.6, comment 21 (emphasis added).

Despite the finding of *California Rural Legal Assistance, Inc.*, 722 F.3d 424, to require an attorney to release client information based solely on federal law would abrogate a state's authority to enforce its Code of Professional Responsibility. If an attorney is required to breach confidentiality to comply with LSC requirements, then the state is unable to enforce its professional responsibility rules. The proposed grant assurances do just this and create an impossible situation for legal services attorneys. As written and implemented if a legal services grantee attorney does not comply with LSC's requests for information, the grantee will be subjected to lose its LSC funding and be unable to provide services to those in need. If the grantee attorney's do comply with the requests for information, they risk being disciplined by their state bar for breach of confidentiality.

Additionally, under Florida law, when a tribunal requires disclosure, an attorney "may first exhaust all appellate remedies." *See* R. Regulating Fla. Bar 4-1.6(d). Under Florida law attorneys have a right to seek judicial review of an order requiring disclosure of confidential information, before being required to release the information. To not allow them this step would violate this right.

Finally, the purpose of Florida Rule of Professional Conduct 1.6 is to encourage clients to share information openly with their attorneys. A client who fears information might be revealed is less likely to divulge potentially prejudicial information. Attorneys, however, often need this information to effectively counsel and represent their client. Requiring attorneys to disclose confidential information would impact the representation provided and result in low income individuals potentially receiving inferior representation as compared to that of clients who are able to pay for legal counsel. For these reasons, we urge LSC not to enact the proposed changes to Grant Assurances 10 and 11.

Sincerely,



William Abbuehl

Fla. Bar Reg. R. 4-1.6

Rules current through changes received by May 9, 2014. Annotations current through May 27, 2014

Florida Rules of Court > *Rules* Regulating The Florida Bar > *Chapter 4. Rules of ProfessionalConduct* > 4-1. CLIENT-LAWYER RELATIONSHIP

Rule 4-1.6. Confidentiality of Information [Effective until June 1, 2014.]

(a) *Consent Required to Reveal Information.* --A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) *When Lawyer Must Reveal Information.* --A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent a client from committing a crime; or

(2) to prevent a death or substantial bodily harm to another.

(c) *When Lawyer May Reveal Information.* --A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;

(3) to establish a defense to a criminal charge or civil claim against the lawyer based upon *conduct* in which the client was involved;

(4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with the *Rules* of *ProfessionalConduct*.

(d) *Exhaustion of Appellate Remedies.* --When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

(e) *Limitation on Amount of Disclosure.* --When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this *rule*.

History

Amended eff. March 23, 2006 (933 So.2d 417); Oct. 1, 2011 (2011 Fla. Lexis 1576)

Annotations

Commentary

COMMENT

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This *rule* governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See *rule4*-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, *rule4*-1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and *rules4*-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful *conduct*. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the *rule* of confidentiality established in *professional* ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a

witness or otherwise required to produce evidence concerning a client. The ***rule*** of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality ***rule*** applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the ***Rules*** of ***ProfessionalConduct*** or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized disclosure

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure adverse to client

The confidentiality ***rule*** is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in ***conduct*** that is criminal or fraudulent. See ***rule4***-1.2(d). Similarly, a lawyer has a duty under ***rule4***-3.3(a)(***4***) not to use false evidence. This duty is essentially a special instance of the duty prescribed in ***rule4***-1.2(d) to avoid assisting a client in criminal or fraudulent ***conduct***.

Second, the lawyer may have been innocently involved in past ***conduct*** by the client that was criminal or fraudulent. In such a situation the lawyer has not violated ***rule4***-1.2(d), because to "counsel or assist" criminal or fraudulent ***conduct*** requires knowing that the ***conduct*** is of that character.

Third, the lawyer may learn that a client intends prospective ***conduct*** that is criminal. As stated in subdivision (b)(1), the lawyer shall reveal information in order to prevent such consequences. It is admittedly difficult for a lawyer to "know" when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. ***Rule4-1.6***(b)(2) would now require the attorney to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the ***conduct*** in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Withdrawal

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent ***conduct***, the lawyer must withdraw, as stated in ***rule4***-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in ***rule4-1.6***. Neither this ***rule*** nor ***rule4***-1.8(b) nor ***rule4***-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated ***conduct*** will actually be carried out by the organization. Where necessary to guide ***conduct*** in connection with the ***rule***, the lawyer may make inquiry within the organization as indicated in ***rule4***-1.13(b).

*Dispute concerning lawyer's **conduct***

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these ***rules***. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (b)(5) permits such disclosure because of the importance of a lawyer's compliance

with the ***Rules*** of ***ProfessionalConduct***.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's ***conduct*** or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the ***conduct*** or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's ***conduct*** is implicated, the ***rule*** of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or ***professional*** disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the ***rule*** expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, ***rule4-1.6***(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The ***Rules*** of ***ProfessionalConduct*** in various circumstances permit or require a lawyer to disclose information relating to the representation. See ***rules4***-2.3, ***4***-3.3, and ***4-4***.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes ***rule4-1.6*** is a matter of interpretation beyond the scope of these ***rules***, but a presumption should exist against such a supersession.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See ***rule4***-1.9 for the prohibition against using such information to the disadvantage of the former client.

Case Notes

Civil Procedure: Class Actions: Class Counsel: General Overview
Civil Procedure: Counsel: Disqualifications
Civil Procedure: Discovery: Privileged Matters: General Overview
Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review
Criminal Law & Procedure: Counsel: Substitution & Withdrawal
Evidence: Privileges: Attorney-Client Privilege: General Overview
Evidence: Privileges: Attorney-Client Privilege: Exceptions
Evidence: Privileges: Attorney-Client Privilege: Scope
Evidence: Privileges: Attorney-Client Privilege: Waiver
Family Law: Delinquency & Dependency: Dependency Proceedings
Legal Ethics: Client Relations: Confidentiality of Information
Legal Ethics: Client Relations: Conflicts of Interest
Legal Ethics: Client Relations: Effective Representation
Legal Ethics: Sanctions: Suspensions
Torts: Malpractice & ***Professional*** Liability: Attorneys

Xinmia Malave

LexisNexis (R) Notes

Civil Procedure: Class Actions: Class Counsel: General Overview

1. Trial court erred in disqualifying the attorneys for petitioner class members; petitioners' right to be represented by attorneys of their choice outweighed any prejudice to the objector class members, since the attorneys' limited interaction with the objectors and their counsel would have resulted in little access to confidential information. *Broin v. Phillip Morris Cos., 84 So. 3d 1107, 2012 Fla. App. LEXIS 4357, 37 Fla. L. Weekly D 702 (Fla. Dist. Ct. App. 3d Dist. 2012), quashed by 2014 Fla. LEXIS 1029, 39 Fla. L. Weekly S 165 (Fla. Mar. 27, 2014).*

Civil Procedure: Counsel: Disqualifications

2. Granting of a petition for certiorari was proper because obtaining confidential client information, switching sides in an ongoing lawsuit, and then filing a legal response against the former client over its objections, was worthy of the strongest protection of the abandoned client's interests. Therefore, it was incumbent on the trial court to disqualify the attorney and his new law firm from the entire lawsuit, and not only to further issues at the trial level regarding the trial in the case. *Rombola v. Botchey, 2014 Fla. App. LEXIS 1374, 39 Fla. L. Weekly D 263 (Fla. Dist. Ct. App. 1st Dist. Feb. 4* 2014).

3. Clients' motion to disqualify a lawyer's counsel in the clients' legal malpractice case was properly denied because, among other things, although the clients argued that the representation of the lawyer in the underlying case would give the lawyer's counsel access to confidential, attorney-client privileged information that he would then be able to use in those other unrelated cases against the clients, any claim that the lawyer had disclosed confidential information to his own attorney that would breach *R. Regulating Fla. Bar 4-1.6* was unfounded; the clients waived their right to attorney confidentiality because they leveled a claim against their former attorney for legal malpractice.. *Miccosukee Tribe of Indians v. Lehtinen, 114 So. 3d 329, 2013 Fla. App. LEXIS 7820, 38 Fla. L. Weekly D 1086 (Fla. Dist. Ct. App. 3d Dist. 2013).*

4. Bank's counsel was disqualified from representing the bank in an action on a personal guaranty because the bank's counsel also represented the personal guarantor's former lawyer in a legal malpractice action and thus had access to confidential communications between the guarantor and the guarantor's former lawyer. *Frye v. Ironstone Bank, 69 So. 3d 1046, 2011 Fla. App. LEXIS 14850, 36 Fla. L. Weekly D 2078 (Fla. Dist. Ct. App. 2d Dist. 2011).*

5. Trial court erred in disqualifying counsel for the insurer in its action against insureds because the case did not involve circumstances where counsel either disclosed confidences learned from representing the insureds in prior litigation or switched sides in violation of *R. Regulating Fla. Bar 4-1.6* and *4*-1.9. *Cont'l Cas. Co. v. Przewoznik, 55 So. 3d 690, 2011 Fla. App. LEXIS 2645, 36 Fla. L. Weekly D 453 (Fla. Dist. Ct. App. 3d Dist. 2011).*

6. Because an attorney representing the estate which was suing a nursing home was never sworn at a hearing regarding the disqualification of a law firm representing the nursing home, and thus, his representations did not qualify as testimony, and the representative's motion to disqualify the law firm was unsworn, there was no evidence as to the actual knowledge of the former partner on which to disqualify the firm. *Bon Secours-Maria Manor Nursing Care Ctr. v. Seaman, 959 So. 2d 774, 2007 Fla. App. LEXIS 9283, 32 Fla. L. Weekly D 1488 (Fla. Dist. Ct. App. 2d Dist. 2007).*

Civil Procedure: Discovery: Privileged Matters: General Overview

7. Where a brother's threat to kill his sister, communicated to his attorney, was an extraneous statement and not a communication incident or necessary to obtaining legal advice, the attorney-client privilege did not prohibit discovery through interrogatories seeking information surrounding the alleged threat. . *Hodgson Russ, LLP v. Trube, 867 So. 2d 1246, 2004 Fla. App. LEXIS 3310, 29 Fla. L. Weekly D 656 (Fla. Dist. Ct. App. 4th* Dist. 2004).

Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

8. Because conflicting evidence created a dispute which required the trial court to determine whether a conflict of interest existed which prohibited a challenged attorney from representing a minor and her parents in their medical malpractice action, as it was alleged that he acquired protected information protected by *R. Regulating Fla. Bar 4-1.6* and *R. Regulating Fla. Bar 4*-1.9(b), and because the trial court applied *R. Regulating Fla. Bar 4*-1.9 rather than *R. Regulating Fla. Bar 4*-1.10(b) in disqualifying the attorney, the minor and her parents were granted certiorari relief from the order disqualifying their attorney, the disqualification order was quashed, and the matter was remanded for a determination of the motion to disqualify under *R. Regulating Fla. Bar 4*-1.10. *Solomon v. Dickison, 2005 Fla. App. LEXIS 15989, 30 Fla. L. Weekly D 2363 (Fla. Dist. Ct. App. 1st Dist. Oct. 6 2005).*

Criminal Law & Procedure: Counsel: Substitution & Withdrawal
9. Defendant's court-appointed counsel was not required to withdraw from representing defendant, who had filed a malpractice complaint against the attorney, because the trial court deemed defendant's claim of ineffective assistance of counsel to be frivolous and the trial court ordered the attorney to continue to represent defendant. *Boudreau v. Carlisle, 549 So. 2d 1073, 1989 Fla. App. LEXIS 5132, 14 Fla. L. Weekly 2242 (Fla. Dist. Ct. App. **4th*** Dist. 1989).

Evidence: Privileges: Attorney-Client Privilege: General Overview
10. Grant of certiorari review in favor of a client and quashing of an order in favor of an attorney authorizing certain depositions that the attorney maintained he needed to prove his case was proper where the client's waiver of the attorney-client privilege was limited to the malpractice action and the attorney could reveal confidential information relating to his representation only to the extent necessary to defend himself. *Ferrari v. Vining, 744 So. 2d 480, 1999 Fla. App. LEXIS 12213, 24 Fla. L. Weekly D 2118 (Fla. Dist. Ct. App. 3d Dist. 1999).*

Evidence: Privileges: Attorney-Client Privilege: Exceptions
11. In a dependency case, attorneys ad litem were improperly ordered to disclose the whereabouts of a minor client, who had the privilege to refuse to disclose such under *Fla. Stat. § 90.502; the attorneys did not believe that the disclosure was necessary to prevent the client's commission of a crime or to prevent death or substantial bodily harm to another. The appellate court declined to find a "dependency exception." R.L.R. v. State, 116 So. 3d 570, 2013 Fla. App. LEXIS 9688, 38 Fla. L. Weekly D 1372 (Fla. Dist. Ct. App. 3d Dist. 2013).*

Evidence: Privileges: Attorney-Client Privilege: Scope
12. Attorney-client privilege did not cover a document that was prepared for the intended purpose of conveying information to an entity that was not a party to an adversary proceeding but instead, was a party in a state court action. Even if the document was protected, the privilege was waived by disclosure. *Stettin v. Gibraltar Private Bank & Trust Co. (In re Rothstein Rosenfeldt Adler, P.A.), 2011 Bankr. LEXIS 5005 (Bankr. S.D. Fla. June 7 2011).*

Evidence: Privileges: Attorney-Client Privilege: Waiver
13. Attorney-client privilege did not cover a document that was prepared for the intended purpose of conveying information to an entity that was not a party to an adversary proceeding but instead, was a party in a state court action. Even if the document was protected, the privilege was waived by disclosure. *Stettin v. Gibraltar Private Bank & Trust Co. (In re Rothstein Rosenfeldt Adler, P.A.), 2011 Bankr. LEXIS 5005 (Bankr. S.D. Fla. June 7 2011).*

Family Law: Delinquency & Dependency: Dependency Proceedings
14. In a dependency case, attorneys ad litem were improperly ordered to disclose the whereabouts of a minor client, who had the privilege to refuse to disclose such under *Fla. Stat. § 90.502; the attorneys did not believe that the disclosure was necessary to prevent the client's commission of a crime or to prevent death or substantial bodily harm to another. The appellate court declined to find a "dependency exception." R.L.R. v. State, 116 So. 3d 570, 2013 Fla. App. LEXIS 9688, 38 Fla. L. Weekly D 1372 (Fla. Dist. Ct. App. 3d Dist. 2013).*

Legal Ethics: Client Relations: Confidentiality of Information
15. Clients' motion to disqualify a lawyer's counsel in the clients' legal malpractice case was properly denied because, among other things, although the clients argued that the representation of the lawyer in the underlying case would give the lawyer's counsel access to confidential, attorney-client privileged information that he would then be able to use in those other unrelated cases against the clients, any claim that the lawyer had disclosed confidential information to his own attorney that would breach *R. Regulating Fla. Bar **4-1.6*** was unfounded; the clients waived their right to attorney confidentiality because they leveled a claim against their former attorney for legal malpractice.. *Miccosukee Tribe of Indians v. Lehtinen, 114 So. 3d 329, 2013 Fla. App. LEXIS 7820, 38 Fla. L. Weekly D 1086 (Fla. Dist. Ct. App. 3d Dist. 2013).*
16. Attorney was suspended for one year where: (1) she violated *R. Regulating Fla. Bar **Rule4-1.6***(a) when she told an Assistant State Attorney (ASA) that she had reason to believe that her client would lie to the Immigration Court, even if her client had mentioned to her that she would do anything, including lying in court, to avoid deportation; (2) the ASA had received confidential paperwork regarding the attorney's client's political asylum case, and the attorney was the only known person to have possession of such paperwork; (3) the attorney violated *R. Regulating Fla. Bar 4*-8.*4*(d) as she filed motions attacking her client's integrity, alleging the client failed to honor checks and fulfill contracts, and that she had heard that her client had robbed members of the Romanian community; and (*4*) the

attorney asserted that her client had been rightfully convicted for grand theft, and that she regretted helping her. *Fla. Bar v. Knowles, 99 So. 3d 918, 2012 Fla. LEXIS 1349, 37 Fla. L. Weekly S 508 (Fla. 2012).*

17. Bank's counsel was disqualified from representing the bank in an action on a personal guaranty because the bank's counsel also represented the personal guarantor's former lawyer in a legal malpractice action and thus had access to confidential communications between the guarantor and the guarantor's former lawyer. *Frye v. Ironstone Bank, 69 So. 3d 1046, 2011 Fla. App. LEXIS 14850, 36 Fla. L. Weekly D 2078 (Fla. Dist. Ct. App. 2d Dist. 2011).*

18. In a reorganized debtor's fraudulent transfer suit against a transfer agent, the transfer agent's counsel was disqualified due to a conflict of interest because, inter alia, (1) an attorney-client relationship existed between counsel and the debtor in a prior securities action, (2) the debtor and the reorganized debtor were the same corporate entity, and (3) the fraudulent transfer action was substantially related to the prior securities action. *World Capita Communs., Inc. v. Island Capital Mgmt., LLC (In re Skyway Communs. Holding Corp.), 415 B.R. 859, 2009 Bankr. LEXIS 2924, 22 Fla. L. Weekly Fed. B 59 (Bankr. M.D. Fla. 2009).*

19. Attorney did not violate former *R. Regulating Fla. Bar **4-1.6***(a) or ***4***-1.8(b) when the attorney testified in federal court that the attorney's opinion, stated in prior testimony, that the attorney's client was not a flight risk had changed because (1) the attorney withdrew the testimony, (2) the attorney did not reveal any communications with the client, (3) the attorney did not state what portion of the attorney's prior testimony the attorney no longer believed, and (***4***) *R. Regulating Fla. Bar **4-1.6***(c)(5) said the attorney could reveal information to the extent the attorney reasonably believed necessary to comply with the ***Rules*** of ***ProfessionalConduct***. Fla. Bar v. Ticktin, 2008 Fla. LEXIS 2525, 34 Fla. L. Weekly S 329 (Fla. May 21 2008).

20. The disclosure of information, that general counsel received while employed by defendant company, in general counsel's whistleblower action, was not improper under *Fla. R. Bar **4-1.6***(c)(2), because the disclosure was necessary to establish her claim, and disqualification of her counsel for receipt of the disclosed information was therefore improper. *Alexander v. Tandem Staffing Solutions, Inc., 881 So. 2d 607, 2004 Fla. App. LEXIS 9947, 29 Fla. L. Weekly D 1610, 21 I.E.R. Cas. (BNA) 1148 (Fla. Dist. Ct. App. **4th*** Dist. 2004).

21. Grant of certiorari review in favor of a client and quashing of an order in favor of an attorney authorizing certain depositions that the attorney maintained he needed to prove his case was proper where the client's waiver of the attorney-client privilege was limited to the malpractice action and the attorney could reveal confidential information relating to his representation only to the extent necessary to defend himself. *Ferrari v. Vining, 744 So. 2d 480, 1999 Fla. App. LEXIS 12213, 24 Fla. L. Weekly D 2118 (Fla. Dist. Ct. App. 3d Dist. 1999).*

22. Attorney in a criminal case, who filed a motion to notice actual potential conflict of interest between himself and a previous client listed as a government witness, thereby disclosing confidential communications in which the previous client confessed to uncharged crimes, violated *Fla. Bar R. **4-1.6**. The Florida Bar v. Lange, 711 So. 2d 518, 1998 Fla. LEXIS 862, 23 Fla. L. Weekly S 263 (Fla. 1998).*

23. ***Rule*** of attorney-client confidentiality comes to an end when an attorney knows that a client is engaging in crime or fraud. *The Florida Bar v. Calvo, 630 So. 2d 548, 1993 Fla. LEXIS 1946, 18 Fla. L. Weekly S 641 (Fla. 1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5442, 63 U.S.L.W. 3257 (1994).*

24. Under *Fla. Bar R. **4-1.6***(c)(2), former client who sued her former lawyer for legal malpractice, did not waive her attorney-client privilege with that lawyer as to the entire world, as such waiver was limited solely to the legal malpractice action; the ex-lawyer could only reveal confidential information relating to his representation of the client to the extent necessary to defend himself against the malpractice claim. *Adelman v. Adelman, 561 So. 2d 671, 1990 Fla. App. LEXIS 3491, 15 Fla. L. Weekly D 1369 (Fla. Dist. Ct. App. 3d Dist. 1990).*

Legal Ethics: Client Relations: Conflicts of Interest

25. Granting of a petition for certiorari was proper because obtaining confidential client information, switching sides in an ongoing lawsuit, and then filing a legal response against the former client over its objections, was worthy of the strongest protection of the abandoned client's interests. Therefore, it was incumbent on the trial court to disqualify the attorney and his new law firm from the entire lawsuit, and not only to further issues at the trial level regarding the trial in the case. *Rombola v. Botchey, 2014 Fla. App. LEXIS 1374, 39 Fla. L. Weekly D 263 (Fla. Dist. Ct. App. 1st Dist. Feb. 4* 2014).

26. Trial court erred in disqualifying the attorneys for petitioner class members; petitioners' right to be represented by attorneys of their choice outweighed any prejudice to the objector class members, since the attorneys' limited interaction with the objectors and their counsel would have resulted in little access to confidential information. *Broin v. Phillip Morris Cos., 84 So. 3d 1107, 2012 Fla. App. LEXIS 4357, 37 Fla. L. Weekly D 702 (Fla. Dist. Ct. App. 3d Dist. 2012), quashed by 2014 Fla. LEXIS 1029, 39 Fla. L. Weekly S 165 (Fla. Mar. 27, 2014).*

27. Trial court erred in disqualifying counsel for the insurer in its action against insureds because the case did not involve circumstances where counsel either disclosed confidences learned from representing the insureds in prior litigation or switched sides in violation of R. Regulating Fla. Bar 4-1.6 and 4-1.9. Cont'l Cas. Co. v. Przewoznik, 55 So. 3d 690, 2011 Fla. App. LEXIS 2645, 36 Fla. L. Weekly D 453 (Fla. Dist. Ct. App. 3d Dist. 2011).
28. In a reorganized debtor's fraudulent transfer suit against a transfer agent, the transfer agent's counsel was disqualified due to a conflict of interest because, inter alia, (1) an attorney-client relationship existed between counsel and the debtor in a prior securities action, (2) the debtor and the reorganized debtor were the same corporate entity, and (3) the fraudulent transfer action was substantially related to the prior securities action. World Capita Communs., Inc. v. Island Capital Mgmt., LLC (In re Skyway Communs. Holding Corp.), 415 B.R. 859, 2009 Bankr. LEXIS 2924, 22 Fla. L. Weekly Fed. B 59 (Bankr. M.D. Fla. 2009).
29. Where lawyer used information relating to his earlier representation of a client against her in a divorce proceeding where he represented former client's husband, he violated Fla. Bar R. 4-1.6. The Florida Bar v. Dunagan, 731 So. 2d 1237, 1999 Fla. LEXIS 159, 24 Fla. L. Weekly S 83 (Fla. 1999).
30. Attorney in a criminal case, who filed a motion to notice actual potential conflict of interest between himself and a previous client listed as a government witness, thereby disclosing confidential communications in which the previous client confessed to uncharged crimes, violated Fla. Bar R. 4-1.6. The Florida Bar v. Lange, 711 So. 2d 518, 1998 Fla. LEXIS 862, 23 Fla. L. Weekly S 263 (Fla. 1998).
31. Defendant's court-appointed counsel was not required to withdraw from representing defendant, who had filed a malpractice complaint against the attorney, because the trial court deemed defendant's claim of ineffective assistance of counsel to be frivolous and the trial court ordered the attorney to continue to represent defendant. Boudreau v. Carlisle, 549 So. 2d 1073, 1989 Fla. App. LEXIS 5132, 14 Fla. L. Weekly 2242 (Fla. Dist. Ct. App. **4th** Dist. 1989).
32. Where state attorney was not involved in the prosecution of defendant and had not revealed any confidential information about defendant known to him prior to his hire to other assistant state attorneys, the court refused to disqualify the state attorney's office from prosecution because it was not a law firm and there was no conflict of interest under former Fla. Code of ***Professional Responsibility*** DR 4-101 (now ***Rules*** Regulating The Florida Bar, ***Rule4-1.6***), former 5-105 (now ***Rules*** Regulating The Florida Bar, ***Rule4***-1.7), or former 9-101(B) (now ***Rules*** Regulating The Florida Bar, ***Rule4***-1.10). State v. Fitzpatrick, 464 So. 2d 1185, 1985 Fla. LEXIS 3276, 10 Fla. L. Weekly 141 (Fla. 1985).

Legal Ethics: Client Relations: Effective Representation
33. Where lawyer used information relating to his earlier representation of a client against her in a divorce proceeding where he represented former client's husband, he violated Fla. Bar R. 4-1.6. The Florida Bar v. Dunagan, 731 So. 2d 1237, 1999 Fla. LEXIS 159, 24 Fla. L. Weekly S 83 (Fla. 1999).

Legal Ethics: Sanctions: Suspensions
34. Attorney was suspended for one year where: (1) she violated R. Regulating Fla. Bar **Rule4-1.6**(a) when she told an Assistant State Attorney (ASA) that she had reason to believe that her client would lie to the Immigration Court, even if her client had mentioned to her that she would do anything, including lying in court, to avoid deportation; (2) the ASA had received confidential paperwork regarding the attorney's client's political asylum case, and the attorney was the only known person to have possession of such paperwork; (3) the attorney violated R. Regulating Fla. Bar 4-8.4(d) as she filed motions attacking her client's integrity, alleging the client failed to honor checks and fulfill contracts, and that she had heard that her client had robbed members of the Romanian community; and (4) the attorney asserted that her client had been rightfully convicted for grand theft, and that she regretted helping her. Fla. Bar v. Knowles, 99 So. 3d 918, 2012 Fla. LEXIS 1349, 37 Fla. L. Weekly S 508 (Fla. 2012).
35. Previously disciplined attorney was suspended for one year, followed by three years of probation, for neglect of three clients' cases by violating: (1) Fla. R. Bar 1-3.3, *by failing to notify the executive director of changes in his mailing address and business telephone;* (2) Fla. R. Bar 4-1.3, by failing to diligently represent the client; (3) Fla. R. Bar 4-1.4(a), by failing to keep the client reasonably informed; (4) Fla. R. Bar 4-1.4(b), by failing to permit the client to make informed decisions; and (5) Fla. R. Bar 4-1.3, 4-1.4(a), 4-1.4(b), and 4-1.6(a)(2), by failing to withdraw when his mental condition impaired his ability to represent a client. The Fla. Bar v. Cimbler, 840 So. 2d 955, 2002 Fla. LEXIS 2409, 27 Fla. L. Weekly S 963 (Fla. 2002).

Torts: Malpractice & *Professional* Liability: Attorneys
36. Although R. Regulating Fla. Bar 4-1.6, 4-1.9(b) provided that an attorney had a continuing duty to the client not to disclose confidences even past the termination of the matter for which representation was sought, the client failed

to allege the breach with particularity; however, the client was given an opportunity to describe the information in an amended legal malpractice complaint. *Elkind v. Bennett, 958 So. 2d 1088, 2007 Fla. App. LEXIS 9508, 32 Fla. L. Weekly D 1526 (Fla. Dist. Ct. App. **4th*** Dist. 2007).

LexisNexis Florida ***Rules*** of Court Annotated
Copyright 2014 by Matthew Bender & Company, Inc. a member of the LexisNexis Group. All rights reserved.

Grant Assurance 15

Public Comments – Non-LSC Recipients

1. National Legal Aid and Defender Association

NLADA
National Legal Aid &
Defender Association

Sent by email to: *LSCGrantAssurances@lsc.gov*

May 30, 2014

Reginald J. Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

RE: Comments Concerning Proposed Revisions to LSC 2015 Grant Assurances, Paragraph 15 (79 Fed. Reg. 24454-24455 (April 30, 2014))

Dear Mr. Haley:

On behalf of the National Legal Aid and Defender Association (NLADA), we want to thank the Legal Services Corporation (LSC) for the opportunity to comment on the proposed revisions to the 2015 Grant Assurances. These comments are submitted on behalf of NLADA by its Civil Policy Group, the elected representative body that establishes policy for the NLADA Civil Division, and its Regulations and Policy Committee.

NLADA appreciates LSC's efforts to clearly set out in its annual grant assurances the duties and obligations of its grant recipients and LSC, thereby insuring that LSC meets its responsibilities as a grant making entity responsible for distributing taxpayer dollars to organizations that provide civil legal assistance to eligible low income clients. However, we are concerned that the proposed revision to paragraph 15 - the addition of the word "time" - rather than clarifying recipients' responsibilities and obligations, creates substantial confusion for grantees and unnecessarily involves LSC in recipient personnel matters.

Since the current language in paragraph 15 already covers acts of criminal behavior involving time reporting, the proposed addition of the word "time" to this paragraph creates uncertainty for recipients as to what actions involving time are subject to mandatory reporting.

Paragraph 15 of the current grant assurances requires a recipient to report to the OIG fraud hotline within 2 business days "…the discovery of any information that gives it reason to believe it has been the victim of a loss of $200 or more as a result of a crime, fraud, misappropriation, embezzlement or theft involving property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when the program contacts local, state or Federal law enforcement officials about a crime." The current language clearly covers serious intentional criminal acts involving a significant theft based on false time reports, such as when an

employee repeatedly submits false time and travel claims for visits to clients when the employee was not actually performing those work-related functions.

However, there is a difference between this type of serious intentional criminal behavior and less serious incidents involving misreporting work time, e.g. consistently arriving 10 – 15 minutes late or using a sick day when not ill instead of a vacation day. These types of infractions and unintentional errors are best handled as personnel matters. They are appropriately handled internally through a recipient's normal management processes based on a grantee's personnel policies and, where applicable, collective bargaining agreements, rather than as an LSC compliance issue.

The addition of the term "time" to this language creates a question as to whether a distinct new category of acts involving time must also be reported to the OIG and what should be included in that category. A recipient could reasonably read this revision as a new requirement by LSC mandating the report of any act where a program has reason to believe an employee has made an erroneous entry on a time sheet or other timekeeping error, situations currently considered and handled as personnel matters and in some cases governed by collective bargaining agreements. Reporting these type of infractions and errors would be unduly burdensome and a wasteful use of the recipients' and the OIG's resources.

We recommend that paragraph 15 not be changed, as the addition of the word "time" creates confusion rather than clarification for recipients and overly entwines the Office of Inspector General in personnel and collective bargaining matters. Mandatory reporting to the OIG regarding time should be reserved for serious conduct involving criminal behavior, actions clearly covered by the current language.

Sincerely,

Dennis Groenenboom, Chair, Civil Policy Group (CPG)
Silvia Argueta, Chair, CPG Regulations and Policies Committee
Robin Murphy, Chief Counsel for Civil Programs
National Legal Aid and Defender Association

Grant Assurance 15

Public Comments – LSC Recipients

1. Northwest Justice Project
2. Colorado Legal Services
3. Iowa Legal Aid

401 Second Ave S. Suite 407
Seattle, WA 98104
Tel. (206) 464-1519
Fax (206) 903-0526

Northwest Justice Project

Toll Free 1-888-201-1012
www.nwjustice.org

César E. Torres
Executive Director

May 29, 2014

Mr. Reginald Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

VIA EMAIL

Re: Comment on Proposed Revision to Grant Assurance No. 15

Dear Mr. Haley:

I am writing on behalf of the Northwest Justice Project (NJP), LSC's grantee for the State of Washington. NJP is concerned by the proposed change to Grant Assurance No. 15 that would add the term "time" to the list of thefts of recipient property reportable to LSC. While we think we understand the purpose of this addition, we also find it conceptually very confusing and unnecessary to ensure that employee wage theft (which we think this actually refers to) is included in the "theft involving…LSC and non-LSC funds."

The inclusion of the word "time" is confusing in the implementation and bootstraps what might otherwise be a personnel matter (which admittedly must be managed and addressed) into a compliance matter. This is particularly true with respect to the application of State wage and hour laws. Specifically, professional and executive staff are deemed to be exempt salaried employees when it comes to State wage and hour laws. While advocate staff are required to track and record case, matter and supporting activity time contemporaneously for accountability, allocations, the LSC timekeeping regulation and for contract billing purposes, as salaried employees, they are not actually being paid by the hours recorded. Salaried advocates and other professional staff members often work and record far in excess of NJP's regular office hours (35 hours per week). Adding "time" language to the Grant Assurance would suggest that any time sheet or timekeeping errors of a few hours may be considered a theft of time and require reporting to LSC.

Finally, it is unclear if LSC intends to entangle itself in day-to-day personnel issues such as isolated incidents of employee tardiness and timesheet errors. If LSC adopts the proposed revision adding "time" to Grant Assurance No. 15, it will require a clear definition and detailed LSC guidance as to what constitutes "theft of time" by an exempt (salaried) and a non-exempt (hourly) employee and how grantees would uniformly determine and calculate a $200 loss for reporting it to LSC.

THE ALLIANCE

Board of Directors: Rima Alaily • Vicente Omar Barraza • Diana Bob • Carolyn Estrada • Celia Guardado • Richard Harrison • Abeda Jafar • David Keenan • Monica Langfeldt • A'Lesha Markee • Andrea Poplawski • Russell J. Speidel • Heather R. Straub • John S. Tracy • Joanne M. Whitehead • Claude M. Pearson, President Emeritus

LSC

In sum, we believe the proposed addition is both unnecessary and unclear, and creates undue burdens on program administration. Thank you for the opportunity to comment on this issue.

Sincerely,

Deborah Perluss
Director of Advocacy/General Counsel

C: César E. Torres, Executive Director
Steve Pelletier, Director of Finance

Colorado Legal Services
1905 Sherman Street, Suite 400
Denver, CO 80203-1811
Telephone: 303.837.1321/Fax: 303.830.7860
www.ColoradoLegalServices.org

May 30, 2014

Reginald J. Haley
Office of Program Performance
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

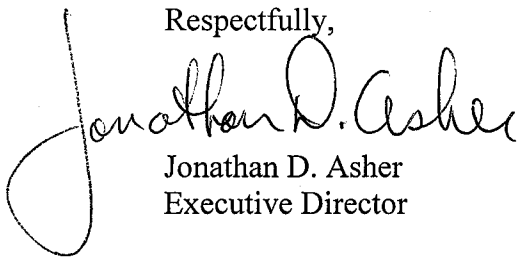
Re: Comment on Proposed Revision to LSC Grant Assurance No. 15

Dear Mr. Haley:

Colorado Legal Services is concerned with, and opposes, the addition of "time" to the matters of mandatory reporting included in Grant Assurance No. 15. The inclusion of "time" is unnecessary, ambiguous, confusing and undefined. Grant Assurance No. 15 currently requires an LSC recipient to report to the Office of Inspector General "... within two business days the discovery of any information that gives it reason to believe it has been the victim of a loss of $200 or more as a result of a crime, fraud, misappropriation, embezzlement or theft involving property, client funds, LSC funds...or when the program contacts local, state or Federal law enforcement officials about a crime." This provision is sufficiently clear that when false time reporting constitutes a crime, that it must be reported. The addition of "time" only adds confusion to the reporting requirement and inappropriately and, most likely, unintentionally involves LSC in internal timekeeping and personnel matters that are best resolved by the program and not by the LSC OIG. Examples are numerous and need not be stated, except to assert that most errors in timekeeping are mistakes. The reporting requirement, however, does not make that distinction and is unnecessary. If actual misuse of time rises to the level of a crime, it, of course, must be reported. The addition of "time" to the reporting requirements simply confuses the reporting requirement. Mandatory reporting to the OIG is best reserved for criminal conduct, which is clearly and adequately covered by the current language of the current Grant Assurance.

If you have any questions or need additional information concerning CLS' opposition to the addition of time to Grant Assurance No. 15, please inform me accordingly. Otherwise, we look forward to your serious consideration of our concern.

Respectfully,



Jonathan D. Asher
Executive Director

IOWA LEGAL AID®
HOPE. DIGNITY. JUSTICE.

1700 SOUTH 1ST AVENUE, SUITE 10
EASTDALE PLAZA
IOWA CITY, IOWA 52240-6036

319-351-6570 OR 800-272-0008
SE HABLA ESPAÑOL
FAX: 319-351-0079
WWW.IOWALEGALAID.ORG

Comment on Paragraph 15 of LSC Grant Assurances for Calendar Year 2015 Funding

Paragraph 15 currently requires the reporting of any illegal or fraudulent act no matter what the nature of the property stolen. The addition of the word "time" to Paragraph 15 is not necessary and only causes confusion regarding what is reportable.

The current provision adequately addresses any situation where there is a criminal act such as an employee submitting false time sheets indicating they were working when they were actually elsewhere and not working. The addition of the word "time" raises a question as to what additional activities or categories of activities are reportable. It might be construed to encompass not only criminal acts but also employee misbehavior subject to a program's personnel policies or collective bargaining agreement. As a result, this could lead to over-reporting, become overly burdensome for grantees and LSC and unnecessarily entwine LSC and the Office of Inspector General in grantees' personnel and collective bargaining issues.

We recommend that paragraph 15 should not be changed. Mandatory reporting within 2 business days to the OIG should be reserved for criminal or fraudulent conduct which is clearly covered by the current language.

Respectfully submitted,

Christine M. Luzzie
Deputy Director

Proposed Rulemaking Agenda

OFFICE OF LEGAL AFFAIRS

To: Operations and Regulations Committee

From: Ronald S. Flagg, Vice President and General Counsel
Mark Freedman, Senior Assistant General Counsel
Stefanie K. Davis, Assistant General Counsel

Re: Proposed Rulemaking Agenda for 2014-2015

Date: July 2, 2014

Management has identified six potential areas for rulemaking in 2014-2015. Management identified the areas after a review of open rulemakings, requests for opinions, discussions with staff, and consideration of questions raised by members of the Committee. The rulemakings are presented in the general order in which Management proposes to address them, although some rulemakings could proceed simultaneously. After the Committee expresses its views about the priorities for rulemaking, the Office of Legal Affairs will develop a workplan that will result in Rulemaking Options Papers for each of the proposed rules.

The areas identified as being most appropriate for regulatory action at this time are:

- Revising 45 C.F.R. Part 1630—Cost Standards and Procedures and the Property Acquisition and Management Manual (PAMM);
- Revising the transfer rule in 45 C.F.R. § 1610.7 and the subgrant rule in 45 C.F.R. § 1627.3;
- Revising the definition of "Federal law relating to the proper use of Federal funds" in 45 C.F.R. § 1640.2(a);
- Examining LSC's policy with respect to individuals who are considered to have filed an application for adjustment of status to that of lawful permanent resident for purposes of eligibility under § 504(a)(11)(B) of the fiscal year 1996 LSC appropriation act;
- Examining the provisions of 45 C.F.R. Part 1607 pertaining to the involvement of client-eligible individuals on recipient boards of directors; and
- Revising the 2002 rulemaking protocol.

The Office of Inspector General (OIG) recommends rulemaking on the first three items in the above list, as well as two additional rulemakings: the addition of Touhy regulations governing the handling of subpoenas received by LSC or the OIG, and implementation or rescission of 45 C.F.R Part 1603. June 27, 2014 Memorandum from Laurie Tarantowicz, Assistant Inspector General and Legal Counsel, and Tom Hester, Associate Counsel, to the LSC Board Operations and Regulations Committee ("OIG Memo"). Because the OIG has submitted its own memo to the Committee, we will not substantially restate their recommendations and analysis in this memo. The OIG's memo is cross-referenced as necessary.

Each proposal is discussed more fully below.

A. Revisions to 45 C.F.R. Part 1630 and the PAMM

LSC issued the PAMM in 2001 as the document containing "all of the relevant policies and requirements related to the acquisition, use and disposal of real and personal property." 66 Fed. Reg. 47688 (Sep. 13, 2001). Part 1630 generally governs the allowability of costs attributed to a recipient's LSC grant. 45 C.F.R. § 1630.1. Part 1630 overlaps with the PAMM insofar as Part 1630 establishes policy for when recipients must seek prior approval of a purchase of personal or real property. Id. §§ 1630.5 (describing costs requiring prior approval), 1630.6 (establishing the timetable and bases for granting prior approval). However, Management has determined that there are inconsistencies between the PAMM and Part 1630, including inconsistencies in how they are applied, that should be resolved through rulemaking. Additionally, Management has identified other aspects of both Part 1630 and the PAMM that would benefit from being clarified through the rulemaking process.

The rulemaking to revise Part 1630 and the PAMM could include the following topics. Other potential areas for rulemaking may be identified during the process, and would be recommended for inclusion as appropriate.

- Revise Section 3(d) of the PAMM and § 1630.5(c) to require prior approval for all purchases of personal property, the cost of which exceeds $10,000 when one or more items are purchased in one transaction. This revision would make the rule consistent with OCE and OIG's current practice. OLA issued IN-2014-001 on January 15, 2014, in which OLA concluded that an "individual" item under the current rules *does not* include aggregated related items;
- Consider raising the prior approval threshold, which was set at $10,000 in 2001;
- Consider revising the PAMM definition of "personal property" to clarify that it includes software licenses and intellectual property;
- Consider including procurement procedures and prior approval requirements for contracts for services within the scope of the PAMM and Part 1630;

- Consider removing or modifying the requirement in § 1630.3(a)(8) that recipients obtain consent from a federal agency before using LSC funds to match a federal grant awarded by that agency; and
- Consider revising § 1630.7(b)(5), which currently states that LSC may disallow a questioned cost only if no more than five years have elapsed since a recipient incurred the cost in question, to allow flexibility in situations where LSC is investigating a recipient's possible misuse of funds. The OIG also recommends revising this section of the regulations. See OIG Memo at 4. The OIG proposes that LSC adopt a provision tolling the five-year period during the pendency of a questioned cost proceeding. See id.

B. Revisions to 45 C.F.R. Parts 1610 and 1627

Part 1610—Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity, and Part 1627—Subgrants and Membership Fees or Dues, jointly govern the use of LSC funds paid by a recipient to a third-party under certain circumstances. Management has determined that aspects of the two rules lack clarity about when and how they should be applied, which has caused LSC difficulty in trying to apply the rules. Management believes that both Parts 1610 and 1627 would benefit from rulemaking to clarify the problematic provisions.

Management recommends that rulemaking to revise Parts 1610 and 1627 include the following topics. Other potential areas for rulemaking may arise during the process, and would be recommended for inclusion as appropriate.

- Revise the § 1610.2(g) definition of "transfer" and the § 1627.2(b)(1) definition of "subrecipient" to make clear when grantee payments to third parties to carry out activities under a special purpose grant are transfers and subgrants. The Board previously authorized rulemaking on this particular issue at the July, 2012 meeting, and the OIG recommends rulemaking to resolve this issue. See OIG Memo at 4-5. The existing definitions are unclear about whether an activity is "programmatic" for purposes of the transfer and subgrant rules turns on the nature of the activity itself or on the nature of the grant that provides the funding for the activity.
    - Example: LSC provides a Technology Initiative Grant (TIG) for technology enhancements to a website. The recipient uses the TIG funds to contract with another organization for these enhancements. Under one reading of § 1610.2(g) and § 1627.2(b)(1), the technology work is "programmatic" because it is the purpose of the TIG; thus, the contract is a subgrant and transfer. Under another interpretation, the contract is not a subgrant and transfer because technology work is not "programmatic" work of an LSC recipient, regardless of whether it is funded from a general legal aid grant or a specific technical grant.

- Harmonize the definitions of "transfer" and "subgrant." As currently written, there are minor differences between the definitions of "transfer" and "subgrant" that may cause confusion about whether the terms are synonymous. Management intends the terms to be synonymous.
- Consider whether in-kind support to third parties should be considered transfers and subgrants.

C. Revisions to 45 C.F.R. § 1640.2(a)(1) definition of "Federal law relating to the proper use of Federal funds"

45 C.F.R. Part 1640 implements § 504(a)(19) of the fiscal year 1996 LSC appropriation act, which renders a recipient's grant void if the recipient violates any "provisions of Federal law relating to the proper use of Federal funds[.]" Pub. L. 104-134, § 504(a)(19), 110 Stat. 1321, 1321-56 (1996). The regulatory history of Part 1640 indicates that Congress intended § 504(a)(19) to require recipients to comply with Federal laws governing waste, fraud, and abuse of Federal funds. 61 Fed. Reg. 45760 (Aug. 29, 1996); 62 Fed. Reg. 19424, 19425 (Apr. 21, 1997). Consistent with that intent, LSC defined "Federal law relating to the proper use of Federal funds" explicitly to include the thirteen laws listed therein. Management subsequently learned that § 1640.2(a)(1) is not a comprehensive list of all Federal laws governing waste, fraud, and abuse; for example, 18 U.S.C. § 666, which has been used to prosecute cases the OIG referred for prosecution, is not included in the list. Because § 666 is not included in the § 1640.2(a)(1) list, LSC cannot issue sanctions authorized by Part 1640 against a recipient found to have violated § 666. Management proposes to undertake rulemaking on Part 1640 to include § 666 and any other Federal laws governing waste, fraud, and abuse of Federal funds that currently are excluded. The OIG also recommends amending 45 C.F.R. § 1640.2(a)(1), and proposes that LSC should eliminate the definition's list of statutes in favor of a reference to LSC's website, where LSC will maintain a current list of the relevant statutes. See OIG Memo at 1-4.

D. Consideration of LSC's policy with respect to individuals who are considered to have filed an application for adjustment of status to that of lawful permanent resident for purposes of eligibility under § 504(a)(11)(B)

Under § 504(a)(11)(B) of the fiscal year 1996 LSC appropriation act, spouses or parents of U.S. citizens who have "filed an application to adjust [their status] to the status of lawful permanent resident" (that has not been rejected) are "eligible aliens" for representation in any matter by LSC recipients. The Department of Homeland Security has designated a primary application for permanent residency, although individuals may apply using other forms. Since at least 2003, the list of acceptable documentation showing that an individual has filed for permanent resident status has included documents that *do not themselves constitute applications to adjust status to that of lawful permanent resident*. Part 1626 itself does not extend eligibility

for these individuals. Management proposes to explore the implications of the discrepancy between the language of § 504(a)(11)(B) and Part 1626 and the list of acceptable documentation to show that an individual has filed an application for lawful permanent resident status and to determine whether rulemaking is necessary to revise the list of acceptable documentation.

E. Revisions to the definition of "eligible client member" and the provisions of Part 1607 pertaining to eligible client participation on recipient boards of directors

Board member Julie Reiskin submitted a memo to the Office of Program Performance, sharing concerns of LSC recipient clients and client-eligible board members about the actual involvement of client representatives on recipients' boards of directors, as well as her own thoughts regarding Part 1607. One primary concern stated in the memo was that the language of §§ 1607.2(c) and 1607.3, which were promulgated in 1994, unnecessarily limit the participation of client-eligible individuals or frustrate the purpose of § 1007(c) of the LSC Act to include individuals who are eligible for services from an LSC recipient on a recipient's board of directors. For example, § 1007(c) states that eligible client members may be representatives of associations or organizations of eligible clients, which § 1607.3(c) interprets as allowing a range of organizations that serve client-eligible individuals, which are not themselves directed by client-eligible individuals, to appoint eligible client members to a recipient's board of directors. Management proposes to assess the effects of the client participation provisions of Part 1607 and determine whether the rule should be revised.

F. Development of Touhy regulations

As explained more fully in their memo to the Committee, the OIG recommends that LSC develop and promulgate regulations to establish procedures by which litigants in civil cases not involving the Corporation may request documents or testimony from LSC and by which LSC will consider and respond to such requests. See OIG Memo at 5-7. Most, if not all, Federal agencies have such regulations, called Touhy regulations after the case that prompted agencies to develop procedures for serving and responding to subpoenas. The Office of Legal Affairs also identified adoption of Touhy regulations as an area of interest, but because the Corporation so rarely receives subpoenas, did not consider the issue a priority when compared to the other proposed rulemakings addressed in this memorandum.

G. Implementation or Rescission of Part 1603

The OIG identified a final area of potential rulemaking action in the upcoming year. The OIG noted that LSC promulgated 45 C.F.R. Part 1603, which implements the LSC Act's requirement that the Corporation establish State advisory councils, but has not acted to maintain such councils. See OIG Memo at 7. The OIG recommends that LSC either ensure that the state

advisory councils are established and operative or rescind Part 1603 "if the Corporation has no intention of establishing state advisory councils pursuant to Section 1004(f)." Id.

H. Revisions to the rulemaking protocol

The Chair of the Committee has expressed interest in examining and revising the rulemaking protocol. Management agrees that the protocol, which has been in place since 2002, is ripe for review, and recommends engaging the Committee to determine whether any changes should be made.

Office of Inspector General
Legal Services Corporation

Inspector General
Jeffrey E. Schanz

3333 K Street, NW, 3rd Floor
Washington, DC 20007-3558
202.295.1660 (p) 202.337.6616 (f)
www.oig.lsc.gov

MEMORANDUM

To: LSC Board Operations and Regulations Committee

Through: Jeffrey Schanz
Inspector General

From: Laurie Tarantowicz
Assistant Inspector General and Legal Counsel

Tom Hester
Associate Counsel

Re: Office of Inspector General Recommendations to the Committee for its 2014 Regulatory Agenda

Date: June 27, 2014

---

1. Introduction

The Office of Inspector General is recommending that the Legal Services Corporation Board of Directors, through its Operations and Regulations Committee, consider a number of issues for its 2014 Regulatory Agenda.

II. Revise Part 1640

A. Background

Section 504(a)(19) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 ("1996 Act"),[1] provides:

> None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity . . . unless such person or entity enters into a contractual agreement to be subject to *all* provisions of Federal law relating to the proper use of Federal funds, the violation of which shall render any grant or contractual agreement to provide funding

> null and void, and, for such purposes, the Corporation shall be considered to be a Federal agency and all funds provided by the Corporation shall be considered to be Federal funds provided by grant or contract. (Emphasis supplied.)

While Section 504(a)(19) requires that grantees agree to be bound by *all* federal statutes relating to the proper use of federal funds, LSC's implementing regulations, at 45 C.F.R. § 1640, do not identify all federal statutes relating to the proper use of federal funds. LSC's grant assurances, in turn, require grantees to agree to be bound *only* by those federal statutes identified in the Part 1640 regulations. See 2013 LSC Grant Assurances at ¶1 (providing that grantee "agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1)").

In its Part 1640 regulations, LSC has identified the following federal laws "related to the proper use of Federal funds" as those to which recipients of LSC funds are to be subject:

- 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses)
- 18 U.S.C. § 286 (Conspiracy to Defraud the Government With Respect to Claims)
- 18 U.S.C. § 287 (False, Fictitious, or Fraudulent Claims)
- 18 U.S.C. § 371 (Conspiracy to Commit Offense or Defraud the United States)
- 18 U.S.C. § 641 (Public Money, Property, or Records)
- 18 U.S.C. § 1001(Statements or Entries Generally)
- 18 U.S.C. § 1002 (Possession of False Papers to Defraud the United States)
- 18 U.S.C. § 1516 (Obstruction of Federal Audit)
- 31 U.S.C. § 3729-33 (Civil False Claims) (except that *qui tam* actions authorized by § 3730(b) may not be brought against the Corporation or its grantees)

45 C.F.R. § 1640.2(a)(1).

At least one[2] major federal criminal statute relating to the proper use of federal funds has been omitted from the list: 18 U.S.C. § 666, which was enacted specifically in response to perceived inadequacies of the older federal theft and bribery laws codified at 18 U.S.C. §§ 201 and 641,[3] and which is the primary federal statute for prosecution of theft, embezzlement and bribery schemes involving non-federal officials. Section 666 provides, in relevant part:

> (a) Whoever, if the circumstance described in subsection (b) of this section exists--
>
> (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that--

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance . . . .

As it expressly relates to the proper use of federal funds (applying only to conduct affecting entities which receive "benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance," 18 U.S.C. § 666(b)), Section 666 appears to fall squarely within the ambit of Section 504(a)(19).

B. <u>OIG Regulatory Proposal</u>

In its current form, Part 1640 provides: "Federal law relating to the proper use of Federal funds *means*," followed by the previously-enumerated list of statutes.[4] Even were the current list of statutes included in Part 1640 not under-inclusive, in its current form Part 1640 would still be at perpetual risk of lapsing into over-or under-inclusiveness, as new statutes come into being and old statutes are amended. To bring Part 1640 into line with the requirements of Section 504(a)(19) while avoiding the need to amend Part 1640 each

time a statute becomes newly applicable (or inapplicable) to LSC funds, the OIG recommends that LSC remove all specific statutory references from the regulation and instead refer readers to the LSC website, where it would maintain an easily-updated list of applicable statutes.

Similarly, LSC's grant assurances currently require grant recipients to "agree[] to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1)." [5] To properly implement Section 504(a)(19), once the regulation is modified, the grant assurances should also be modified to refer readers to the list of applicable statutes on the LSC website.

For the foregoing reasons, the OIG recommends that the Part 1640 regulations and grant assurances be amended to comply with Section 504(a)(19).

III. Revise Part 1630.7(b)

A. Background

The Corporation's Part 1630 regulations establish "costs standards and procedures," which govern the allowability of costs incurred by recipients of LSC grants. In the event a recipient incurs a cost that is not allowable, Part 1630 provides that LSC may initiate a questioned cost procedure that will allow LSC to recoup the misspent funds from the recipient.

In its Part 1630 regulation LSC has imposed a 5-year limitations period on the recovery of disallowed costs. Part 1630.7(b) provides that, if LSC management "determines that there is a basis for disallowing a questioned cost, and if not more than five years have elapsed since the recipient incurred the cost, Corporation management shall provide to the recipient written notice of its intent to disallow the cost."

Because the process for questioning costs can sometimes move quite slowly at LSC, this 5-year limitation period has, on a number of occasions, impeded the Corporation's ability to recover misspent funds.

B. OIG Regulatory Proposal

To address this problem, the OIG proposes that the limitations period be tolled during the pendency of a questioned cost proceeding, with the tolling period triggered by the initial identification of a questioned cost, whether by the OIG or OCE.

IV. Revise Part 1627

A. Background

The OIG has long supported a revision of LSC's subgrant rule. OIG recognizes that there may be cogent policy considerations for exempting certain third-party payments made by

TIG grantees from treatment as subgrants. It is the OIG's understanding that LSC's past practice was largely guided by these policy considerations. The OIG further recognizes that LSC's primary interest in this matter is to ensure adequate oversight of grant funds paid to third parties and that such oversight does not necessarily entail treatment of these payments as sub grants. As explained more fully in its June 11, 2012 memorandum to the Operations and Regulations Committee, however, the OIG does not believe that the text of the rule itself is susceptible to multiple readings, particularly given the statutory context in which it was enacted and the regulatory history.

B. OIG Regulatory Proposal

Provided that LSC maintains adequate oversight over all third-party payments, the OIG would welcome amendment of the subgrant rule to bring it into conformity with LSC practice concerning payments to third parties not engaged in the provision of legal services.

V. Implement *Touhy* Regulations

A. Background

When federal agencies receive subpoenas issued in connection with civil cases in which the United States is not a party, their responses are generally governed by regulations promulgated under the so-called "Touhy doctrine," which enables the head of an agency (or his delegate) to control the disclosure of agency information, whether documentary or testimonial. Because LSC has not promulgated Touhy regulations, the Corporation's responses to third-party subpoenas have necessarily been somewhat improvisational. To improve our ability to respond to third-party subpoenas, the OIG recommends that the LSC OIG and the LSC adopt *Touhy* regulations.

In United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951), a prisoner bringing a habeas corpus action against the warden of his penitentiary served a subpoena *duces tecum* on an FBI agent, seeking records which allegedly showed his conviction had been obtained through fraud. 340 U.S. at 464-65. The FBI agent declined to produce the records, stating he was bound by an order of the Attorney General which prohibited disclosure of Department of Justice records without the consent of the Attorney General or his designee. Id. at 465. See Department of Justice Order No. 3229, 11 Fed. Reg. 4920 ("All official files, documents, records and information in the offices of the Department of Justice . . . are to be regarded as confidential. No officer or employee may permit the disclosure or use of the same for any purpose other than for the performance of his official duties, except in the discretion of the Attorney General, the Assistant to the Attorney General, or an Assistant Attorney General acting for him."). The district court held the FBI agent in contempt for refusing to produce the records and ordered him jailed. Id.

The Court of Appeals for the 7th Circuit reversed, holding the FBI agent acted properly in refusing to disclose DOJ records pursuant to the Attorney General's order, United States

ex rel. Touhy v. Ragen, 180 F.3d 321 (7th Cir. 1950), and the Supreme Court affirmed the judgment of the Seventh Circuit.

In its decision the Supreme Court took pains to emphasize that, in affirming the Seventh Circuit's judgment, it was not "consider[ing] the ultimate reach of the authority of the Attorney General to refuse to produce at a court's order the government papers in his possession, for the case as we understand it raises no question as to the power of the Attorney General himself to make such a refusal." 340 U.S. at 467. Rather, under the facts and posture of the case as it reached the Court, the lawfulness of the FBI agent's action was at issue only insofar as the Court was asked "to determine whether the Attorney General can validly withdraw from his subordinates the power to release department papers."

Since the Touhy decision, most federal agencies have promulgated regulations instituting specific procedures for serving and responding to subpoenas. The institution of Touhy regulations has been particularly important for large agencies, where the absence of such procedures could otherwise result in needless confusion and delay for departmental employees and litigants alike.

Since the advent of the Freedom of Information Act (FOIA) in 1966 the promulgation of Touhy regulations has also been helpful in allowing agencies to respond to subpoenas *duces tecum* outside of the procedures for public information requests governed by the FOIA, as well as requiring subpoena proponents to provide information to the agency that the agency would not be allowed to demand under the FOIA.

For example, in addition to specifying where and on whom a demand for testimony or records shall be served, and requiring that a copy be served upon the agency's general counsel, a Touhy regulation may also require a subpoena proponent to submit an affidavit setting forth the title of the legal proceeding and the forum; the requesting party's interest in the legal proceeding; the reason for the demand; a showing that the desired testimony or document is not reasonably available from any other source and, if testimony is requested, the intended us of the testimony; a general summary of the desired testimony; and a showing that no document could be effectively provided in lieu of testimony.[6]

Touhy regulations likewise govern employees' response to subpoenas, forbidding them from responding to subpoenas without the prior authorization of agency counsel, and requiring them to immediately notify agency counsel upon receipt of a subpoena.[7]

In the past year the OIG has received two third-party subpoenas *duces tecum* issued in connection with civil cases; LSC management also received a subpoena in connection with the second case.

The first case arose from a Title VII suit brought against an LSC recipient in federal court in Tennessee by a former recipient employee. The subpoena demanded voluminous OIG investigative documents compiled as a result of allegations of wrongdoing by recipient management. As the OIG had never, to the knowledge of OIG counsel, received such a

third-party subpoena *duces tecum*, several issues arose as a matter of first impression, particularly regarding the question whether the OIG would be limited to asserting FOIA exemptions to withhold sensitive law enforcement information, or whether it might be entitled to assert the broader common-law law enforcement privileges developed in the subpoena enforcement context.

Fortunately these issues became moot when the subpoena proponent, through her counsel, agreed to allow the OIG to withhold all third-party law enforcement information under the same terms as would apply in a FOIA request. In addition, she agreed to extend the two-week timeframe for the OIG's response; substantially narrow the scope of the request; limit the use she would make of the information; and destroy the subpoenaed documents once the litigation had concluded.

The second case arose out of a federal-court lawsuit brought by a private litigant represented by the Legal Aid Society of Los Angeles (and co-counseled by LSC recipient CRLA) against an individual who had provided information to both the OIG and LSC Management. The litigant served both the OIG and LSC Management with a wide-ranging subpoena *duces tecum* which resulted in the OIG and LSC Management's identification of several thousand pages of responsive documents, many of which contained sensitive law enforcement information, as well as internal OIG and LSC communications of a type that is normally protected by the deliberative process and attorney-client privileges of the FOIA.

Fortunately the U.S. Attorney for the Eastern District of California agreed to represent the OIG and LSC Management alike in the subpoena action; moreover, the subpoena proponents ultimately agreed to narrow the scope of the request substantially and allow the subpoena recipients to withhold information that would be exempt from the disclosure requirements of the FOIA. Again, however, the lack of a formalized procedure for responding to third-party subpoenas caused some initial perplexity in the U.S. Attorney's Office, as the attorneys there had no experience representing entities subject to the FOIA yet lacking Touhy regulations to distinguish subpoenas from garden-variety FOIA requests, and to specify on what terms the response would be made.

C. OIG Regulatory Proposal

For the foregoing reasons, the OIG recommends that the Corporation promulgate Touhy regulations to rationalize and simplify the OIG's and LSC Management's response to third-party subpoenas issued in civil cases.

VI. Implement or Delete Part 1603

Section 1004(f) of the LSC Act, 42 U.S.C. § 2996c(f), requires LSC to "request the Governor of each state to appoint a nine-member advisory council for such State." Such advisory councils will be "charged with notifying the Corporation of any apparent violation" of the LSC Act and its implementing rules, regulations and guidelines. Id.

In 1975 the Corporation promulgated 45 C.F.R. § 1603 to implement the statutory provision on advisory councils. To the OIG's knowledge, however, the Corporation, at least for quite a long period of time, has not successfully carried out the statutory requirement of requesting the governors of each state to appoint advisory councils.

Accordingly, the OIG recommends that LSC either request the governors of each state to establish advisory councils, as required by the statute, or delete Section 1603 altogether, if the Corporation has no intention of establishing state advisory councils pursuant to Section 1004(f).

---

[1] PUB. L. 104-134, 110 STAT. 1321. This provision has been incorporated by reference into all subsequent LSC appropriations acts.

[2] 18 U.S.C. § 285, which likewise does not appear in Section 1640, provides:

> Whoever, without authority, takes and carries away from the place where it was filed, deposited, or kept by authority of the United States, any certificate, affidavit, deposition, statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper prepared, fitted, or intended to be used or presented to procure the payment of money from or by the United States or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof has or has not already been allowed or paid; or
>
> Whoever presents, uses, or attempts to use any such document, record, file, or paper so taken and carried away, to procure the payment of any money from or by the United States, or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States--
>
> Shall be fined under this title or imprisoned not more than five years, or both.

Although there are no published decisions discussing the reach of 18 U.S.C. § 285, because the statute relates on its face to the proper use of federal funds, it too would appear to be made applicable to LSC and its grantees by Section 504(a)(19).

[3] See Sabri v. United States, 541 U.S. 600, 606-607 (2004).

[4] 45 C.F.R. § 1640(a)(1) (emphasis supplied).

[5] 2013 LSC Grant Assurances at 1.

[6] See, e.g., 15 C.F.R. § 15a (Department of Commerce Touhy regulations)

[7] See, e.g., 15 C.F.R. § 15a(4).

Service Eligibility Options for Persons Covered by the Convention Against Torture

LSC

OFFICE OF LEGAL AFFAIRS

TO: Charles N.W. Keckler, Chairman, Operations and Regulations Committee

FROM: Ronald S. Flagg, General Counsel *RSF*
Stefanie K. Davis, Assistant General Counsel *SKD*

CC: James J. Sandman, President
Carol A. Bergman, Director of Government Relations and Public Affairs

RE: Amendments to the Restrictions on Legal Assistance to Non-Citizens

DATE: June 30, 2014

This memorandum responds to your request for information about whether and how LSC should ask Congress to modify the restrictions on legal assistance to non-citizens established by § 504(a)(11) of the fiscal year 1996 LSC appropriation statute, Pub. L. 104-134, and incorporated by reference in LSC's appropriations annually.

Your question arose from comments LSC received during the public comment period for proposed changes to 45 C.F.R. Part 1626. The comments came from non-profit organizations advocating that LSC extend eligibility for legal assistance to individuals who were granted withholding of removal or deferral of removal under the Convention Against Torture ("CAT"). For the reasons explained below, we do not believe LSC has the authority to expand eligibility for legal assistance to such individuals. It may be possible, however, for LSC to recommend adding language extending eligibility to individuals granted withholding or deferral of removal under the CAT to LSC's annual appropriation bill.

The CAT does not entitle individuals who have been subject to torture to legal assistance in proceedings in which they seek relief from their torturers. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984. Nor does the CAT's implementing legislation require that legal assistance be provided to those individuals. See 18 U.S.C. § 2340 et seq. (extending criminal liability to any act of torture committed outside the United States by a U.S. national or by an alleged offender present in the United States, regardless of the offender's nationality). The CAT can thus be distinguished from the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"), to which the United States is also a party. Pursuant to Article 25, nationals of countries that are signatories to the Hague Convention "shall be entitled in matters concerned

with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of . . . that State." Hague Convention on the Civil Aspects of International Child Abduction, Chap. V, Art. 25, done Oct. 25, 1980, 39 U.N. GAOR Supp. 51, at 197.

In 1993, LSC's Office of the General Counsel determined that the specific language of Article 25 of the Hague Convention overrode the general proscription against legal assistance to non-citizens contained in LSC's annual appropriation statutes. See Letter from Kelly Martin, Assistant General Counsel, LSC, to Andy Harrington, Staff Attorney, Alaska Legal Services Corporation, Mar. 18, 1993. Consistent with that opinion, LSC promulgated 45 C.F.R. §1626.10(e), which extended eligibility for legal assistance to "indigent persons abroad who seek to invoke the protection of the [Hague Convention], so long as they are otherwise financially eligible." See 62 Fed. Reg. 19409, 19413 (Apr. 21, 1997) (45 C.F.R. Part 1626 final rule). Because both the CAT and its implementing legislation are silent on the availability of legal assistance to victims of torture,[1] unlike the Hague Convention, we conclude that LSC lacks the authority to extend eligibility for legal assistance to individuals granted withholding or deferral of removal under the CAT.

Should the Board wish to explore legislative action to extend eligibility, we recommend that the Board work with LSC's Office of Government Relations and Public Affairs on the issue. It may be possible to ask Congress to extend eligibility to victims of torture covered by the CAT through LSC's annual appropriation bill, a process into which LSC has some input.

[1] In addition to the CAT and its implementing legislation, we also considered the Torture Victims Protection Act of 1991, Pub. L. 102-256, and the Torture Victims Relief Act of 1998, Pub. L. 105-320. Neither statute provides a right of access to legal assistance for victims of torture.

Institutional Advancement Committee

INSTITUTIONAL ADVANCEMENT COMMITTEE

July 20, 2014

Agenda

OPEN SESSION

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of April 6, 2014
3. Update on 40th Anniversary Campaign
4. Consider and act on In-kind Contributions Protocol
5. Update on September Conference Events
6. Public comment
7. Consider and act on other business

CLOSED SESSION

1. Approval of minutes of the Committee's Closed Session meeting of April 6, 2014
2. Consider and act on prospective funders
3. Donor report
4. Consider and act on adjournment of meeting

Draft Minutes of April 6, 2014

Open Session Meeting

Legal Services Corporation
Meeting of the Institutional Advancement Committee

Open Session

Sunday, April 6, 2014

DRAFT

Chairman John G. Levi convened an open session meeting of the Legal Services Corporation's ("LSC") Institutional Advancement Committee ("the Committee") at 3:08 p.m. on Sunday, April 6, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

John G. Levi, Chairman
Martha L. Minow
Robert J. Grey, Jr.
Charles N.W. Keckler
Father Pius Pietrzyk
Herbert S. Garten, (Non-Director Member)
Frank B. Strickland (Non-Director Member)

Other Board members present:

Sharon L. Browne
Julie A. Reiskin
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Wendy Rhein	Chief Development Officer
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Richard L. Sloane	Chief of Staff and Special Assistant to the President
David Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services
Jeffrey Schanz	Inspector General
Rebecca Fertig Cohen	Special Assistant to the President
Carol Bergman	Director, Office of Government Relations and Public Affairs
Carl Rauscher	Director of Media Relations, Office of Government Relations and Public Affairs

Allan Tanenbaum	Non-Director Member, LSC's Finance Committee
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluations, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit, Office of the Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General
Lora M. Rath	Director, Office of Compliance and Enforcement
Atitaya Rok	Staff Attorney, Office of Legal Affairs
Katherine Ward	Executive Assistant, Office of Legal Affairs
Wendy Long	Executive Assistant, Office of Government Relations and Public Affairs
Treefa Aziz	Government Affairs Representative, Office of Government Relations and Public Affairs
Eric Jones	Office of Information Technology
Terry Brooks	American Bar Association (ABA)
Robin C. Murphy	National Legal Aid and Defenders Association (NLADA)
Don Saunders	National Legal Aid and Defenders Association (NLADA)
Dominique Martin	Law99.com

The following summarizes actions taken by, and presentations made to, the Committee:

Chairman Levi called the meeting to order.

MOTION

Mr. Keckler moved to approve the agenda. Mr. Strickland seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Dean Minow moved to approve the minutes of the Committee's meetings of January 25, 2014. Mr. Keckler seconded the motion.

VOTE

The motion passed by voice vote.

Chairman Levi invited comments from Ms. Rhein on the calendar of events planned for LSC's 40th anniversary. She discussed planned activities and guest speakers and reminded Board members to forward names of invitees they would like to attend the various events.

Chairman Levi spoke of the importance of publicizing to the legal community the need for civil legal assistance to low income Americans. He discussed the responsibility of LSC to promote institutional advancement, and the importance of the 40th anniversary event. He thanked Mr. Garten for putting together the event in Austin, Texas and Mr. Strickland for the work he is doing in Atlanta. He also thanked the Board for its commitment.

Chairman Levi invited public comments and received none.

There was no other business to consider.

The Committee continued its meeting in closed session at 3:29 p.m.

In-Kind Contributions Protocol

Protocol for the Acceptance and Use
Of
In-Kind Contributions to LSC

(*for inclusion in the LSC Accounting and Administrative Manuals*)

1. Protocol and Purpose

This Protocol for the Acceptance and Use of In-Kind Contributions ("Protocol") governs the solicitation and acceptance of contributions of *goods or services* by the Legal Services Corporation ("LSC" or "Corporation"). This Protocol is not meant to apply to *financial* contributions subject to the Protocol for the Acceptance and Use of Private Contributions of Funds to LSC. This Protocol governs the solicitation of contributions of goods or services only from Prospects approved by the Board for purposes of the Protocol for the Acceptance and Use of Private Contributions and Funds to LSC.

The purpose of this Protocol is to provide guidance to LSC's Board of Directors, ("Board"), members of committees of the Board, LSC employees, and other stakeholders concerning gifts of goods or services to LSC, and to provide guidance to donors and their professional advisors when making donations of goods or services to LSC. LSC's Board reserves the right to revise or revoke this Protocol at any time, and to make exceptions. Any changes or exceptions to the Protocol must be approved by the Board in writing. This Protocol and any changes or exceptions to the Protocol will be made available on the LSC website at www.lsc.gov.

All applications for grants or solicitations for contributions of goods or services will be coordinated with the Chief Development Officer to ensure compliance with this Protocol.

2. Grants and Gifts

For the purposes of this Protocol, a "grant" is defined as any opportunity to receive goods or services made available by a third party pursuant to a Request for Proposal ("RFP") or other equivalent application process. "Grant" does not include procurement contracts for which LSC issues an RFP. A "gift" is a contribution of goods or services, solicited or unsolicited, made available by a third party, through means other than a grant.

Solicitations for gifts for LSC staff events/functions (e.g., LSC Cares silent auction; Black History Month events) are subject to this Protocol.

The Corporation's In-Kind Committee ("Committee") will evaluate prospects for in-kind contributions and determine whether to pursue or decline the grant or gift. The Chief Development Officer, the Ethics Officer, the General Counsel, and the Director of Government Relations and Public Affairs make up the Committee.

Before any member of the Board of Directors ("Director"), member of a Board committee, officer, or LSC employee pursues any grant or gift subject to this Protocol, the proposed grant or gift application must be approved through the following process:

A. A Director, member of a Board committee, officer, or LSC employee ("Initiator"):

- learns of an opportunity to apply, or intends to develop an opportunity, for a grant or gift of goods or services from an individual or another organization; or
- is presented with an unsolicited contribution of goods or services.

B. The Initiator provides information on the opportunity, in writing, to the Chief Development Officer, with a copy to the Initiator's office head. The Initiator will submit the information using the Prospect Information Form ("Form"), attached as the appendix to this Protocol.

C. Upon receipt of the Form, the Chief Development Officer will forward the Form to the Committee.

D. The Committee will take the following actions:

- The Chief Development Officer will assess the proposal to determine whether LSC has an existing relationship with the prospective donor, including an in-progress solicitation.
- The Ethics Officer will assess the prospect for potential conflicts of interest.
- The General Counsel will assess the prospect for potential legal issues.
- The Committee will convene and determine whether it is appropriate for LSC to pursue the opportunity.

E. If the Committee decides that LSC will pursue the opportunity, the Chief Development Officer will note the decision on the Prospect Information Form. The Chief Development Officer will identify the offices and staff members that will be responsible for developing the application or making the request.

F. If the Committee determines that pursuing the opportunity raises a significant policy issue for the Corporation or may place unanticipated burdens on the Corporation (e.g., an obligation to provide upkeep or maintenance on a donation of personal or real property), the Committee will forward the opportunity, along with its analysis and recommendation for action, to the President for decision. If the opportunity will result in a contribution of goods or services the fair market value of which exceeds $5,000, the Committee will forward the opportunity and a recommendation for action to the President for decision.

G. If the Committee determines that LSC will pursue the opportunity, but the opportunity is presented by a non-approved Prospect or Prospects and has a fair market value of $5,000 or less, the Committee will present the proposed opportunity to the President for approval no later than ten business days in advance of submission of the application or the solicitation. If the opportunity has a fair market value that exceeds $5,000, the Committee will present the proposed opportunity to the Board for approval no later than ten business days in advance of submission of the application or the solicitation.

H. If the Committee, President, or Board, as appropriate, determines that LSC will not pursue the opportunity, the reason for the decision will be noted on the Prospect Information Form. A copy of the form will be returned to the Initiator.

I. The Chief Development Officer will retain completed Prospect Information Forms for all opportunities presented for consideration consistent with LSC's records retention policy.

J. If a Director, member of a Board committee, officer, or LSC employee receives an unsolicited gift of goods or services, he or she must immediately notify the Chief Development Officer of the gift, including the nature of the goods or services, and the donor.

3. Notification to Donors

The Chief Development Officer will send a letter acknowledging receipt of any grant or gift of goods or services within 72 hours of receipt or notice of receipt.

4. Accounting

Should LSC engage in a solicitation of contributions of goods or services, the Comptroller shall provide an accounting of any additional expense to the Corporation associated with the solicitation.

5. Donors' Use of Legal Counsel

In order to avoid potential conflicts of interest, LSC should encourage prospective donors to seek the assistance of their own legal and financial advisers in matters relating to their gifts and the resulting tax and estate planning consequences.

6. Ethical Considerations and Conflict of Interest

LSC is committed to the highest ethical business practices in fundraising. All donor engagement on behalf of LSC will adhere to LSC's Code of Ethics and Conduct and the Donor Bill of Rights.

LSC shall not apply for grants or solicit or accept gifts that:

A. Violate the terms of LSC's organizational documents, including, but not limited to, the LSC Act, LSC's appropriations acts, LSC's regulations, or the LSC Code of Ethics and Conduct;

B. Would jeopardize LSC's status as a tax-exempt organization under federal or state law;

C. Are for purposes that do not further LSC's objectives; or

D. Could damage LSC's reputation.

7. Gift Agreements

Where appropriate, LSC shall enter into a written gift agreement with the donor, specifying the terms of any restricted gift, which may include provisions regarding donor recognition.

8. Pledge Agreements

Acceptance by LSC of pledges by donors of future support of LSC shall be contingent upon the execution and fulfillment of a written charitable pledge agreement specifying the terms of the pledge, which may include provisions regarding donor recognition.

9. Fees

LSC will not accept a gift unless the donor is responsible for (1) the fees of independent legal counsel retained by the donor for completing the gift; (2) appraisal fees; (3) all other third-party fees associated with the transfer of the gift to LSC.

10. Valuation

LSC shall record gifts of goods in accordance with applicable IRS rules.

In-Kind Grants Application/Solicitation: Prospect Information Form

Date:	
Name of LSC Employee:	
LSC Office (e.g., Exec, OLA, OPP, GRPA):	

Name of Prospective Organizational Donor (Company/Foundation Name):	
Name of Contact at Prospect:	
Title of Contact:	
Telephone Number of Contact:	Office: Cell:
E-mail Address of Contact:	
Mailing Address of Prospect (street address, city, state, zip code)	
Website of Prospect:	
Description of Offered Goods/Services (e.g., $X worth of donated ad space per month) **Note: Attach related documentation, if relevant (e.g., e-mails; project proposal; etc.).	
Anticipated/Estimated Value ($) of Donated Goods/Services to LSC:	
Anticipated/Estimated Duration of Donation (e.g., one-time gift; recurring monthly for 12 months; 2 years with possibility for renewal; indefinitely):	
Notes/Comments:	

**** Prospect Information Form initially to be reviewed and evaluated by Chief Development Officer, Ethics Officer, and General Counsel and, if appropriate to pursue, to President for consideration.**

Reviewed by:	**Comments/Analysis:**	**Recommendation (Approve; Deny; Hold for Additional Information):**	**Date Forwarded to Next Reviewer:**	**Initials of Reviewer**
Chief Development Officer				
Ethics Officer				
General Counsel				
President				

Governance & Performance Review Committee

GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE

July 20, 2014

Agenda

OPEN SESSION

1. Approval of agenda

2. Approval of minutes of the Committee's Open Session meeting of April 6, 2014

3. Report on progress in implementing GAO Recommendations

    - Presentation by Carol Bergman, Director of Government Relations & Public Affairs

4. Report on Public Welfare Foundation grant and LSC research agenda

    - Presentation by Jim Sandman, President

5. Consider and Act on LSC Equal Opportunity, Non-Discrimination & Anti-Harassment Policy

    - Presentation by Ron Flagg, General Counsel

6. Board Member Attendance on Program Visits

    - Presentation by Ron Flagg, General Counsel

7. Consider and act on other business

8. Public comment

9. Consider and act on motion to adjourn meeting

Draft Minutes of April 6, 2014

Open Session Meeting

Legal Services Corporation
Meeting of the Governance and Performance Review Committee

Open Session

Sunday, April 6, 2014

DRAFT

Committee Chair Martha L. Minow convened an open session meeting of the Legal Services Corporation's ("LSC") Governance and Performance Review Committee ("the Committee") at 2:02 p.m. on Sunday, April 6, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Martha L. Minow, Chair
Sharon L. Browne
Charles N.W. Keckler
Julie A. Reiskin
John G. Levi, ex officio

Other Board members present:

Robert J. Grey, Jr.
Father Pius Pietrzyk
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Richard L. Sloane	Chief of Staff and Special Assistant to the President
Lynn Jennings	Vice President for Grants Management
Wendy Rhein	Chief Development Officer
Rebecca Fertig Cohen	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Carol A. Bergman	Director, Office of Government Relations and Public Affairs
Treefa Aziz	Government Affairs Representative, Office of Government Relations and Public Affairs
Wendy Long	Executive Assistant, Office of Government Relations and Public Affairs
David Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services
Jeffrey E. Schanz	Inspector General
Atitaya Rok	Staff Attorney

Katherine Ward	Executive Assistant, Office of Legal Affairs
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit, Office of the Inspector General
Laura Tarantowicz	Assistant Inspector General & Legal Counsel
Lora M. Rath	Director, Office of Compliance and Enforcement
Don Saunders	National Legal Aid and Defender Association (NLADA)
Herbert S. Garten	Non-Director Member, LSC's Institutional Advancement Committee
Frank Strickland	Non-Director Member, LSC's Institutional Advancement Committee
Allan J. Tanenbaum	Non-Director Member, LSC's Finance Committee
Terry Brooks	American Bar Association, Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Robin C. Murphy	National Legal Aid and Defender Association (NLADA)
Dominique Martin	Law99.com
Manvi Drona	Web Coordinator, Office of Government Relations and Public Affairs
Eric Jones	Office of Information Technology
LaVon Smith	Office of Information Technology

The following summarizes actions taken by, and presentations made to, the Committee:

Committee Chair Minow called the meeting to order.

MOTION

Ms. Reiskin moved to approve the agenda. Mr. Keckler seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

The minutes of the Committee's meeting of January 24, 2014, were unanimously approved by the Committee.

Ms. Bergman reported on LSC's progress in implementing the 2010 GAO recommendations and answered Committee members' questions.

President Sandman gave a progress report on the Public Welfare Foundation grant. He noted (1) proposed implementation of specific outcome measures to be used by grantees; (2) assessing those outcome measures; and (3) looking at how data are used from the outcome measures. President Sandman recommended using an outcome measures system already in use by other states, and answered Committee members' questions.

President Sandman reported on the evaluations for the LSC Vice President for Legal Affairs, the LSC Comptroller, and the LSC Vice President for Grants Management. President Sandman answered Committee members' questions.

Mr. Flagg presented and discussed new proposed revisions made to LSC's non-discrimination and anti-harassment policy. Mr. Flagg answered questions from the Committee members. The Committee members offered amendments to the policy, the complaint form and the corresponding resolution.

Committee Chair Minow invited public comment and received none

There was no other business to consider.

MOTION

Ms. Reiskin moved to adjourn the meeting. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

The Committee meeting adjourned at 2:59 p.m.

GAO 2010 Report Tracking Document

Status of GAO Recommendations from June 2010 Report
"Improvements Needed in Controls over Grant Awards & Grantee Program Effectiveness"

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
1	Develop and implement procedures to provide a complete record of all data used, discussions held, and decisions made on grant applications.	June 2010 August 2010 June 2010	Real time observation of LSC Grants Real time observation of LSC Grants Real time observation of LSC Grants	Changes to the LSC Grants software program have been implemented and include: • The home page of the LSC Grants review module has been revised to include a listing of grant documents that must be reviewed (if applicable). The final page of the review module requires the reviewer to certify, by entering the reviewer's name, that all applicable grant documents have been reviewed in completing the grant application evaluation. • LSC grants includes a page for OPP management to use in certifying the meeting(s) held with staff reviewers to discuss data used in the evaluation process, the reviewer's recommendations, and management's final funding recommendation for the grant applicant. • The evaluation module of LSC grants is modified to designate certain reviewer data fields as required, which prohibits a reviewer from submitting an application evaluation that is incomplete. As an example, the field that reviewers use to certify that all required grant documents have been reviewed is a required field. Also, data fields linked to particular responses provided in other data fields are designated as required fields.	Closed by GAO on 3.15.13.

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
2	Develop and implement procedures to carry out and document management's review and approval of the grant evaluation and award decisions.	December 2010	Real time observation of LSC Grants	The following changes were incorporated for the 2011 grant decision cycle: LSC grants has been revised to include a page for the LSC Vice President for Programs and Compliance and a page for the LSC President to use in certifying the meeting(s) held with OPP and OCE management to discuss the evaluation process, and OPP and OCE management recommendations. • The Vice President's page includes a funding recommendation for the grant Applicant and the President's page includes a line for certifying the funding decision for each Applicant. Funding decisions were completed in December 2010.	Closed by GAO on 3.15.13.
3	Conduct and document a risk-based assessment of the adequacy of internal control of the grant evaluation and award and monitoring process from the point that the Request for Proposal is created through award, and grantee selection.	Ongoing.	Documentation of the risk based internal control assessment of the process and any related risk remediation efforts.	LSC has engaged an outside expert to develop and perform a full evaluation and assessment of the competitive grants process. This includes conducting a risk-based assessment of the internal control of the grant evaluation, award, and monitoring process; recommendations of additional internal control options; recommendations for maximizing information reporting capabilities; and a report on internal controls and options implemented.	Closed by GAO on 3.15.13.
4	Conduct and document a cost benefit assessment of improving the effectiveness of application controls in LSC Grants such that the system's information capabilities could be utilized to a greater extent in the grantee application evaluation and decision-making process.	November 2010	Cost benefits assessment. Real time observation of the required fields, certs etc. in LSC Grants Evidence of the continuous internal evaluation by staff.	LSC implemented the use of the required fields, certifications required by reviewers documenting the review process, and certifications by management and the Executive Office documenting the process for reaching final funding recommendations and funding decisions. LSC Grants will undergo a continuous internal evaluation by staff and management to assess the effectiveness of the control features implemented, and consider additional control feature options.	Closed by GAO on 8.12.13.

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
Grantee Oversight Activities					
5	Develop and implement procedures to ensure that grantee site visit selection risk criteria are consistently used and to provide for summarizing results by grantee.	August 16, 2010	Evidence of outside labor counsel review and implementation.	LSC policy reflecting risk criteria used by OPP and OCE for selecting grantee site visits has been issued and posted on LSC website. Both offices have prepared summarized results of the selection process by grantee for the 2013 grant cycle.	Closed by GAO on 3.4.14.
6	Establish and implement procedures to monitor OCE grantee site visit report completion against the 120 day time frame provided in the OCE Procedures Manual.	April 2012	Evidence of outside labor counsel review and implementation.	OCE has developed an annual tracking document that includes comprehensive information on grantee site visits, and reporting date and issuance (OCE/OPP combined visit list). Outside labor counsel has reviewed LSC's response.	Closed by GAO on 3.15.13.
7	Execute a study to determine an appropriate standard timeframe for OLA opinions to be developed and issued. Develop and implement procedures to monitor completion of OLA opinions related to OCE site visits against the target time frame for issuing opinions.	August 20, 2010	Copy of study and new OLA Opinions Protocol. Also, evidence of implementation of the new protocol.	Office of Legal Affairs (OLA) issued a new Opinions Protocol that sets forth the procedures and processes to be followed in the development and issuance of both Advisory and Internal Opinions. As part of this effort, OLA implemented appropriate timeframes for response to requests for opinions.	Closed by GAO on 3.15.13.

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
8	Develop and implement procedures to provide a centralized tracking system for LSC's recommendations to grantees identified during grantee site visits and the status of grantees' corrective actions.	August 2011	Evidence of procedures and implementation of the centralized tracking system for LSC recommendations.	Both OPP and OCE currently monitor recommendations and corrective actions through separate processes in each office. LSC has implemented a method of monitoring the status of top tier recommendations from OPP program quality visits in LSC Grants. The system requires grantees to discuss the status of the implementation of the report recommendations in their annual competition or renewal applications.	Closed by GAO on 3.15.13.
Performance Management					
9	Develop and implement procedures to link performance measures (1) to specific offices and their core functions and activities, and (2) to LSC's strategic goals and objectives.	Ongoing	Evidence of procedures and sustainable implementation.	The LSC Board of Directors has developed a new strategic plan for the Corporation which will include linking performance measures to LSC's strategic goals and objectives. LSC has drafted department procedures to identify performance measures for each office within LSC annually and to link these measures to LSC's strategic goals and objectives.	On June 20, 2014, GAO provided oral confirmation that LSC has submitted sufficient documentation (sample 1st quarter department Performance Plans) to close out this recommendation.
10	Develop and implement procedures for periodically assessing performance measures to ensure they are up-to-date.	Ongoing	Evidence of implementation.	LSC will develop and implement procedures to periodically assess performance measures after a new strategic plan is finalized. LSC has drafted procedures to identify departmental performance measures that include a schedule for assessing performance measures and ensuring they are up to date.	On June 20, 2014, GAO provided oral confirmation that LSC has submitted sufficient documentation (smple 1st quarter department Performance Plans) to close out this recommendation.
Staffing Needs Assessment					
11	Develop and implement procedures to provide for assessing all LSC component staffing needs in relation to LSC's strategic and strategic human capital plans.	Ongoing	Evidence of procedures and their sustainable implementation.	LSC will develop and implement a human capital plan consistent with the new strategic goals the Board adopts. LSC has drafted a Strategic Human Capital Plan for use in assessing LSC's staffing needs.	Closed by GAO on 3.4.14.

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
12	Develop and implement a mechanism to ensure that all LSC staff receives annual performance assessments.	Ongoing	Evidence of procedures and their sustainable implementation e.g., most recent actual performance assessments for all OPP and OCE employees. Also list of OPP and OCE staff on board at time of performance assessment cycle.	LSC has drafted a performance management system process that will replace the performance management process described in LSC's Employee Handbook. GAO has notified LSC that it does not require a two consecutive years of implementation before close-out. GAO has confirmed that the only remaining requirement needed to close out this recommendation is that LSC submit a performance management system plan.	All LSC staff and managers have now been trained on the new individual performance management system. Directors are completing employee performance plans tied to the departmental plans. The plan includes a 6-month check-in between employees and supervisors (which will be a 3-month check-in this year). LSC plans to discuss the new performance management system and the steps taken to implement itto determine options for closing this recommendation out in 2014.
Budget Controls					
13	Develop and implement a process to monitor contract approvals to ensure that all proposed contracts are properly approved before award.	October 2009	Evidence of process design and implementation.	Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance. This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.	Closed by GAO on 10.13.2011.
14	Develop and implement procedures for contracts at or above established policy thresholds, to ensure the LSC President provides written approval in accordance with policy before contract award.	October 2009	Evidence of procedures and their implementation.	Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance. This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.	Closed by GAO on 10.13.2011.

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
15	Develop and implement procedures to ensure budget funds are available for all contract proposals before contracts are awarded.	October 2009	Evidence of sustainable implementation.	Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance. This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.	Closed by GAO on 10.13.2011.
Internal Control Environment					
16	Develop and implement procedures for providing and periodically updating training for LSC management and staff on applicable internal controls necessary to effectively carry out LSC's grant award and grantee performance oversight responsibilities.	Ongoing	Evidence demonstrating implementation of procedures for providing and periodically updating training for LSC management and staff on applicable internal controls necessary to effectively carry out LSC's grant award and grantee performance oversight.	LSC developed training procedures for LSC management and staff regarding internal controls to carry out grant award competition and grantee oversight responsibilities. LSC management received first of a 3-part training series on this topic on September 6, 2012. Second session scheduled for October.	Closed by GAO on 10.13.2011.

Updated 7.01.2014

#	Grant Application Processing and Award	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
17	Establish a mechanism to monitor progress in taking corrective actions to address recommendations related to improving LSC grants award, evaluation, and monitoring.	October 2010	Evidence of implementation of the monitoring of corrective actions taken to address recommendations related to improving LSC grant award.	LSC has established a formal process to monitor and track actions taken by LSC in response to recommendations from the Government Accountability Office. This written procedure identifies the Office of Government Relations and Public Affairs as the office responsible for maintaining the tracking system and includes quarterly reporting on the status of any remediation efforts to the Board of Directors.	Closed by GAO on 10.13.2011.

Total Number of Recommendations: 17
Total Number Officially Closed or Pending Close-Out : 16
Total Number of Open Items: 1

LSC Equal Opportunity Non-Discrimination & Anti-Harassment Policy

Legal Services Corporation
America's Partner For Equal Justice

OFFICE OF LEGAL AFFAIRS

MEMORANDUM

TO: Governance & Performance Review Committee

FROM: Ronald S. Flagg, Vice President and General Counsel

DATE: June 23, 2014

SUBJ: Proposed Revised LSC Equal Opportunity, Non-Discrimination and Anti-Harassment Policy

---

This memorandum addresses proposed revisions to LSC's Equal Opportunity, Discrimination and Harassment Policy ("Policy"), including revisions made subsequent to the Committee's meeting in April 2014.

On March 24, 2008, the Board of Directors ("Board") adopted the LSC Code of Ethics and Conduct ("Code of Conduct"). The Code of Conduct applies to all Directors, officers, and employees of the Corporation, and includes a provision prohibiting discrimination and harassment. *See* Section XIII, Discrimination and Harassment. LSC's Employee Handbook, which was adopted by the Board on April 28, 2007, also includes provisions prohibiting discrimination and harassment. *See* Section 2.2, Equal Employment Opportunity, and Section 2.3, Policy Prohibiting Harassment, Including but Not Limited to Sexual Harassment. Upon reviewing the current policy prohibiting discrimination and harassment in the Code of Conduct, Management determined that the policy would benefit from substantial revisions to provide greater clarity and guidance to Directors, officers, and employees. Furthermore, because such policy is currently scattered in a number of places, including the Code of Conduct and LSC's Employee Handbook, Management believes it would be best to create a single, comprehensive equal opportunity, non-discrimination and anti-harassment policy.

Management, working cooperatively with the Office of Inspector General ("OIG"), proposes adoption of the Equal Opportunity, Non-Discrimination and Anti-Harassment Policy, as reflected in the attachment hereto. Management presented a prior draft of the Policy to the Committee at its meeting in April 2014. Committee members and other Board members provided extensive comments on the prior draft. Management, in consultation with outside counsel, revised the proposed Policy in light of those comments. I transmitted a privileged memorandum discussing these revisions and reflecting the analyses of the Office of Legal Affairs and outside counsel to you by email dated June 4, 2014.

Subject to Board approval, the Equal Opportunity, Non-Discrimination and Anti-Harassment Policy will be incorporated into the Code of Conduct and will be made available to LSC employees and the public on the LSC website.

EQUAL OPPORTUNITY, NON-DISCRIMINATION, AND ANTI-HARASSMENT POLICY

1. Purpose

The Legal Services Corporation ("LSC") is committed to providing equal employment opportunity in all of its employment programs and decisions. Discrimination in employment on the basis of any characteristic protected under federal, state, or local law is illegal and is a violation of LSC's policy. The purposes of this policy are to prohibit and prevent discrimination and harassment in the workplace, encourage members of the Board of Directors ("Directors"), officers, and employees to report instances of alleged discrimination and harassment without fear of retaliation, and to provide procedures for reporting and investigating such activity.

2. Scope

This policy applies to all LSC employees, officers, Directors and third parties over whom LSC has control. Employees of the Office of Inspector General ("OIG") are covered by this policy and included within the term "LSC officers and employees," except as otherwise indicated. Any reference to "Directors" in this policy includes non-Director members of committees of the Board of Directors. This policy applies to all terms and conditions of employment, appointment or contracting, including, but not limited to recruiting, hiring, firing, transferring, promoting and demoting, evaluating, disciplining, scheduling, training, or deciding compensation and benefits.

3. Statement of Policy

Equal employment opportunity is provided to all employees and applicants for employment without regard to race, color, sex, age, religion, national origin, sexual orientation, personal appearance, political affiliation, pregnancy, genetic information, gender identity or transgender status, status as a victim of an intrafamily offense, domestic partner or familial status, marital status, matriculation, family responsibilities, source of income, place of residence or business, veteran status or active military service, or disability, or any other factor protected by local, state, or federal law (collectively "protected traits").

In accordance with applicable federal, state and local laws protecting qualified individuals with disabilities, LSC will attempt to reasonably accommodate those individuals unless doing so would create undue hardship for LSC or if, with reasonable accommodation, the employee is unable to perform the essential functions of his or her position without posing a direct threat to the health or safety of the employee or other individuals in the workplace. Any applicant or employee who needs a reasonable accommodation to apply for employment or to perform the essential functions of his or her job should contact the Director of Human Resources ("HR Director").

LSC is committed to providing a diverse and inclusive work environment free of discrimination and harassment, including sexual harassment. LSC strictly prohibits and does not tolerate discrimination and harassment by anyone regardless of the sex of the individuals involved. This policy applies to all discrimination and harassment, regardless of whether it is verbal, non-verbal, or physical, on the basis of a protected trait. Discrimination and harassment

are prohibited in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, and LSC-sponsored events.

An employee, officer or Director who believes that he or she has been subjected to, or witnesses or becomes aware of, behavior that may violate this policy should promptly report the conduct in accordance with the procedures provided under Section 5 (Reporting Requirements and Procedures). LSC will not retaliate nor tolerate retaliation against any individual who, in good faith, reports or participates in the investigation of potential violations of this policy. LSC will take reasonable and appropriate remedial action to address violations of this policy, up to and including termination.

4. Definitions

Complainant: An individual who has alleged a violation(s) of this policy.

Discrimination: For the purposes of this policy, adverse treatment of an individual based on any protected trait(s) under applicable federal, state, or local law, rather than on the basis of his or her individual merit, with respect to the terms, conditions, or privileges of employment, appointment or contracting including, but not limited to recruiting, hiring, firing, transferring, promoting and demoting, evaluating, disciplining, scheduling, training, or deciding compensation and benefits.

Gender Identity or Expression: A gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

Genetic Information: Information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

Harassment: For the purposes of this policy, any unwelcome verbal, non-verbal, or physical conduct that has the purpose or effect of unreasonably interfering with an individual's work performance and/or creating an intimidating, hostile, or offensive work environment as a result of an individual's protected trait(s) under applicable federal, state, or local law. Examples of harassment include, but are not limited to:

- **Verbal** – Epithets, negative or derogatory statements, threats, slurs, comments, stereotyping, or jokes regarding a person's protected trait(s).
- **Non-Verbal** – Inappropriate gestures, distribution or display of any written or graphic materials, including calendars photographs, posters, cartoons, or drawings that ridicule, denigrate, insult, belittle, or show hostility or aversion toward an individual or group because of their protected trait(s).
- **Physical** – Assault, unwanted or inappropriate physical contact, including, but not limited to, pushing, slapping, poking, punching, shoving, blocking normal movement, or purposely bumping into an individual.

Marital Status: The state of being married or in a domestic partnership, divorced or separated (as such statuses are determined by applicable law), or the state of being single or widowed, and the usual conditions associated therewith, including pregnancy or parenthood.

Personal Appearance: The outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare, or safety of any individual.

Respondent: An individual alleged to have violated this policy.

Sexual Harassment: For the purposes of this policy, any harassment based on an individual's sex or gender. It includes harassment that is not sexual in nature (for example, offensive remarks about an individual's sex or gender), as well as any unwelcome sexual advances, requests for sexual favors, or any other conduct of a sexual nature, when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as a basis for an employment decision or an adverse action; or
- Such conduct has the purpose or effect of substantially or unreasonably interfering with an employee's work performance by creating an intimidating, hostile, or offensive work environment.

Sexual harassment applies to males sexually harassing females or other males, and to females who sexually harass males or other females.

Examples of sexual harassment include, but are not limited to:

- **Verbal** – Epithets, derogatory statements, sexually degrading words to describe an individual, slurs, threats, sexually-related or suggestive comments or jokes; unwelcome sexual advances, propositions, suggestions, movement, or physical action; requests for any type of sexual favors; sexual innuendoes; lewd remarks; gossip regarding an individual's sex life; comments on an individual's body or dress; comments about an individual's sexual activity, deficiencies, or prowess; inquiring into an individual's sexual experiences; or discussion of one's sexual activities.
- **Non-Verbal** – Distribution or display of any written or graphic material, including calendars, posters, cartoons, or drawings that are sexually suggestive, or that show hostility toward an individual or group because of sex; suggestive or insulting gestures, sounds, leering, staring, and whistling; obscene gestures or content in letters, notes, facsimiles, and e-mail; or knowingly playing music with lyrics of a sexual or offensive nature.

- **Physical** – Unwelcome, unwanted physical contact, including, but not limited to, touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling or sexual assault.

Other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work environment that is hostile, offensive, or intimidating may also constitute sexual harassment.

5. Reporting Requirements and Procedures

A. *Complaints by LSC Employees, Officers and Directors (including Employees of the OIG)*

Any employee, officer or Director (including employees of the OIG) who believes he or she has been subjected to discrimination or harassment prohibited by this policy, or who witnesses or becomes aware of alleged discrimination or harassing conduct, except as provided for under Section 5.B. (Complaints Against OIG Officers and Employees) , should promptly report, orally or in writing, the conduct to his or her supervisor, the director of his or her office, the General Counsel, the Vice President for Grants Management or the HR Director. If the report is made to the complainant's supervisor, the director of his or her office, the General Counsel, or the Vice President for Grants Management, the person receiving the report will promptly communicate the report to the HR Director. The HR Director will consult with the appropriate supervisor(s) to ensure that immediate action is taken to stop any potential policy violations and prevent further potential policy violations while the allegations are being investigated.

The HR Director, independently or through his or her designated agent, shall conduct a prompt, thorough, and impartial investigation of all complaints (and may, in his or her discretion, engage external investigators to conduct an investigation of a report). The HR Director or designated investigator will consult with the complainant and respondent and interview all relevant identified witnesses or other parties. LSC expects all officers and employees to fully cooperate with any investigation conducted. The HR Director or designated investigator will conclude the investigation expeditiously and prepare a written summary of his or her findings and, if it is determined that a policy violation has occurred, the HR Director will prepare recommendations as to corrective action(s), commensurate with the severity of the offense, up to and including termination. If the HR Director's investigation is inconclusive or it is determined that there has been no policy violation, but some potentially problematic conduct is revealed, recommendations may be made for preventative or ameliorative action.

After the investigation is concluded, the HR Director will promptly meet with the complainant and respondent separately to notify them of the findings of the investigation and the action being recommended. In the event the complainant or the respondent wishes to appeal the HR Director's findings and/or recommendations, he or she may submit a written appeal to the President within ten (10) business days after meeting with the HR Director.

If the alleged discriminatory or harassing conduct involves the HR Director, the complainant should promptly report the conduct to the Ethics Officer. The Ethics Officer will conduct a prompt, thorough, and impartial investigation of a report and will render a written

summary of his or her findings and, if it is determined that a policy violation has occurred, recommend corrective action(s) to be taken.

If the alleged discriminatory or harassing conduct involves the LSC President or a Director, the HR Director will conduct a prompt, thorough, and impartial investigation of the complaint and will render a written summary of his or her findings and, if it is determined that a policy violation has occurred, recommend corrective action(s) to be taken to the Board. The LSC President, a Director or the complainant may submit a written appeal to the Board of Directors within ten (10) business days of receiving the HR Director's written decision. The Chairman of the Board will promptly refer the appeal to the Governance and Performance Review Committee for a recommendation regarding the Board's action. The Committee will review the appeal and make a recommendation to the Board. The Board will then consider and act on the recommendation. Consistent with the provisions of the LSC Act, 42 U.S.C. § 2996c(g), and 45 C.F.R. Part 1622, consideration and action by the Committee and Board regarding an appeal may be held in closed session. The Chairman of the Board will notify the HR Director of the Board's decision and any action taken for purposes of record-keeping.

B. *Complaints Against OIG Employees and Officers*

Any employee, officer or Director who believes he or she has been subjected to discrimination or harassment by an employee or officer of the OIG prohibited by this policy, or who witnesses or becomes aware of alleged discrimination or harassing conduct by an employee or officer of the OIG, should promptly report, orally or in writing, the conduct to his or her supervisor, the director of his or her office, the General Counsel, the Vice President for Grants Management, the HR Director, or the Inspector General.. If the report is made to anyone other than the Inspector General, the person receiving the report will promptly communicate the report to the Inspector General. The Inspector General will take immediate action to stop any potential policy violations and prevent further potential policy violations while the allegations are being investigated.

The Inspector General or his or her designee shall fully investigate all complaints (and may, in his or her discretion, engage external investigators to conduct an investigation of a report). The Inspector General or designated investigator will consult with the complainant and respondent and interview all relevant identified witnesses or other parties. The Inspector General will conclude the investigation expeditiously and prepare a written summary of his or her findings and, if it is determined that a policy violation has occurred, the Inspector General will determine the corrective action(s) to be taken. If the Inspector General's investigation is inconclusive or it is determined that there has been no policy violation, but some potentially problematic conduct is revealed, preventative or ameliorative action may be taken. After the investigation is concluded, the Inspector General or his or her designee will meet with the complainant and respondent separately to notify them of the findings of the investigation and the action being recommended.

If the alleged discriminatory or harassing conduct involves the Inspector General the complainant or LSC official to whom a complainant has made an initial report should promptly report, orally or in writing, the conduct to the Assistant Inspector General for Investigations or the OIG Ethics Officer. All such reports will be referred to the Integrity Committee of the

Council of the Inspectors General on Integrity and Efficiency ("CIGIE Integrity Committee") for review and investigation (if warranted) in accordance with the provisions of § 11(d) of the Inspector General Act of 1978, as amended ("IG Act"), and the policies and procedures of the CIGIE Integrity Committee promulgated thereunder. Where an investigation is conducted by or under the purview of the Integrity Committee, a report, including recommendations of the CIGIE Integrity Committee, will be forwarded to the Board of Directors for resolution. The CIGIE Integrity Committee is also required to provide a summary of the report and recommendations to designated committees of the Senate and House of Representatives. 5 U.S.C. App. § 11(d).

If the alleged discriminatory or harassing conduct involves a senior employee of the OIG (e.g., an Assistant Inspector General or other employee who reports directly to the Inspector General), the Inspector General will make a determination as to referral and investigation of the allegation(s) in accordance with the provisions of § 11(d) of the IG Act and the policies and procedures of the CIGIE Integrity Committee.

C. *Complaints Against Employees, Officers or Governing Body Members of Recipients*

Any employee, officer or Director (including employees of the OIG) who believes he or she has been subjected to discrimination or harassment prohibited by this policy by an employee, an officer or a member of the governing body of a recipient of LSC funds, or who witnesses or becomes aware of alleged discrimination or harassing conduct, should promptly report, orally or in writing, the conduct to his or her supervisor, the director of his or her office, the General Counsel, the Vice President for Grants Management or the HR Director. If the report is made to the complainant's supervisor, the director of his or her office, the General Counsel, or the Vice President for Grants Management, the person receiving the report will promptly communicate the report to the HR Director.

The HR Director will promptly communicate the report to the Executive Director of the recipient or, if the report involves the Executive Director, to the chair of the recipient's governing board. The HR Director will request that the recipient promptly investigate the report, consistent with the recipient's Equal Opportunity and Sexual Harassment Policy required under LSC's Grant Assurances. The HR Director will request the recipient to prepare a written summary of the recipient's findings and any follow-up actions the recipient has taken or proposes to take. LSC reserves the right to take further action, including conducting its own investigation, following receipt of the recipient's report.

6. Confidentiality

Reports of alleged discrimination and harassment may be submitted on a confidential basis. LSC will maintain confidentiality to the extent possible, consistent with a thorough investigation. Information received and the privacy of the individuals involved will be disclosed only as reasonably necessary for purposes of this policy or when legally required; however, confidentiality is not guaranteed.

7. No Retaliation

LSC prohibits retaliation against individuals who report or allege violations of this policy, or who are involved in the investigation of potential policy violations. An individual who

makes a good faith report of what he or she believes to be violations of this policy; participates in the investigation of potential violations of this policy; or files, testifies, assists, or participates in any manner in any investigation, proceeding, or hearing conducted by a governmental enforcement agency will not be subject to reprisal or retaliation, including but not limited to, termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit. Any person found to have retaliated against an individual for reporting a violation of this policy or for participating in an investigation of allegations of such conduct will be subject to appropriate disciplinary action, up to and including termination.

Contact the HR Director or your supervisor if you have any questions or concerns regarding this policy or if you believe this policy may have been violated.

RESOLUTION

ADOPTING A REVISED EQUAL OPPORTUNITY, NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY

WHEREAS, by Resolution #2008-007, the Legal Services Corporation ("LSC" or "Corporation") Board of Directors ("Board") adopted the *Code of Ethics and Conduct* ("Code of Conduct") to provide guidance to Board members, officers, and employees regarding the Corporation's expectations for standards of ethics and conduct, including prohibitions against discrimination and harassment, Code of Conduct Section XIII;

WHEREAS, on April 28, 2007, the Board adopted the LSC Employee Handbook to provide guidance to employees on, among other things, discrimination and harassment and reporting violations thereof; and

WHEREAS, Management has determined that the Corporation will benefit from a more comprehensive equal opportunity, non-discrimination and anti-harassment policy codified in a single location and that provides greater clarity and guidance to the Directors, officers, and employees, and recommends adoption of the attached Equal Opportunity, Non-Discrimination and Anti-Harassment Policy;

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Directors adopts the attached Equal Opportunity, Non-Discrimination and Anti-Harassment Policy and directs that the new Policy supersede any prior existing policies prohibiting discrimination and harassment policies.

Adopted by the Board of Directors
On July 22, 2014

_____
John G. Levi
Chairman

Attest:

_____
Ronald S. Flagg
Vice President for Legal Affairs,
General Counsel & Corporate Secretary

Board Member Attendance on Program Visits

Legal Services Corporation
America's Partner For Equal Justice

OFFICE OF LEGAL AFFAIRS

MEMORANDUM

TO: Governance & Performance Review Committee

FROM: Ronald S. Flagg, Vice President and General Counsel

DATE: June 23, 2014

SUBJ: Program Visits by LSC Board Members

This memorandum addresses a proposal by management to clarify that program visits with LSC management or staff are among the categories of activities for which members of LSC's Board of Directors may be compensated for the discharge of their Board-related duties.

Jim Sandman and Julie Reiskin have made joint presentations regarding client board members at recent meetings of the National Legal Aid and Defender Association ("NLADA"). During those presentations, recipient client board members have suggested that LSC consider including clients as part of its Program Quality Visit teams. Jim, Lynn Jennings and Janet Labella think that is a good suggestion and believe Julie Reiskin would be an ideal candidate to serve in that role for pilot visits.

Section 3.08 of the LSC Bylaws provides:

> **Section 3.08. Compensation.**
> *To the extent provided for by resolution of the Board, Directors shall be entitled to receive compensation for their services on the Board or on any committee thereof and for other activity relating to the affairs of the Corporation.* Such compensation shall be at a rate not in excess of the per diem equivalent of the Level V rate of the Executive Schedule specified from time to time in section 5316 of Title 5 U.S.C. Directors also shall be entitled to receive reimbursement for travel, subsistence, and other expenses necessarily incurred in connection with such services or activity. A Director shall not serve the Corporation in any other capacity or receive compensation for such service, except as authorized by the Board. In no event shall a Director receive compensation in more than one capacity.

Emphasis added.

LSC Board Resolution No. 2004-001 (attached), the most recent resolution governing compensation of Board members, identifies eight categories of activities for which a Board member may be compensated:

1. attending Board and committee meetings, whether or not the member is a committee member;
2. attending Board and committee meetings by telephone if this method of attendance is required due to the member's infirmity or for similar extenuating circumstances;
3. appearing officially before the United States Congress, a committee or subcommittee thereof;
4. meeting with a member of Congress and/or his/her constituent as requested by the member of Congress;
5. attending meetings at the White House;
6. attending meetings with LSC management or staff;
7. attending LSC Board annual conferences, forums or such other special activities sponsored by the Board to engage grantee management and staff; and
8. representing the Corporation officially at other types of externally-sponsored events after obtaining prior written approval from the Chair or his designee to attend the event.

In my opinion Bylaw Section 3.08, and in particular its reference to "other activity relating to the affairs of the Corporation," clearly empowers the Board to authorize LSC Board members to receive compensation for accompanying LSC staff on program visits. Resolution No. 2004-001, and in particular category No. 6, "attending meetings with LSC management or staff," arguably authorizes the payment of compensation to a Board member who accompanies LSC management or staff on a program visit. However, in order to eliminate any doubt about the matter, LSC management recommends that the Board adopt the attached Resolution adding "attending program visits with LSC management or staff" as a category of activity for which compensation is authorized.

BOARD OF DIRECTORS

RESOLUTION

BOARD OF DIRECTORS COMPENSATION

[Resolution No. 2014-xxx]

WHEREAS, the Board of Directors ("Board") of the Legal Services Corporation ("LSC") has determined a need to delineate the specific categories of activities for which attendance fees are paid to members of the Board for the discharge of its board-related duties;

WHEREAS, in Resolution 2004-001, the Board determined that attendance fees should be paid to members only for the specified categories of activities enumerated in that Resolution;

WHEREAS, the Board has determined that the list of activities should be amended to make clear that it includes attendance by Board members on program visits with LSC management or staff; and

WHEREAS, the Board has determined that the current daily honoraria of $320 shall remain unaltered.

NOW, THEREFORE, BE IT RESOLVED that Board members may be paid for:

1. attending Board and committee meetings, whether or not the member is a committee member;

2. attending Board and committee meetings by telephone if this method of attendance is required due to the member's infirmity or for similar extenuating circumstances;

3. appearing officially before the United States Congress, a committee or subcommittee thereof;

4. meeting with a member of Congress and/or his/her constituent as requested by the member of Congress;

5. attending meetings at the White House;

6. attending meetings with LSC management or staff;

7. attending program visits with LSC management or staff;

8. attending LSC Board annual conferences, forums or such other special activities sponsored by the Board to engage grantee management and staff; and

9. representing the Corporation officially at other types of externally-sponsored events after obtaining prior written approval from the Chair or his designee to attend the event.

Adopted by the Board of Directors
On July 22, 2014

_____
John G. Levi, *Chair*

_____
Ronald S. Flagg
Vice President for Legal Affairs,
General Counsel & Corporate Secretary

LSC

Legal Services Corporation
America's Partner For Equal Justice

BOARD OF DIRECTORS

RESOLUTION

BOARD OF DIRECTORS COMPENSATION

[Resolution No. 2004-001]

WHEREAS, the Board of Directors ("Board") of the Legal Services Corporation ("LSC") has determined a need to delineate the specific categories of activities for which attendance fees are paid to members of the Board for the discharge of its board-related duties; and

WHEREAS, members of the Board of LSC determined that attendance fees should be paid to members only for the specified categories of activities enumerated below;

WHEREAS, members of the Board of LSC determined that the maximum daily honoraria payable to members shall be set at 1/260th of the salary of the Legal Services Corporation's President and shall adjust automatically upon adjustment of the President's salary; and

WHEREAS, members of the Board of LSC determined that the current daily honoraria of $320 shall remain unaltered.

NOW, THEREFORE, BE IT RESOLVED that effective January 1, 2004 Board members may be paid for:

1. attending Board and committee meetings, whether or not the member is a committee member;

2. attending Board and committee meetings by telephone if this method of attendance is required due to the member's infirmity or for similar extenuating circumstances;

3. appearing officially before the United States Congress, a committee or subcommittee thereof;

4. meeting with a member of Congress and/or his/her constituent as requested by the member of Congress;

5. attending meetings at the White House;

6. attending meetings with LSC management or staff;

7. attending LSC Board annual conferences, forums or such other special activities sponsored by the Board to engage grantee management and staff; and

8. representing the Corporation officially at other types of externally-sponsored events after obtaining prior written approval from the Chair or his designee to attend the event.

Adopted by the Board of Directors
On January 31, 2004

Frank B. Strickland, *Chair*

Victor M. Fortuno
Vice President for Legal Affairs,
General Counsel & Corporate Secretary

Delivery of Legal Services Committee

DELIVERY OF LEGAL SERVICES COMMITTEE

July 21, 2014

Agenda

OPEN SESSION

1. Approval of Agenda

2. Approval of minutes of the Committee's Open Session meeting on April 7, 2014

3. Panel presentation and Committee discussion of LSC's Performance Criteria, Performance Area Four, Criterion 1 -- "Board Governance—board composition, client eligible member engagement in board decision making"

    - **Linda Morris**, Client-Eligible Board Member and past President, Laurel Legal Services
    - **Cynthia A. Sheehan**, Executive Director, Laurel Legal Services
    - **Susan Cae Barta**, Secretary, Board of Directors, Iowa Legal Aid
    - **Dennis Groenenboom**, Executive Director, Iowa Legal Aid
    - **Althea Hayward**, Deputy Director, Office of Program Performance, LSC (*Moderator)*

4. Public comment

5. Consider and act on other business

6. Consider and act on motion to adjourn the meeting

Draft Minutes of April 7, 2014

Open Session Meeting

Legal Services Corporation
Meeting of the
Delivery of Legal Services Committee

Open Session

Monday, April 7, 2014

DRAFT

Co-Chair Father Pius Pietrzyk convened an open session meeting of the Legal Services Corporation's ("LSC") Delivery of Legal Services Committee ("the Committee") at 10:43 a.m. on Monday, April 7, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Father Pius Pietrzyk, Co-Chair
Gloria Valencia-Weber, Co-Chair
Sharon L. Browne
Victor B. Maddox
Julie A. Reiskin
John G. Levi, *ex officio*

Other Board members present:
Robert Grey
Martha L. Minow
Laurie I. Mikva

Also attending were:

James J. Sandman	President
Richard L. Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig Cohen	Special Assistant to the President
Lynn Jennings	Vice President for Grants Management
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel & Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs
David Richardson	Comptroller/Treasurer
Jeffrey Schanz	Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit
Daniel Sheahan	Program Evaluation Analyst, Office of Inspector General

Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Wendy Long	Executive Assistant Office of Government Relations and Public Affairs (GRPA)
Lora M. Rath	Director, Office of Compliance and Enforcement
Janet LaBella	Director, Office of Program Performance
Glenn Rawdon	Program Counsel, Office of Program Performance
Reginald Haley	Program Analyst, Office of Program Performance
Evora Thomas	Office of Program Performance
Nancy Glickman	Office of Program Performance
Peter Campbell	Chief Information Officer, Office of Information Technology
Eric Jones	Office of Information Technology
Allan J. Tanenbaum	Non-Director Member, Finance Committee (General Counsel, Equicorp Partners)
Thomas Smegal	Non-Director Member, Institutional Advancement Committee
Frank Strickland	Non-Director Member, Institutional Advancement Committee
Herbert Garten	Non-Director Member, Institutional Advancement Committee
Cesar Torres	Executive Director, Northwest Justice Project
Steve Pelletier	Financial Director, Northwest Justice Project
Ed Marks	Executive Director, New Mexico Legal Aid
Lisa Schatz-Vance	Development Director, New Mexico Legal Aid
Calvin Harris Jr.	CPA, President – Change Management, Harvin Consulting LLC
Don Saunders	National Legal Aid and Defenders Association (NLADA)
Robin C. Murphy	National Legal Aid and Defenders Association (NLADA)
Terry Brooks	American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Dominique Martin	Law99.com

The following summarizes actions taken by, and presentations made to, the Committee:

Committee Co-Chairman Father Pius called the meeting to order.

MOTION

Committee Co-Chair Valencia-Weber moved to approve the agenda. Mr. Levi seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Committee Co-Chair Valencia-Weber moved to approve the minutes of the Committee's meeting of January 24, 2014. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

Committee Co-Chair Father Pius lead the discussion of the Committee's evaluations for 2013 and its goals for 2014.

Mr. Haley, panel moderator, introduced the LSC Performance Criteria 4 panelists: Cesar Torres, Executive Director, Northwest Justice Project; Steve Pelletier, Financial Director, Northwest Justice Project; Ed Marks, Executive Director, New Mexico Legal Aid; Lisa Schatz-Vance, Development Director, New Mexico Legal Aid; and Calvin Harris, Jr. CPA, President-Change Management, Harvin Consulting LLC. Mr. Haley gave an overview of discussion topics covering the challenges faced by grantees in financial planning and budgeting. He was followed by Mr. Harris who discussed the benefits of budgeting in times of funding uncertainty. Mr. Pelletier then shared his experiences in proactive budgeting and financial management of the annual budget at the Northwest Justice Project. Next, Mr. Torres discussed the Northwest Justice Project board's involvement in the budget process; followed by Ms. Schatz-Vance's' briefing on her role as a Resource Development Director. Mr. Marks spoke of the importance of including staff in management's financial planning and budget resources processes. Mr. Haley and the panelists answered Committee members' questions.

Committee Co-Chair Father Pius invited public comment. Mr. Brooks of the American Bar Association, Standing Committee on Legal Aid and Indigent Defendants (SCLAID) spoke of the proposed federal changes in student loans repayment and forgiveness laws and the impact it could have on lawyer recruitment in the legal aid community.

There was no new business to consider.

MOTION

Committee Co-Chair Valencia-Weber moved to adjourn the meeting. Mr. Maddox seconded the motion.

VOTE

The motion passed by voice vote.

The Committee meeting adjourned at 12:10 p.m.

Panel Presentation:

Board Governance: 45 CFR Part 1607 and Panelist Bios

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of June 2, 2014

Title 45: Public Welfare

PART 1607—GOVERNING BODIES

Contents

§1607.1 Purpose.
§1607.2 Definitions.
§1607.3 Composition.
§1607.4 Functions of a governing body.
§1607.5 Compensation.
§1607.6 Waiver.

AUTHORITY: 42 U.S.C. 2996f(c); Pub. L. 103-317.

SOURCE: 59 FR 65254, Dec. 19, 1994, unless otherwise noted.

Back to Top

§1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel and to insure that the recipient is accountable to its clients.

Back to Top

§1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority to govern the activities of a recipient receiving funds under §1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and

enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under §1006(a)(1)(A) of the Act.

Back to Top

§1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other similar factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means

consistent with this part and with the recipient's bylaws and applicable State law.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) Recipients may recommend candidates for governing body membership to the appropriate bar associations and other appointing groups and should consult with the appointing organizations to insure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general requirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole meet the diversity requirements described in §§1607.3(b)(3), 1607.3(c) and 1607.3(d);

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

Back to Top

§1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session in accordance with written policies adopted by the recipient's governing body.

(b) In addition to other powers and responsibilities that may be provided for by State law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation notice of any changes in such bylaws within a reasonable time after the change is made.

Back to Top

§1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other reasonable out-of-pocket expenses in accordance with written policies adopted by the recipient.

(b) Pursuant to a waiver granted under §1607.6(b)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area:

(1) To accept referrals of fee-generating cases under part 1609 of these regulations;

(2) To participate in any uncompensated private attorney involvement activities supported by the recipient;

(3) To seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to §§1607.5 (c) (1) and (2); and

(4) To receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to §1607.5(c)(2).

[59 FR 65254, Dec. 19, 1994, as amended at 60 FR 2330, Jan. 9, 1995]

Back to Top

§1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under §222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive any of the requirements of this part which are not mandated by applicable law if a recipient demonstrates that it cannot comply with them because of: (1) The nature of the population, legal community or area served; or (2) Special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(c) A recipient seeking a waiver under §1607.6(b)(1) shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

(d) As a condition of granting a waiver under §1607.6(b)(2) of any of the requirements imposed upon governing bodies by §1607.3, the president shall require that a recipient have a policy body with a membership composed and appointed in the manner prescribed by §1607.3. Such policy body shall be subject to the meeting requirements of §1607.4(a) and its attorney members shall be subject to the restrictions on compensation contained in §1607.5. The policy body shall have such specific powers and responsibilities as the President determines are necessary to enable it to formulate and enforce policy with respect to the services provided under the recipient's LSC grant or contract.

Back to Top

For questions or comments regarding e-CFR editorial content, features, or design, email ecfr@nara.gov.
For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

Delivery of Legal Services Committee
July 21, 2014

Panel Discussion: Board Governance: Board Composition, Client Eligible Member Engagement in Board Decision-Making

Susan Cae Barta, Secretary, Board of Directors, Iowa Legal Aid

Susan has been a member of Iowa Legal Aid's Board of Directors since June 2007, and currently serves as Secretary of that board. Outside of her work with Iowa Legal Aid, Susan is very active in her hometown of Sioux City and the state of Iowa, using her experiences to help others. She has been involved in the Sioux City Chapter of the American Indian Council since 1990, and is currently president of that group. Since 1996, Susan has served on the American Indian Employment and Training Board. She is also a founding member of the Woodbury County Community Drug Court Program, working with that program from 1999 through 2013. Susan has served on the board of the Woodbury County Prevention Commission for At-risk Youth since 2011, and is currently vice-chair of that group. She has served as treasurer, vice president and president for the Community Action Agency of Siouxland. From 2005 – 2007 Susan sat on the Sioux City Human Rights Commission Board. Susan has also been very active in a number of other organizations in the community.

As far back as Susan Barta can remember she has been keenly aware that discrimination takes place and that she could do something to change the way people treat each other. While Susan was a young girl in the late 60's she witnessed her parents' deep involvement in Human Rights issues. This time in history was also the start of the American Indian Movement that her parents were deeply involved in locally. Susan's early introduction to civil right causes has encouraged her to speak up for what is right.

Dennis Groenenboom, Executive Director, Iowa Legal Aid

Dennis Groenenboom serves as the Executive Director of Iowa Legal Aid. A 1978 graduate of the University of Iowa College of Law, Dennis has spent his entire professional career with Iowa Legal Aid. He has worked as a staff attorney, senior staff attorney, managing attorney, deputy director, and serves as the program's third Executive Director, a position he has held since May 1992. Before assuming administrative responsibilities, including development of additional funding sources, Dennis' substantive areas of expertise were in representing individuals with disabilities. He also developed substantial expertise in the area of public benefits
and rights of older Iowans.

Dennis is currently participating as a fellow in the Where Health Meets Justice Fellowship convened by the National Center for Medical Legal Partnership, School of Public Health and Health Services and National Legal Aid and Defender Association to build healthcare expertise and resources in the legal aid community. Dennis also serves on the National Legal Aid and Defender Association's (NLADA) Civil Policy Group and Board of Directors. He is currently the Chair of NLADA's Civil Policy Group. Dennis has been a member of many sections and committees of the Iowa State Bar Association. He is also active in and has served on the boards of several community and faith based organizations.

Linda J. Morris, President, Board of Directors, Laurel Legal Services

Linda J. Morris has served on the Laurel Legal Services, Inc. Board of Directors since 2001. Prior to that she served on the Board of Directors of Southern Allegheny Legal Aid, Inc. in Cambria County.

At the present time Linda is President of the Board of Directors of Laurel Legal Services. In the past she has served as secretary, president-elect and president. Linda is a member Ex Officio of all board committees as the president. In the past she has served on several board committees including the Fiscal Committee, the Development Committee, and the Strategic Planning Committee. She is a member of the Southwestern Pennsylvania Client Consortium.

Linda was appointed to the Board of Laurel Legal Services, Inc. by the Oakhurst Resident Council in Johnstown, Pennsylvania. She is a past president of Oakhurst Resident Council. She has been active with the Pennsylvania Department of Public Welfare Income Maintenance Advisory Committee, Keystone Economic Development, and Order of Eastern Star. She also served on the Health Law and Housing Committees and she is currently a board member of the Pennsylvania Legal Aid Network. In the past she has been secretary of the Board of the Pennsylvania Legal Aid Network. Linda is also a member and current president of the Clients Council of Pennsylvania.

She is also a member of the Mecca Temple #294, Daughter of Elks and Alpha Council #1, a branch of the Elks.

Cynthia A. Sheehan, Executive Director, Laurel Legal Services

Cynthia Sheehan has been Executive Director of Laurel Legal Services, Inc. since September of 2002. This is a six-county civil legal services program in Western Pennsylvania. She spent almost her entire legal career in this program after a brief period as law clerk in Beaver County, Pennsylvania. She began in 1976 as a staff attorney and became the managing attorney for four of the six offices in l980. During her time at Laurel Legal Services, Cynthia was involved in the founding of a domestic violence shelter and rape crisis center, the Alice Paul House in Indiana, Pennsylvania, and helped found a community living program for mental health consumers, I&A Residential Services in Indiana, Pennsylvania. She currently serves as president of that board. She also helped found a program of drop-in centers for mental health consumers, Tri-Centers, Inc. in Indiana, Pennsylvania. She currently serves on the Westmoreland County Stop Violence Against Women Coordinating Team and on the Board of the Community Justice Project, a legal services program which serves poor families and low wage workers of Pennsylvania.

Cynthia obtained her J.D. from the University of Pittsburgh, and also an M.A. from the University of Pittsburgh. She is admitted to practice in the Supreme Court of Pennsylvania, the United States District Court for the Western District of Pennsylvania, the Third Circuit of Court of Appeals and the U.S. Supreme Court.

Audit Committee

AUDIT COMMITTEE

July 21, 2014

Agenda

OPEN SESSION

1. Approval of agenda

2. Approval of minutes of the Committee's Open Session April 7, 2014 meeting

3. Approval of minutes of the Committee's Telephonic Open Session May 22, 2014 meeting

4. Briefing by Office of Inspector General

   - Jeffrey Schanz, Inspector General

5. Management update regarding risk management

   - Ron Flagg, Vice President of Legal Affairs

6. Briefing about Management representation letters in connection with financial reporting

   - David Richardson, Comptroller

7. Briefing regarding LSC audit and review activities

   - Lynn Jennings, Vice President of Grants Management
   - Janet LaBella, Director of Program Performance
   - Lora Rath, Director of Compliance and Enforcement

8. Briefing about follow-up by Office of Compliance and Enforcement from referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees

- Lora Rath, Director of Compliance and Enforcement
- John Seeba, Assistant Inspector General for Audits

9. Public comment

10. Consider and act on other business

CLOSED SESSION

11. Approval of minutes of the committee's Closed Session meeting on April 7, 2014

12. Briefing by Office Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General

- Lora Rath, Director of Compliance and Enforcement

13. Update on management response to the OIG Information Technology Systems Risk Assessment

- Peter Campbell, Chief Information Officer

14. Consider and act on adjournment of meeting

Draft Minutes of April 7, 2014 &

May 22, 2014

Open Session Telephonic Meeting

Legal Services Corporation
Meeting of the Audit Committee

Open Session

Monday, April 7, 2014

DRAFT

Chairman Victor B. Maddox convened an open session meeting of the Legal Services Corporation's ("LSC") Audit Committee ("the Committee") at 9:05 a.m. on Monday, April 7, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were in attendance:

Victor B. Maddox, Chairman
Gloria Valencia-Weber
David Hoffman, Non-Director Member (by telephone)
Paul L. Snyder, Non-Director Member (by telephone)
John G. Levi, ex officio

Other Board members present:

Sharon L. Browne
Robert J. Grey, Jr.
Charles N.W. Keckler
Father Pius Pietrzyk, O.P.
Laurie Mikva
Martha L. Minow
Julie A. Reiskin

Also in attendance were:

James Sandman	President
Lynn Jennings	Vice President for Grants Management
Rebecca Fertig Cohen	Special Assistant to the President
Richard L. Sloane	Chief of Staff and Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel & Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs
Traci Higgins	Director, Office of Human Resources
David L. Richardson	Treasurer and Comptroller, Office of Financial and Administrative Services

Wendy Rhein	Chief Development Officer
Jeffrey E. Schanz	Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit, Office of the Inspector General
Laurie Tarantowicz	Assistant Inspector General & Legal Counsel, Office of the Inspector General
Grace Nyakoe	Office of Inspector General
Roxanne Caruso	Office of Inspector General
Carol Bergman	Director, Office of Government Relations and Public Affairs
Wendy Long	Executive Assistant, Office of Government Relations and Public Affairs
Marcos Navarro	Office of Government Relations and Public Affairs
Janet LaBella	Director, Office of Program Performance
Lora M. Rath	Director, Office of Compliance and Enforcement
Frank B. Strickland	Non-Director Member, LSC's Institutional Advancement Committee
Herbert Garten	Non-Director Member, LSC's Institutional Advancement Committee
Thomas Smegal	Non-Director Member, LSC's Institutional Advancement Committee
Allan Tanenbaum	Non-Director Member, LSC's Finance Committee
Robert E. Henley, Jr.	Non- Director Member, LSC's Finance Committee
Reginald J. Haley	Program Analyst, Office of Program Performance
LaVon Smith	Office of Information Technology
Ed Marks	Executive Director, New Mexico Legal Aid
Lisa Schatz Vance	Development Director, New Mexico Legal Aid
Calvin Harris Jr.	CPA, President Change Management, Consulting, Harvin Consulting
Terry Brooks	American Bar association Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Don Saunders	National Legal Aid and Defender Association (NLADA)
Robin C. Murphy	National Legal Aid and Defender Association (NLADA)
Dominique Martin	Law99.com

The following summarizes actions taken by and presentations made to the Committee:

Committee Chairman Maddox called the meeting to order.

MOTION

Mr. Hoffman moved to approve the agenda. Mr. Snyder seconded the motion.

VOTE

The motion was approved by voice vote.

MOTION

Professor Valencia-Weber moved to approve the minutes of the Committee's meeting of January 23, 2014. Mr. Hoffman seconded the motion.

VOTE

The motion passed by voice vote.

Ms. Higgins briefed the Committee on the performance of LSC's 403(b) plan and answered Committee member's questions.

Mr. Schanz informed the Committee of the recent retirement of Ronald "Dutch" Merryman and introduced his successor, John Seeba, to the position of Inspector General for Audit. Next, Mr. Schanz briefed the Committee on the Office of the Inspector General's (OIG) meeting with the Government Accountability Office (GAO), and its scheduled audit and peer reviews.

Mr. Flagg presented the revised LSC Risk Management matrix and answered Committee members' questions and suggestions.

Next, Ms. Rath gave a briefing on the Office of Compliance and Enforcement's (OCE) follow-up of referrals from the OIG regarding audit and investigation reports and the annual independent public accountants' audits of grantees. Ms. Rath and Mr. Seeba answered Committee members' questions.

Committee Chairman Maddox invited public comment and received none.

There was no new business to consider.

MOTION

Professor Valencia-Weber moved to adjourn for briefings in closed session. Mr. Levi seconded the motion.

VOTE

The motion passed by voice vote.

The Committee meeting adjourned for briefings in closed session at 10:19 a.m.

Legal Services Corporation
Telephonic Meeting of the Audit Committee

Open Session

Thursday, May 22, 2014

DRAFT

Chairman Victor B. Maddox convened an open session telephonic meeting of the Legal Services Corporation's ("LSC") Audit Committee ("the Committee") at 3:03 p.m. on Thursday, May 22, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were in attendance:

Victor B. Maddox, Chairman
Harry J. F. Korrell, III
Gloria Valencia-Weber
John G. Levi, ex officio

Other Board members present:

Sharon L. Browne
Robert J. Grey, Jr.
Charles N.W. Keckler
Father Pius Pietrzyk, O.P.
Laurie Mikva
Martha L. Minow

Also in attendance were:

James Sandman	President
Lynn Jennings	Vice President for Grants Management
Rebecca FertigCohen	Special Assistant to the President (by telephone)
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel & Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs
David L. Richardson	Treasurer and Comptroller, Office of Financial and Administrative Services
Jeffrey E. Schanz	Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit, Office of the Inspector General

Laurie Tarantowicz	Assistant Inspector General & Legal Counsel, Office of the Inspector General
Joel Gallay	Special Counsel to the Inspector, Office of Inspector General
Carol Bergman	Director, Office of Government Relations and Public Affairs
Treefa Aziz	Government Affairs Representative, Office of Government Relations and Public Affairs
Nupur Khullar	Intern, Office of Government Relations and Public Affairs
Silove Barwari	Intern, Office of Government Relations and Public Affairs
Lora M. Rath	Director, Office of Compliance and Enforcement

The following summarizes actions taken by and presentations made to the Committee:

Chairman Maddox called the meeting to order.

Mr. Richardson briefed the Committee on LSC's 990 financial form for FY 2013 and answered Committee member's questions.

Committee Chairman Maddox invited public comment and received none.

There was no new business to consider.

MOTION

Professor Valencia-Weber moved to adjourn the meeting. Dean Minow seconded the motion.

VOTE

The motion passed by voice vote.

The Committee meeting adjourned at 3:09 p.m.

Risk Management Matrix

RISK TO LSC RESOURCES – PEOPLE

Risks			Strategies	Who is responsible?		Last report to Board[1]	Next report to Board
	Probability	**Severity**		**Management**	**Board**		
Board Leadership and Governance -- Potential for problems	L	H	• Good information flow from management (including legal, financial, programmatic information) and from the OIG and outside auditors • Training of board • Orientation of new board • Evaluations/self-assessments • Sufficient staff support • Staying abreast of best board governance practices • Staying abreast of stakeholder and client concerns • Periodic review of governing documents to assure compliance and relevancy		Board, Chairman, Gov. & Performance Review Com.		
-- Board Transitions	M	M	• Board transition plan • Board orientation	Secretary	Board, Chairman, Gov. & Performance Review Com.		
Management Leadership Transitions					Gov. & Performance Review Com.		

[1] Tracking of risk management reports to the Board began with the Board meeting in 2013, and thus no dates before that year are recorded in this matrix.

RISK TO LSC RESOURCES – PEOPLE

Risks			Strategies	Who is responsible?		Last report to Board[1]	Next report to Board
	Probability	Severity		Management	Board		
-- President	H	M	• Presidential transition plan	President			10/5/14
-- Other senior leadership changes	M	M	• Transition plan	President	Gov. & Performance Review Com.		10/5/14
Management/IG Relations -- Potential for problems	M	H	• Communicate, coordinate, cooperate • Regular meetings	President	Audit Com.	4/7/14	7/20/14
Management Leadership Performance -- Preventing leadership problems	L	H	• Cohesive, effective management team • Emphasis on high standards • Regular communications with board, staff, grantees, public, OIG • Regular performance evaluations	President	Gov. & Performance Review Com	4/6/14	7/20/14
Management System Risks ■ Performance Management (failure to achieve performance of defined goals including implementation of Fiscal Oversight and Pro Bono Task Force	M	H	• Create formal organizational management performance cycle including articulation of goals and metrics • Routine reporting of performance • Providing training to close competency gaps	President OHR Director	Ops. & Regs. Com.	4/7/14	7/20/14 (PBTF Implementation Update)

RISK TO LSC RESOURCES – PEOPLE							
Risks			**Strategies**	**Who is responsible?**		**Last report to Board[1]**	**Next report to Board**
	Probability	**Severity**		**Management**	**Board**		
Reports)							
■ Human Capital Management (failure to attract, motivate and retain high quality staff)	M	H	• Professional training for staff and managers • Routine performance evaluations and feedback • Robust communications with employees	President OHR Director	Ops. & Regs. Com.	4/7/14	
■ Information Management (failure to collect and share vital information)	M	H	• Create a common data portal for collection and sharing of grantee data	Vice President for Grants Management (VPGM) CIO	Ops. & Regs. Com.		
■ Acquisitions Management (higher contract costs and possible areas of fraud, waste and abuse)	M	H	• Periodically review and strengthen procurement and contracting policies • Routine training of employees on policies	Vice President for Legal Affairs (VPLA) Controller	Ops. & Regs. Com.		7/20/14
Conflicts of Interest/Ethics Violations	L	M	• Training on ethics code • Reminders, emphasis on ethics	Ethics Officer	Audit Com.		10/5/14

RISK TO LSC RESOURCES – FUNDING

Risks			Strategies	Who is responsible?		Last report to Board	Next report to Board
	Probability	**Severity**		**Management**	**Board**		
Adequacy of Basic Field Funding -- Insufficient funding to accomplish LSC's mission of providing equal access to justice	H	H	• Public education • Strengthen congressional relationships • Develop stronger data to support funding requests, including data on outcomes and economic benefits of legal aid	Government Relations/ Public Affairs (GRPA) Director	Finance Com.	4/6/14	7/20/14
-- Funding cut so severely that programs must close altogether or radically cut back services	H	H	• Develop crisis-mode messaging and network	GRPA Director			
Adequacy of MGO Funding -- Insufficient Management and Grants Oversight funding	H	H	• Strengthen congressional relationships • Emphasize quantifying return on investment from oversight funding • Emphasize grants oversight function	GRPA Director	Finance Com.	4/6/14	7/20/14
			• Respond to and implement GAO recommendations		Gov. & Perform. Review Com.	4/16/14	7/20/14

			• Continue to assess MGO expenses to reduce any unnecessary duplication and inefficiencies	VPGM			

RISK TO LSC RESOURCES –ASSETS

Risks			Strategies	Who is responsible?		Last report to Board	Next report to Board
	Probability	**Severity**		**Management**	**Board**		
Internal Fraud	L	H	• Effective internal controls • IG oversight • Annual corporate audit	Treasurer	Audit Com.		
			• Staff training on ethics	Ethics Officer			
Internal Financial Controls -- Failures at LSC	L	H	• Management accountability • Annual audit • Board oversight • Regular review/update of Accounting Manual • Implement GAO recommendations and OMB guidance	Treasurer	Audit Com.	10/20/13	
Litigation -- Employment	M	M	• Regular training of managers • Clear-cut policies and uniform application	OHR Director	Ops. & Regs. Com.		
			• Effective negotiation and use of releases	VPLA			
Integrity of electronic data/ information -- Potential for Problems -- Security of electronic data	M	H	• Effective system back-ups • Effective disaster recovery • Regular staff training • Maintain qualified IT staff • Effective document and system security • Maintain up-to-date	CIO	Audit Com.	1/23/14	7/20/14

RISK TO LSC RESOURCES –ASSETS							
Risks			**Strategies**	**Who is responsible?**		**Last report to Board**	**Next report to Board**
	Probability	**Severity**		**Management**	**Board**		
			technology				
Accuracy of grantee data -- Potential for Problems	M	H	• Data validation protocols (electronic analysis) • Clear guidance/training on grantee reporting • Improve grantee Activity Reports to receive better data	VPGM Director OPP Director OCE	Ops. & Regs. Com.		
LSC Records Management -- Potential for Problems	L	M	• Update records management policy, including statement on the handling of confidential information • Train staff in new policy • Effective FOIA procedures • Stay abreast of best practices • Maintain effective computer back-ups • Maintain effective security on electronic information access *(continued on next page)* • Improve internal access to key records	CIO VPLA	Ops. & Regs. Com.		

RISK TO LSC RESOURCES –ASSETS							
Risks			**Strategies**	**Who is responsible?**		**Last report to Board**	**Next report to Board**
	Probability	**Severity**		**Management**	**Board**		
			• improve public access to records • Ensure compliance with legal requirements				
Preservation of LSC interest in grantee property -- Potential for loss	L	L	• Maintain up to date Property Acquisition Manual • Remind grantees of LSC policy • Pursue remedies as necessary	VPLA	Ops. & Regs. Com.		
Continuation of Operations & Organizational Resilience	L L	H H	• Effective COOP plan • Computer network back-up	Chief of Staff CIO	Ops. & Regs. Com.		

RISK TO LSC RESOURCES – GRANTEES							
Risks			**Strategies**	**Who is responsible?**		**Last report to Board**	**Next report to Board**
	Probability	**Severity**		**Management**	**Board**		
Grantee Oversight by LSC & IPAs -- Preventing lapses	M	H	• Rigorous Compliance oversight • Maintain comprehensive procedures manuals • Well-defined workplans for program visits • Careful review of grantee reports to LSC • Communications between offices • Internal training • Regular communications with programs • Monitoring media reports	VPGM	Ops & Regs. Com. Del. Of Legal Serv. Com.		
Interpretations of regulations by LSC Staff -- Preventing inconsistencies	L	H	• Joint meetings and trainings • Joint work groups by topic • Feedback from grantees	VPGM	Ops & Regs. Com.		

RISK TO LSC RESOURCES – GRANTEES

Risks			Strategies	Who is responsible?		Last report to Board	Next report to Board
	Probability	Severity		Management	Board		
Grantee Operations			• Rigorous selection process for grantees • Enforcement of regulations • Grant assurances • Grant conditions • Advisories • Program letters • Compliance/Fiscal visits • LSC Resource Information • Training of grantee staff • Performance Criteria • Outreach to local boards • Local board education • Outreach to Access to Justice community in region • Review/redefine services • Seek interim provider • Work with programs to improve compliance and reduce chances that they will violate restrictions or otherwise require the imposition of sanctions	VPGM Director OPP Director OCE	Del. Of Legal Serv. Com.	4/7/14 (financial planning & budgeting) 1/24/14 (Board governance – fiscal and financial oversight) 10/21/13 (Performance Criteria) 4/15/2013 Comprehensive legal needs assessments 1/25/2013 Succession planning and leadership development	7/20/14 (board composition and client board members)
-- Major misuse of grant funds	M	H					
-- Failure of leadership	L	H					
-- Failure of internal controls	M	H					
-- Lack of board oversight	M	H					
-- Leadership transitions	H	M					
-- Restriction violations	M	H					
-- Poor records management	M	M					
-- Poor Quality legal services	L	H					
-- Need to replace program	L	H					

RISK TO LSC RESOURCES – GRANTEES							
Risks			Strategies	Who is responsible?		Last report to Board	Next report to Board
	Probability	Severity		Management	Board		
			• Periodic review of regulations • OLA opinions	VPLA			

Responsibilities for Risk Management

Board of Directors

- Sets strategic goals and objectives, adopts annual operating budget, and approves risk management plan.
- Reviews operational reports to monitor progress towards goals as defined in *Strategic Directions* and assure compliance with organizational requirements.
- Adopts and establishes policies and regulations.
- Reviews the organization's risk management plan (RMP).
- Maintains working relationship with members of Congress.
- Board Committees to review implementation of RMP.

President

- Has overall responsibility for the effective implementation of the RMP.
- Assigns staff to design and carry out risk management activities.
- Assigns staff to perform annual review of the risk management activities.
- Approves all grants for the Corporation.
- Executes major contracts for the organization.
- Keeps the Board apprised of emerging threats and opportunities facing the organization.
- Leads the Executive Team in periodic review and update of the risk management plan.
- Gives final approval to the plan.
- Maintains effective relationship with members of Congress and staff.

Vice President for Legal Affairs

- Serves as advisor to the Board of Directors in legal matters, consulting outside counsel on an as needed basis.
- Advises senior staff on contracts; reviews contracts on an as needed basis.
- Monitors implementation of risk management program.
- Recommends any necessary modifications.

Vice President for Grants Management

- Supervises oversight of grantee operations and compliance.

Treasurer/Comptroller

- Establishes, conducts, and maintains internal controls for financial transactions.
- Purchases D&O insurance.

Executive Team

- Oversees organization-wide effort to protect the vital assets of LSC
- Convenes periodically to review the Corporation’s priority risks and corresponding risk management strategies.

Office Directors

- Review and recommend modifications to corporate risk management program.
- Supervise implementation of risk management strategies within their area of responsibility.

Management Representation Letter

Legal Services Corporation
America's Partner For Equal Justice

President
James J. Sandman

Board of Directors
John G. Levi
Chicago, IL
Chairman

Martha Minow
Cambridge, MA
Vice Chair

Sharon L. Browne
Sacramento, CA

Robert J. Grey, Jr.
Richmond, VA

Charles N. W. Keckler
Arlington, VA

Harry J. F. Korrell
Seattle, WA

Victor B. Maddox
Louisville, KY

Laurie Mikva
Evanston, IL

Fr. Pius Pietrzyk, OP
Zanesville, OH

Julie A. Reiskin
Denver, CO

Gloria Valencia-Weber
Albuquerque, NM

December 19, 2013

WithumSmith+Brown, P.C.
8403 Colesville Rd, Suite 340
Silver Spring, MD 20910

Dear WithumSmith+Brown:

This representation letter is provided in connection with your audits of the financial statements of Legal Services Corporation , which comprise the statements of financial position as of September 30, 2013 and 2012, and the related statements of activities and cash flows for the years then ended, and the related notes to the financial statements, for the purpose of expressing an opinion on whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

Except where otherwise stated below, immaterial matters less than $7,000 collectively are not considered to be exceptions that require disclosure for the purpose of the following representations. This amount is not necessarily indicative of amounts that would require adjustment to or disclosure in the financial statements.

We confirm the following to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of December 19, 2013:

3333 K Street, NW 3rd Floor
Washington, DC 20007-3522
Phone 202.295.1500 Fax 202.337.6797
www.lsc.gov

Financial Statements

- We have fulfilled our responsibilities for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
- Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable (Including Notes 5 and 6).
- Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
- We are in agreement that there are no adjusting journal entries you have proposed.
- The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
- LSC has determined that for financial reporting purposes, LSC is not a governmental organization and therefore follows the accounting pronouncements for nonprofit organizations promulgated by the Financial Accounting Standards Board (FASB).
- We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us.
- We have determined that LSC is not subject to the requirements of the Single Audit Act and OMB Circular A-133.
- We are responsible for the information contained in the Management's Discussion and Analysis ("MD&A") and for ensuring that there are no material inconsistencies between the MD&A and the financial statements. The MD&A is not a required part of the basic financial statements and is presented for purposes of additional analysis and is considered "Other Information in Documents Containing Audited Financial Statements."

Information Provided

- We have provided you with:
  - Access to all information of which we are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters;

  - Additional information that you have requested from us for the purpose of the audit; and
  - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- All transactions have been recorded in the accounting records and are reflected in the financial statements.
- We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
  - Management;
  - Employees who have significant roles in internal control; or
  - Others when the fraud could have a material effect on the financial statements.
- We have no knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, analysts, regulators, or others.
- We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws, regulations, and provisions of contracts and grant agreements whose effects should be considered when preparing financial statements.
- We are not aware of any pending or threatened litigation and claims whose effects should be considered when preparing the financial statements.
- We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
- LSC is an exempt organization under Section 501(c)(3) of the Internal Revenue Code. Any activities of which we are aware that would jeopardize the Organization's tax-exempt status, and all activities subject to tax on unrelated business income or excise or other tax, have been disclosed to you. All required filings with tax authorities are up-to-date.
- We have a process to track the status of audit findings and recommendations.
- We have identified to you any previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of the audit being undertaken and the corrective actions taken to address significant findings and recommendations.
- There are no significant deficiencies and we have provided you with our responses to the reported recommendations.
- Management has considered the results of grantee audits and, where necessary, adjustments to the Corporation's own books and records have been made.

- We will notify you in advance of our intent to print your report, in whole or in part, and you will have the opportunity to review such printed matter before its issuance.
- We confirm to you that we are responsible for management decisions and functions, and have designated an individual with suitable skill, knowledge or experience to oversee the tax services provided, for evaluating the adequacy and results of those services, and accepting responsibility for them.

James Sandman, President

David L. Richardson, Treasurer/Comptroller

Office of Inspector General Referrals to the Office of Compliance & Enforcement

STATUS OF OPEN or RECENTLY CLOSED REFERRALS FROM OIG AUDIT DIVISION TO OCE (Thru June 2014)

State	Grantee	Date of OIG Onsite/ Review	Date of OIG Report	Date of Referral to OCE	OIG Referral	OCE Action	Resolution	Date Closed
TX	Texas Rural Legal Aid	six visits between 5/10 and 1/11	6/12/12	6/12/12	OIG did not refer any questioned costs but did refer two findings/recommendations: 1)related to cost allocation methodology used to accurately account for LSC funds expended in each migrant area funded; and 2) ensure that credit card purchases are supported by receipts and that travel reports are filed as required.	OCE conducted an onsite focused fiscal review in October 2012. 1)OLA has issued a memorandum recommending that the various migrant areas be merged into one area, obviating the need for separate reporting; and 2) In TRLA's comments to the OCE Draft Report, they provided evidence that sufficient credit card and travel policies are now in writing and being followed.	1. On 12/26/13, LSC published notification in the federal register that it intends to merge all effected migrant grants into one migrant grant encompassing all of the prior migrant service areas. 2. The Final Report was issued on 5/8/14 and determined that TRLA has taken sufficient action to resolve the deficiencies noted by the OIG.	1. 12/26/13 2. 5/8/14
CA	Inland Counties Legal Services,	1/11-15/11 and 8/1-5/11	7/25/12 revision provided on 11/15/12	8/6/12	The OIG originally referred questioned costs in the amount of $1,384,670 for stipends and other benefits charged to the LSC fund. This amount was reduced to $1,367,480 by memo dated 11/15/12	A questioned cost proceeding under 45 CFR Part 1630 was initiated on 9/30/13, questioning $252,069.33. The program's response was received on 12/3/13. A Management Decision, disallowing the full amount questioned, was issued on 1/29/14. The program appealed to the LSC President.	On 4/14/14, the LSC President issued a final determination upholding the disallowance of $252,069.33. Those funds are being withheld, in equal amounts, from the program's remaining monthly funding distributions for calendar year 2014.	4/14/14
TX	Lone Star Legal Aid	5 visits between 8/10 and 1/11	1/15/13 revision provided on 2/22/13	1/24/13	OIG originally referred $45,762 in questioned costs due to unsupported credit card charges ($4,639, purchases exceeding $10,000 for which LSC prior approval was not obtained ($40,458), and physical inventory items that could not be located ($665). That amount was reduced by $27,280 on 2/22/13. The remaining $13,178 for prior approval and the other costs remained questioned.	OLA guidance was requested on 10/30/13 to resolve issue of intellectual versus personal property for the $13,178 purchase of software licenses. After a meeting between OLA and OCE staff on 1/10/14 it was determined that the purchase of software licenses do not require prior approval A questioned cost proceeding was initiated on 2/19/14 questioning $2,116. The program responded on 4/14/14. OCE reviewed the information and provided a recommended Management Decision to the VP for Grants Management.	On 4/28/14, the LSC VP for Grants Management issued a Management Decision disallowing $2,116. As this amount is below the regulatory limit ($2,500) for which appeals to the LSC President are allowed, the Management Decision was immediately final. The disallowed funds are being withheld, in equal amounts, from the program's remaining monthly funding distributions for calendar year 2014.	4/28/14
AL	Legal Services Alabama		6/9/14	6/11/14	OIG referred $29,914.03 in questioned costs: $3,462 for unallowable charges; $6,569 for unsupported charges; $15,179 for insufficiently supported costs and $4,704.03 related to matching costs.	OCE contacted the OIG to request supporting documentation. After reviewing the available material, OCE submitted a memorandum of recommended action to the VP for Grants Management on 6/25/14. On 6/27/14, LSA contacted OCE - on its own - to ask if it could provide additional documentation in response to the OIG's report. The information was received via email the same day and will be reviewed in order to determine if the recommendation to the VP should be modified.		Pending

Recently Closed or Pending Closure OIG Referrals from Audited Financial Statements FYE 6/30/11 to date

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
1	NY	LS NYC	2012-233100-02	8/13/2012	Item 11-02 governing board composition.	OIG noted that management concurred with the IPA's finding and stated that moving forward, they would submit all required reports within the specified due dates. The OIG noted that follow up needed to determine if grantee is submitting reports timely.	3/18/2013 & 3/12/2014	CA Closed*** The Office of Program Performance ("OPP") was able to verify that, during calendar year 2012, and the first part of 2013, LS NYC submitted all necessary reports regarding its Governing/Policy Body Composition in a timely manner.	Corrective Action Closed	Under Review On 3/12/2014, OCE resubmitted evidence to OIG regarding the program's timely submission of required reporting. OIG is in the process of reviewing the submission for sufficiency.
2	MT	Montana Legal Services Association	2012-927000-01	6/17/2012	Grantee did not fully comply with grant condition requiring minimum level of client-eligible representation on Board of Trustees: 5 required, 2 currently filled.	OIG referral noted that this appears to be an on-going issue that needs LSC oversight.	6/25/2014	Closed CAP On March 18, 2014, MLSA informed its Office of Program Performance liaison that it had filled the open Board positions and was now in compliance with 45 CFR Part 1607.	Pending	As MLSA has demonstrated that it is now in compliance with the pertinent regulation, this referral is deemed closed by OCE. OPP will continue to monitor all grantees regarding Board composition and compliance with 45 CFR Part 1630.
			2013-927000-01	9/10/2013	Grantee did not fully comply with grant condition regarding representation on Board of Trustees.	OIG noted that this was a prior year finding, remains unresolved. Referred to OCE for follow-up to ensure corrective action is taken.	6/25/2014	Closed CAP On March 18, 2014, MLSA informed its Office of Program Performance liaison that it had filled the open Board positions and was now in compliance with 45 CFR Part 1607.	Pending	
3	WY	Legal Aid of Wyoming, Inc.	2012-951050-01	6/17/2012	Audit Adjustments	OIG noted that , according to the IPA, the misstatements were caused by human error and no review of the year end accrual entries prepared was performed. OIG also noted that grantee management did issue response to remedy the problem. Referred to OCE for follow-up to determine whether corrective actions were taken.	3/25/2013	Accept CAP OCE has continued to monitor the progress made by this program to cure fiscal deficiencies noted in its 2011 audit. As noted at right, the program is actively continuing to take the necessary steps to resolve the noted deficiencies.	Corrective Action Closed	The program has submitted additional information regarding the steps it has taken over the last several years to decrease the number of errors occurring in its fiscal department including replacing staff, engaging a new CPA firm to help with fiscal functions, and increasing the overall number of members on its finance committee, as well as the number of members with fiscal expertise.

*SRF = Summary Report Form completed by IPA.

**CAP = Corrective Action Plan submitted by Grantee appears appropriate to cure deficiency.

***CA Closed = Corrective Action taken was sufficient.

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
4	AZ	DNA Peoples Legal Services	2012-703068-01	6/17/2012	Numerous material audit adjustments were required for the financial statements to be correct at year-end.	OIG noted that grantee mgmt. stated that error was due to an upgrade of the accounting software resulting in co-mingling of expense & revenue entries from the old chart of accounts. The AFS further indicated that grantee did not have chance to sort issue before IPA arrived. OIG referred for OCE follow-up on this issue as it was a repeat finding.	3/12/2014	Accept CAP For FY 2012 and FY 2013 LSC imposed numerous fiscal special grant conditions on this grantee to assist improvement in fiscal systems and internal controls. Pursuant to an on-site review conducted in July 2013, OCE determined that DNA has taken significant steps to cure the noted deficiencies.	Corrective Action Closed	For FY 2012 and FY 2013 LSC imposed numerous fiscal special grant conditions on this grantee to assist improvement in fiscal systems and internal controls. Additionally, OCE conducted an onsite Follow-up Review in July 2013 to assess the program's steps towards improving fiscal and internal control systems. Based on the July 2013 visit, it has been determined that the program had made significant improvements to its fiscal systems and processes.
			2013-703068-01	6/26/2013	Numerous material audit adjustments were required for the financial statements to be correct at year-end.	OIG noted that, for the year audited, numerous material audit adjustments were required for the financial statement to be correct at year end. The unadjusted general ledger was not materially correct under generally accepted accounting principles. Referred to OCE for follow-up to ensure corrective action is taken as this was a repeat finding.	3/12/2014	Accept CAP OCE has been maintaining close contact with this grantee and will carefully monitor the 2013 AFS for signs of continued deficiencies.		
			2013-703068-02	10/3/2013	For the year audited, numerous material audit adjustments were required for the financial statement to be correct at year-end. Thus, the unadjusted general ledger was not materially correct under accounting principles generally accepted in the USA.	OIG referral noted that DNA Accounting and Finance Office will implement fiscal year end closeout procedures and establish key deadlines dates to process and closeout financial transactions prior to the fiscal year ending. Referred to OCE for follow-up to ensure corrective action is taken.	3/12/2014	Accept CAP OCE has been maintaining close contact with this grantee and will carefully monitor the 2013 AFS for signs of continued deficiencies.		

*SRF = Summary Report Form completed by IPA.

**CAP = Corrective Action Plan submitted by Grantee appears appropriate to cure deficiency.

***CA Closed = Corrective Action taken was sufficient.

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
1	KY	Appalachian Research and Defense Fund of Kentucky	2012-618030-01	8/13/2012	Two case files were lacking required documentation out of eighty case files reviewed	OIG reported that grantee mgmt. said they would implement the IPA's recommendation to ensure that personnel responsible for maintaining case files review LSC documentation requirements and determine that all case files are in compliance. OIG referred for OCE follow-up to ensure adequate response had occurred as this was a prior year finding.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		OCE conducted an onsite Technical Assistance Review in October 2012 and an onsite Compliance Review in Spring 2013. OCE is continuing to work with and provide technical assistance to this program. The program's 2014 LSC funding has several Special Grant Conditions attached to it to assist OCE and OPP in overseeing this program's ongoing process to come into compliance with LSC regulations and guidance. On May 7, 2014, AppalReD provided additional information/documentation related to Required Corrective Actions that arose from the Spring 2013 Compliance Review. The information was reviewed by OCE and determined to be sufficient to close all but 3 of the remaining Required Corrective Actions. The information specifically noted that the program's timekeeping policy had been updated and communicated to staff. OCE continues to work with this program and will provide the new Executive Director with an opportunity to participate in an webinar targeted to new Executive Directors.
			2012-618030-02	8/13/2012	Many audit adjustments were needed in order to present the financial statements in conformity with GAAP	OIG noted that grantee mgmt. stated they would implement enhanced financial review and monthly closing procedures to improve their financial reporting. OIG referred for OCE follow-up to determine if the planned procedures have been implemented.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		
			2013-618030-01	9/10/2013	For the second straight year, there was a prior period adjustment required	OIG noted that, for the second straight year, there was a prior period adjustment required due to improper recording of unearned grant revenue. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		
			2013-618030-02	9/10/2013	The Organization does not have a formal written policy that was effectively communicated to staff	OIG reported that time keeping requirements were not met because the grantee lacked a formal written policy which was effectively communicated to staff. Grantee management stated that they would implement policies. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
			2013-618030-03	10/3/2013	Time keeping requirements were not met in that the grantee lacked a formal written policy which was effectively communicated to staff.	OIG noted that grantee management stated that the would develop a written time keeping requirements policy in accordance with Legal Services Corporation regulations and ensure that the policy is effectively communicated to staff. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		
2	AZ	DNA Peoples Legal Services	2014-703068-01	6/3/2014	IPA noted numerous material audit adjustments were required at year-end. Thus, the unadjusted General Ledger was not materially correct under accounting principles accepted in the United States.	OIG noted that grant allocation information should be accurate and timely so it properly reflects the operations of the organization.		Under Review		This information has been noted in OCE's risk assessment chart. OCE is also offering the program New Executive Director Orientation training to assist the program with fiscal oversight. OCE recommended that a targeted Special Grant Condition, related to budgetary controls and processes, be imposed on the program's 2014 grant. Senior Management accepted that recommendation. The program is due to provide a response by June 30, 2014.
			2014-703068-02	6/3/2014	OIG noted a segregation of duties concern relating to bank reconciliations where they are being reviewed by the same staff who prepares them without prior review by the ED.	OIG noted that this was a finding in prior years and it poses a risk for fraud.		Under Review		This information has been noted in OCE's risk assessment chart. Additionally, during the July 2013 onsite review, OCE was provided with information regarding DNA's Fraud Risk Prevention Policy and training programs that had taken place and found. when taking into account the small number of program staff, the policy and the training to be sufficient to alleviate concerns such as those expressed by the IPA. OCE will follow-up with DNA to determine what additional preventive
			2014-703068-03	6/3/2014	OIG noted that DNA holds Certificates of Deposit (CD) but the Board of Directors did not permit this. Further, DNA's depreciation schedule did not track property purchased with LSC funds.	OIG noted that the CD issue was noted in prior years, and that the depreciation schedule should track property purchased with LSC funds.		Under Review		This information has been noted in OCE's risk assessment chart. OCE will contact the program to determine whether the Board of Directors prohibits the use of CDs or whether they did not affirmatively approve the purchase. Additionally, OCE will advise the program as to the LSC Accounting Guides' requirements for accounting for personal property purchased with LSC funds.

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
3	CA	Inland Counties Legal Services, Inc.	2012-805230-01	8/13/2012	Internal Controls over cash accounts were not adequate.	OIG noted that grantee management accepted the finding and stated that a new controller had been hired. Referred to OCE for follow-up to ensure that controls over cash accounts have been implemented.		Under Review OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken.		OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken. As the IPA continues to express concerns regarding ICLS and its fiscal policies and practices, OCE will include conducting a Focused Fiscal Review of ICLS in its work plan for CY 2015.
			2012-805230-02	8/13/2012	Policies and procedures for use of the accounting software and preparing transactions and reconciliations was not adequately documented. The new controller did not expend a significant effort to understand the system.	OIG noted that grantee management stated that they would strive to have that accounting manual updated in 2012 by the new controller. Referred to OCE for follow-up needed to determine if accounting manual was updated.		Under Review OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken.		
			2012-805230-03	8/13/2012	Grantee did not obtain all necessary documentation from subrecipients to provide reasonable assurance that federal awards were properly administered and to ensure that performance goals were achieved.	OIG noted that grantee stated that full charge bookkeeper had been hired to review monthly subgrantee submissions & that subgrantees have been notified of their deficiencies. Referred to OCE for follow-up to ensure on-going implementation.		Accept CAP This issue was addressed via follow-up correspondence with grantee in which ICLS submitted documentation regarding improved/increased oversight of subgrantee activities.		Open pending resolution of #10 and #11. This issue was addressed via follow-up correspondence with grantee.
			2013-805230-01	6/26/2013	Policies & procedures for use of the accounting software and preparation of monthly, quarterly and annual transactions & reconciliations were not adequately documented. There were also account reconciliations that were not updated or thoroughly analyzed.	OIG noted that grantee management stated that continual turnover of key accounting personnel resulted in the condition. Grantee had stated that they would have the accounting manual updated by 2012. Referred to OCE for follow-up to ensure corrective action is taken as this was a prior year finding.		Accept CAP ICLS submitted a revised/updated accounting manual containing the requested policies and procedures.		Open pending resolution of ICLS referral 2013-805230-02.

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
			2013-805230-02	6/27/2013	The grantee did not maintain effective oversight overs its retirement plan. The grantee did not always obtain signed payroll deduction forms authorizing payroll deductions to repay retirement plan loans and the form was outdated.	OIG noted that grantee management stated that they will develop a written protocol/checklist of actions necessary when a plan administrator leaves the program to be included in the accounting manual being updated. Referred to OCE for follow-up to ensure corrective action is taken.		OPEN		OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken. As the IPA continues to express concerns regarding ICLS and its fiscal policies and practices, OCE will include conducting a Focused Fiscal Review of ICLS in its work plan for CY 2015.
			2014-805230-01	6/3/2014	IPA noted grantee did not have a system in place to verify whether vendors were suspended or disbarred.	According to the IPA, the grantee stated that written protocols would be put in place to ensure that when considering bids for procurement in excess of $25,000, a debarment and suspension check would be conducted. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review		This information has been noted in OCE's risk assessment chart. As the IPA continues to express concerns regarding ICLS and its fiscal policies and practices, OCE will include conducting a Focused Fiscal Review of ICLS in its work plan for CY 2015.
			2014-805230-02	6/3/2014	IPA noted that 5 clients who had expired immigration cards received legal services.	The IPA noted that the program is reviewing and revising their policies to ensure compliance with 45 CFR Part 1626. The OIG referred the issue to OCE to ensure necessary actions are undertaken.		Under Review		Once LSC has confirmed whether these instances were violations of 45 CFR Part 1626, and whether the program's policy is consistent with this part, it will take appropriate follow-up action.
4	MO	Legal Aid of Western Missouri	2013-526010-01	6/27/2013	Initial testing and follow-up testing showed that the vast majority of the organization's staff members comply with LSC timekeeping requirements. There are, however, a small number of staff members who are not in compliance.	OIG reported that grantee mgmt. fully understands the nature of the requirement and will take necessary steps to ensure that all staff is in compliance. OIG further noted that grantee mgmt. states that upon being informed by the IPA of the issue; they took action to address the issue. Referred to OCE for follow-up to ensure corrective action taken.		Under Review		An OCE Compliance Review was conducted in November 2013. This issue was noted and will be addressed, as necessary, in the Draft Report.

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
5	AL	Legal Services Alabama, Inc.	2013-601037-01	10/3/2013	One difference was noted for payroll time entry used for cost allocation purposes.	OIG referred this as a repeat finding which requires OCE follow-up.		Under Review		OCE has noted this deficiency in its risk assessment chart.
6	NM	New Mexico Legal Aid	2013-732010-01	6/26/2013	Improper Board Composition	OIG noted that this was repeat finding from 2011. The ED and the Human Board Composition Resources Director have been working with Board members and management staff to identify potential new client members and qualified appointing organizations willing to nominate them. Referred to OCE for follow-up to ensure corrective action is taken.		Accept CAP OCE is waiting for official documentation from NMLA before advising the OIG that this finding should be closed.		As previously noted, LSC formed a multi-divisional working group to address the issue of Board Composition. NMLA has indicated that it will bring itself into compliance with 45 CFR Part 1607 by September 27, 2014.
7	VA	Central Virginia Legal Services, Inc.	2014-447030-01	2/25/2014	Recipient must state who prepares monthly bank reconciliations, who reviews the reconciliations, and who approves & certifies the reconciliations. Due dates for each steps to be established. Follow-up by LSC management needed to ensure implementation.	OIG noted based upon inquires with management that bank reconciliations and reviews were not being performed on a timely basis. OIG also noted that management during their review was not tracing bank reconciliation totals back to the trial balance and General Ledger.		By letter dated March 7, 2014, OCE requested specific information regarding ## 26, 27, 28, and 30. The program responded on March 21, 2014. OCE has reviewed the information received and finds it sufficient to close #28, but not ## 26, 27 and 30. OCE continues to work with the program to close these referrals. OCE has also scheduled a Technical Assistance Review of this program for August, 2014.		This information has been noted in the OCE Risk Assessment Chart. Additionally, as OCE received a copy of the AFS during the competition cycle for 2014 funding, OCE recommended that several targeted Special Grant Conditions be imposed on the program's 2014 grant. Senior Management accepted that recommendation. OCE was in contact with the program in March, May, and June of 2014 to obtain information required by the 2014 Special Grant Conditions. OCE has scheduled a Technical Assistance Review of this program for August, 2014.
			2014-447030-02	2/25/2014	This is a repeat finding from the prior year. The CA mentions a payroll module being added to the case management system but does not mention a timeframe.	Based upon inquires with management and review of time records OIG noted instances were attorneys had not contemporaneously inputted a portion of their time into CVLAS' time keeping system by case matter and supporting activities.		By letter dated March 7, 2014, OCE requested specific information regarding ## 26, 27, 28, and 30. The program responded on March 21, 2014. OCE has reviewed the information received and finds it sufficient to close #28, but not ## 26, 27 and 30. OCE continues to work with the program to close these referrals. OCE has also scheduled a Technical Assistance Review of this program for August, 2014.		

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
			2014-447030-03	2/25/2014	OIG indicated that LSC Management may want to follow-up on this requirement as 12 of 25 selections made by the IPA did not contain notice to the funding source. The CA mentions sending letters will be the sole responsibility of the ED, does not mention when the action will be put into place.	OIG noted instances where CVLAS had not provided to the source of funds written notification of LSC prohibitions and conditions.		By letter dated March 7, 2014, OCE requested specific information regarding ## 26, 27, 28, and 30. The program responded on March 21, 2014. OCE has reviewed the information received and finds it sufficient to close # 28. OCE plans to close this item if facts uncovered during the onsite review scheduled for August, 2014, do not contradict OCE's understanding that efficient actions have been taken.		
			2014-447030-04	2/25/2014	Incorrect cost and time allocations can lead to possibly incorrect revenues and expenses for grants/contracts. Program management should make decisions based on revenues/expenses. The CA should be followed up on.	Cost allocations are not being performed on a timely basis. Also timesheet are not being properly monitored by management and adjusted when funding sources have been eliminated or depleted. Also the funds in the accounting system need to be utilized.		This issue is being addressed via the Special Grant Conditions. OCE has also scheduled a Technical Assistance Review of this program for August, 2014.		
			2014-447030-05	2/25/2014	Based on review of the CA OIG feels LSC Management should ensure that the CA s being followed and follow-up on whether the Board approved the drafted policy mentioned.	OIG noted during inquires with management and review of credit card files instances were credit card receipts were not being properly maintained.		By letter dated March 7, 2014, OCE requested specific information regarding ## 26, 27, 28, and 30. The program responded on March 21, 2014. OCE has reviewed the information received and finds it sufficient to close #28, but not ## 26, 27, and 30. The program continues to work with CVLAS to close these referrals. OCE has also scheduled a Technical Assistance Review of this program for August, 2014.		

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
8	ME	Pine Tree Legal Assistance, Inc.	2014-120000-02	6/3/2014	OIG noted the IPA found a significant amount of equipment was fully depreciated. The IPA recommended that program management review the inventory annually and that disposed of assets should be removed from the General Ledger.	IPA recommended the asset list be evaluated annually and compared to a physical inventory count.		Under Review		This information has been noted in OCE's risk assessment chart.
9	IL	LAF (Legal Assistance Foundation)	2014-514020-01	6/3/2014	The IPA noted it found that 45 CFR Part 1636 written statements of fact were not obtained for each represented plaintiff in three (3) cases.	OIG noted that since this is a compliance requirement, OCE should follow-up to ensure compliance with 45 CFR Part 1636.		Under Review		OCE conducted an onsite review of this program in April, 2014. Draft findings indicate that out of 756 case files reviewed, 2 did not fully comply with 45 CFR Part 1636. Through the report process, OCE will follow-up with the program to ensure that required corrective action is taken.
10	SD	East River Legal Services	2014-542026-01	6/3/2014	OIG noted the organization does not have an internal control system to support the preparation of audited financial statements. The IPA was requested to draft financial statements and notes accompanying financial statements.	OIG noted this was a finding in prior years.		Under Review		OCE conducted an onsite review of grantee in April, 2014. Preliminary findings indicate that grantee's internal controls are generally sufficient given the small number of staff, however, some improvements are warranted. OCE will follow-up with grantee on this issue as well as any deficiencies found during the onsite review.

LSC 403(b) Thrift Plan Update

Legal Services Corporation
America's Partner For Equal Justice

OFFICE OF HUMAN RESOURCES

MEMORANDUM

TO: **The Audit Committee**

FROM: **Traci L. Higgins**

DATE: **June 23, 2014**

SUBJECT: **LSC 403(b) Thrift Plan – 2nd Quarter 2014 Update**

---

403 (b) Plan Performance

Through the first five months of 2014, twenty-one of our twenty-five funds showed continued growth and positive gains. BMO Small-Cap Growth and Columbia Small Cap Index both had lackluster three-month performance, registering three-month returns of -8.12% and -2.04%, respectively (through May 31, 2014). These are the only funds with negative year-to-date returns. Lord Abbett Value Opportunities, a fund we have watched for some time now, had a weak quarter (-0.37%), but its one-month return was positive (0.8%), as was its overall year-to-date return (3.93%). The fourth fund, Alger Capital Appreciation Institutional, had no returns during the period, but its performance is positive for the year (3.27%). In addition, our advisor, Dave Ponder, has informed us that he is monitoring the T. Rowe Price Equity Income Fund because its rankings have slipped recently and one of its long-time fund managers (Brian Rogers) will be replaced in November 2015. He is not concerned at this point, but is closely monitoring fund performance. Overall, Mr. Ponder, reports that the rankings of LSC's funds "continue to be very strong."

A report detailing performance through May 31, 2014 is attached.

403 (b) Plan Distributions

A total of $848,232 in distributions were made during the period March 15 – June 21, 2014, with pay-outs to former employees accounting for approximately $793,232 of the total and in-service withdrawals of $55,000 accounting for the balance.

Please let me know if you have any questions or require additional information.

3333 K Street, NW 3rd Floor
Washington, DC 20007-3522
Phone 202.295.1500 Fax 202.337.6797
www.lsc.gov

This material is for internal and/or client reporting purposes only and may not be used as sales material or by broker/dealers in connection with the sale of any security.

Release Date: 05-31-2014

Primary Rank: Õ Morningstar Category
Secondary Rank:

	Fund Name	Morningstar Category	Ticker	Prospectu Net Exp Ratio	Tot Ret 1 Mo	Tot Ret 3 Mo	Tot Ret YTD	Tot Ret 12 Mo	Tot Ret Annlzd 3 Yr	Tot Ret Annlzd 5 Yr	Tot Ret Annlzd 10 Yr	Tot Ret Annlzd 15 Yr	% Rank Cat 3 Mo
1	American Funds Capital World G/I R4	World Stock	RWIEX	0.80	2.48	3.36	5.30	19.66	10.43	13.84	9.39	9.16	33
2	American Century One Choice 2050 Inv	Target Date 2046-2050	ARFVX	0.98	2.07	2.32	3.98	14.87	10.58	15.06	-	-	48
3	American Century One Choice 2045 Inv	Target Date 2041-2045	AROIX	0.97	2.08	2.28	3.99	14.67	10.46	14.82	-	-	50
4	American Century One Choice 2040 Inv	Target Date 2036-2040	ARDVX	0.93	1.99	2.23	3.88	13.85	10.03	14.37	-	-	50
5	American Century One Choice 2035 Inv	Target Date 2031-2035	ARYIX	0.90	1.90	2.10	3.80	12.87	9.53	13.60	-	-	56
6	American Century One Choice 2030 Inv	Target Date 2026-2030	ARCVX	0.87	1.72	2.05	3.76	11.80	8.95	12.73	-	-	59
7	American Century One Choice 2025 Inv	Target Date 2021-2025	ARWIX	0.85	1.61	2.11	3.78	11.00	8.50	12.04	-	-	49
8	American Century One Choice 2020 Inv	Target Date 2016-2020	ARBVX	0.82	1.49	2.00	3.64	10.14	8.10	11.36	-	-	49
9	American Century One Choice 2015 Inv	Target Date 2011-2015	ARFIX	0.79	1.32	2.00	3.53	9.52	7.73	10.70	-	-	47
10	BMO Small-Cap Growth Y	Small Growth	MRSCX	1.42	-1.09	-8.12	-2.33	15.57	11.38	21.71	11.51	9.89	66
11	Columbia Small Cap Index A	Small Blend	NMSAX	0.48	0.22	-2.04	-1.66	19.05	13.84	20.67	9.62	9.30	66
12	American Century One Choice In Ret Inv	Retirement Income	ARTOX	0.77	1.32	2.01	3.54	9.31	7.68	10.20	-	-	21
13	Nuveen Real Estate Securities A	Real Estate	FREAX	1.25	2.77	7.06	17.12	10.37	9.75	22.44	11.39	12.18	16
14	Prudential Jennison Natural Resources Z	Natural Resources	PNRZX	0.87	0.50	6.30	10.49	20.67	-1.91	8.40	13.38	15.08	30
15	Goldman Sachs Mid Cap Value Instl	Mid-Cap Value	GSMCX	0.74	1.93	2.40	5.72	20.46	12.94	19.97	10.23	10.49	65
16	Lord Abbett Value Opportunities A	Mid-Cap Blend	LVOAX	1.28	0.80	-0.37	3.93	19.94	11.42	18.14	-	-	84
17	T. Rowe Price Equity Income Adv	Large Value	PAFDX	0.94	1.38	4.16	3.68	16.30	13.43	17.27	7.53	6.28	51
18	TIAA-CREF Growth & Income Retire	Large Growth	TRGIX	0.70	2.87	1.00	3.41	20.92	14.85	17.62	9.36	-	37
19	Alger Capital Appreciation Instl I	Large Growth	ALARX	1.19	3.43	0.00	3.27	23.30	14.33	18.65	11.17	6.18	50
20	State Street Equity 500 Index Adm	Large Blend	STFAX	0.25	2.32	3.92	4.86	20.08	14.86	18.13	7.57	-	28
21	PIMCO Total Return Admin	Intermediate-Term Bond	PTRAX	0.71	1.23	1.36	3.22	1.49	3.81	6.19	6.12	6.50	82
22	American Century Infl Adj Bond A	Inflation-Protected Bond	AIAVX	0.72	1.86	2.55	4.87	-0.88	2.93	4.86	4.59	5.85	55
23	Prudential High-Yield Z	High Yield Bond	PHYZX	0.58	0.89	1.75	4.48	7.64	8.48	13.71	8.67	6.79	34
24	American Funds EuroPacific Gr R4	Foreign Large Blend	REREX	0.85	2.15	1.13	2.55	17.08	6.17	11.03	8.81	7.39	67
25	Oppenheimer Developing Markets Y	Diversified Emerging Mkts	ODVYX	1.05	4.22	6.32	2.53	10.38	3.55	13.26	15.94	16.12	54

© 1996-2014 Morningstar, Inc. All rights reserved. 22 W. Washington Street, Chicago, IL, 60602, 312-696-6000
Morningstar is an independent provider of financial information. Morningstar does not endorse any broker/dealer, financial planner, or fund company. Reprints are available in quantity, 312-696-6100.

This material is for internal and/or client reporting purposes only and may not be used as sales material or by broker/dealers in connection with the sale of any security.

Primary Rank: Õ Morningstar Category
Secondary Rank:

	Fund Name	% Rank Cat YTD	% Rank Cat 12 Mo	% Rank Cat 3 Yr	% Rank Cat 5 Yr	% Rank Cat 10 Yr	% Rank Cat 15 Yr	Annual Return 2013	Annual Return 2012	Annual Return 2011	Annual Return 2010	Annual Return 2009	Annual Return 2008	Sharpe Ratio	Alpha 3 Yr
1	American Funds Capital World G/I R4	24	28	35	60	17	13	24.86	19.12	-7.55	7.71	32.29	-38.41	0.80	6.18
2	American Century One Choice 2050 Inv	30	73	16	21	-	-	21.58	15.39	-0.96	15.70	26.66	-	0.92	-0.67
3	American Century One Choice 2045 Inv	28	79	20	34	-	-	21.08	15.00	-0.78	15.50	26.36	-33.64	0.94	-0.47
4	American Century One Choice 2040 Inv	37	78	24	40	-	-	19.69	14.50	-0.27	14.99	25.95	-	0.95	-0.32
5	American Century One Choice 2035 Inv	40	87	35	62	-	-	17.92	13.62	0.37	14.28	24.31	-30.58	0.98	-0.05
6	American Century One Choice 2030 Inv	39	77	28	62	-	-	15.86	12.79	1.04	13.39	22.88	-	1.00	0.12
7	American Century One Choice 2025 Inv	43	74	29	71	-	-	14.04	12.14	1.77	12.57	21.24	-25.02	1.04	0.41
8	American Century One Choice 2020 Inv	53	52	18	52	-	-	12.58	11.47	2.50	11.70	20.11	-	1.08	0.68
9	American Century One Choice 2015 Inv	56	42	17	44	-	-	11.53	10.59	3.16	10.84	18.26	-20.10	1.14	1.04
10	BMO Small-Cap Growth Y	27	56	29	13	3	16	42.25	12.06	-3.82	35.59	46.81	-42.50	0.64	-8.50
11	Columbia Small Cap Index A	67	34	20	22	28	55	40.60	15.96	0.58	25.71	25.19	-31.00	0.89	-3.92
12	American Century One Choice In Ret Inv	31	25	14	32	-	-	11.11	10.13	3.58	10.07	16.42	-16.57	1.19	1.33
13	Nuveen Real Estate Securities A	5	30	25	25	6	3	1.04	18.07	7.69	30.24	30.18	-34.96	0.65	2.63
14	Prudential Jennison Natural Resources Z	11	12	64	66	9	1	10.08	-2.43	-18.54	28.14	73.74	-52.73	0.04	-13.13
15	Goldman Sachs Mid Cap Value Instl	23	47	59	47	18	20	32.97	18.54	-6.26	24.85	33.19	-36.47	0.92	-3.46
16	Lord Abbett Value Opportunities A	30	39	69	73	-	-	36.07	9.73	-4.18	24.50	33.82	-27.77	0.75	-6.32
17	T. Rowe Price Equity Income Adv	74	84	54	36	46	37	29.44	16.92	-0.94	14.87	25.40	-35.88	1.09	-1.14
18	TIAA-CREF Growth & Income Retire	30	49	19	41	13	-	34.01	16.17	2.79	12.91	26.52	-35.12	1.15	-0.45
19	Alger Capital Appreciation Instl I	34	25	26	23	2	18	34.81	18.11	-1.03	13.48	49.12	-43.89	1.00	-2.24
20	State Street Equity 500 Index Adm	29	38	27	26	38	-	31.97	15.84	1.79	14.81	26.25	-36.89	1.18	-0.24
21	PIMCO Total Return Admin	82	87	50	48	9	6	-2.17	10.08	3.91	8.56	13.55	4.55	0.95	0.17
22	American Century Infl Adj Bond A	55	85	48	61	54	70	-9.31	6.44	12.64	5.24	10.33	-1.38	0.53	-3.06
23	Prudential High-Yield Z	26	28	19	30	12	37	7.23	14.16	5.07	14.72	48.35	-22.14	1.40	6.92
24	American Funds EuroPacific Gr R4	49	35	41	42	15	16	20.17	19.22	-13.61	9.39	39.13	-40.56	0.45	1.71
25	Oppenheimer Developing Markets Y	61	9	10	4	1	1	8.68	21.29	-17.85	27.39	82.10	-47.84	0.28	-1.04

© 1996-2014 Morningstar, Inc. All rights reserved. 22 W. Washington Street, Chicago, IL, 60602, 312-696-6000
Morningstar is an independent provider of financial information. Morningstar does not endorse any broker/dealer, financial planner, or fund company. Reprints are available in quantity, 312-696-6100.

This material is for internal and/or client reporting purposes only and may not be used as sales material or by broker/dealers in connection with the sale of any security.

Primary Rank: Õ Morningstar Category
Secondary Rank:

	Fund Name	Beta 3 Yr	R2 3 Yr	Std Dev 3 Yr	% US Stoc	% Non-US Stocks	% Bonds	% Cash	% Other	Total Number o Holdings	Turnove Ratio	Manager Tenure (Average)
1	American Funds Capital World G/I R4	0.79	94.30	13.53	39.61	51.07	0.73	4.85	3.74	374	24	9.2
2	American Century One Choice 2050 Inv	1.39	96.93	11.60	63.33	17.55	15.58	2.39	1.14	14	4	3.2
3	American Century One Choice 2045 Inv	1.34	97.35	11.21	61.72	16.89	17.73	2.59	1.08	14	3	3.6
4	American Century One Choice 2040 Inv	1.27	97.55	10.58	57.55	15.51	21.01	4.96	0.97	15	5	3.2
5	American Century One Choice 2035 Inv	1.17	97.79	9.74	52.86	14.06	24.49	7.74	0.86	16	3	3.6
6	American Century One Choice 2030 Inv	1.08	98.05	8.94	48.59	12.24	29.66	8.66	0.85	17	5	3.2
7	American Century One Choice 2025 Inv	0.98	98.26	8.15	44.76	10.19	34.94	9.29	0.83	17	3	3.6
8	American Century One Choice 2020 Inv	0.90	98.19	7.45	41.93	8.16	37.61	11.56	0.73	17	6	3.2
9	American Century One Choice 2015 Inv	0.80	97.78	6.70	39.08	6.17	39.85	14.26	0.65	17	6	3.6
10	BMO Small-Cap Growth Y	1.42	80.66	19.58	84.77	11.05	0.00	4.18	0.00	91	153	8.1
11	Columbia Small Cap Index A	1.22	89.03	15.98	95.89	0.17	0.00	3.94	0.00	602	15	3.9
12	American Century One Choice In Ret Inv	0.76	97.65	6.33	38.47	5.97	40.28	14.67	0.61	16	11	3.6
13	Nuveen Real Estate Securities A	0.83	53.28	16.22	97.15	0.61	0.00	1.73	0.51	114	89	9.0
14	Prudential Jennison Natural Resources Z	1.47	75.33	24.26	73.62	20.78	0.00	3.44	2.16	113	21	8.3
15	Goldman Sachs Mid Cap Value Instl	1.12	92.65	14.38	96.28	1.91	0.00	1.80	0.00	100	103	12.4
16	Lord Abbett Value Opportunities A	1.24	90.01	16.12	95.87	2.41	0.00	1.72	0.00	98	66	7.4
17	T. Rowe Price Equity Income Adv	0.97	97.40	12.20	86.36	5.47	0.58	6.78	0.81	118	10	28.6
18	TIAA-CREF Growth & Income Retire	1.02	96.74	12.78	87.14	11.77	0.00	0.49	0.60	195	146	9.3
19	Alger Capital Appreciation Instl I	1.12	92.02	14.46	87.76	8.87	0.00	3.34	0.03	120	124	9.7
20	State Street Equity 500 Index Adm	1.00	99.98	12.36	94.19	3.70	0.00	2.11	0.00	506	4	9.2
21	PIMCO Total Return Admin	1.04	53.73	3.94	0.00	0.31	140.56	-42.30	1.43	20319	227	27.1
22	American Century Infl Adj Bond A	1.74	74.83	5.61	0.00	0.00	100.77	0.03	-0.80	127	17	7.2
23	Prudential High-Yield Z	0.39	3.40	5.94	0.08	0.00	93.68	5.24	0.99	636	55	5.7
24	American Funds EuroPacific Gr R4	0.94	96.44	15.81	1.68	89.67	0.35	7.87	0.43	412	28	13.9
25	Oppenheimer Developing Markets Y	1.04	91.98	17.95	0.00	92.69	0.00	5.10	2.21	117	29	7.1

© 1996-2014 Morningstar, Inc. All rights reserved. 22 W. Washington Street, Chicago, IL, 60602, 312-696-6000
Morningstar is an independent provider of financial information. Morningstar does not endorse any broker/dealer, financial planner, or fund company. Reprints are available in quantity, 312-696-6100.

Finance Committee

FINANCE COMMITTEE

July 21, 2014

Agenda

OPEN SESSION

1. Approval of agenda

2. Presentation on LSC's Financial Reports for the first eight months of FY 2014

    - David Richardson, Treasurer/Comptroller

3. Consider and act on Revised Consolidated Operating Budget for FY 2014

    - David Richardson, Treasurer/Comptroller

4. Report on the FY 2015 appropriation process

    - Carol Bergman, Director, Government Relations and Public Affairs

5. Consider and act on Temporary Operating Authority for FY 2015, Resolution 2014-XXX

    - David Richardson, Treasurer/Comptroller

6. Consider and act on FY 2016 Budget Request

    - Jim Sandman, President
    - Carol Bergman, Director, Government Relations and Public Affairs

7. Public comment

8. Consider and act on other business

9. Consider and act on adjournment of meeting

Financial Report for the First Eight Months for FY 2014

Partner For Equal Justice

FINANCIAL & ADMINISTRATIVE SERVICES

MEMORANDUM

TO: Robert J. Grey, Jr., Finance Committee Chairman

FROM: David L. Richardson, Treasurer/Comptroller *dlr*

DATE: July 7, 2014

SUBJECT: May 2014 Financial Reports

The financial report for the eight-month period ending May 31, 2014, is attached for your review. There are four worksheets that comprise this report, and we are using the fiscal year (FY) 2014 Consolidated Operating Budget (COB) that was approved at the April Board meeting for our comparisons.

Attachment A provides summary information for each element of the COB.

Attachment B presents Management and Grants Oversight's (MGO) budget and expenditures.

Attachment C shows the MGO Other Operating Expenses by cost centers.

Attachment D provides budget and expenditures for the Office of Inspector General (OIG).

The first section of Attachment A presents information for the Delivery of Legal Assistance, ***Roman numeral I***, and the Herbert S. Garten Loan Repayment Assistance Program (LRAP), ***Roman numeral II***. The expenditures are compared to the annual budget, and the report shows the variance for each budget line. The expenditures are also compared to the same period of the prior year.

I. There are four elements included in the Delivery of Legal Assistance:

1. The Basic Field Programs budget is $336,332,991; the grant expenses through this period total $333,685,379. The grant expenses include Basic Field Programs of $313,161,470, Native American of $9,445,647, and Migrant of $11,078,262. The remaining funds of $2,647,612 are earmarked for Michigan, where a grantee is on short-

term funding; for Louisiana, for a close-out audit; and for American Samoa, where we do not have a grantee.

2. The U.S. Court of Veterans Appeals Funds budget totals $2,506,752, and there are no grant expenses for this period.

3. The Grants from Other Funds budget totals $273,366, and no emergency or one-time grants have been awarded.

4. The Technology Initiatives budget totals $6,875,828. Net grant expenses are $3,060,538 and are comprised of grant awards totaling $3,072,477 and grant recoveries of $11,939. The remaining amount of $3,815,290 will be used for the support of the FY 2014 competitive awards process, which is ongoing now.

5. The Hurricane Sandy Disaster Relief Funds budget totals $75,959. The full amount remains and will be used to support additional grants for the hurricane area.

6. The new budget line for Pro Bono Innovation has a budget of $2,500,000, and we have no expenses as of this report. The application deadline was June 30.

II. The Herbert S. Garten Loan Repayment Assistance Program's budget is $2,439,193; there are no loan expenses for the period.

The second section of Attachment A presents expenditures for MGO and the OIG. The expenditures are compared to a pro rata allocation of the annual budget based on the number of months of the fiscal year covered by the reporting period, which is eight months for this report.

III. MGO's annual budget totals $23,329,795. The budget is comprised of the MGO operating budget of $19,603,400, the MGO Research Initiative of $200,113, and MGO Contingency Funds totaling $3,526,282.

The MGO operating budget allocation for this reporting period is $13,068,933, compared to actual expenses of $11,157,500. MGO is under budget by $1,911,433, or 14.63%, and the encumbrances are $294,973. The expenditures are $383,936 more than the same period in 2013.

The MGO Research Initiative budget allocation is $133,409, and expenses total $126,140. The variance shows that expenses are under budget by $7,269. The iScale and Keystone Accountability

contract has a balance of $41,667, which is the amount of the encumbrance.

The MGO Contingency Funds allocation for this period is $2,350,855, and there are no expenses.

IV. The OIG's annual budget totals $5,537,681. The budget consists of the OIG operating budget of $5,303,700 and Contingency Funds of $233,981.

The OIG operating budget allocation is $3,535,800, compared to actual expenses of $3,218,096. The OIG is $317,704 or 8.99%, under budget, and the encumbrances are $101,390. The expenditures are $150,869 more than in 2013.

The OIG Contingency Funds budget allocation is $155,987, and there are no expenses against these funds.

Attachment B, page 1, presents comparative budgets and expenditures for MGO by cost center; all cost centers are under budget. Attachment B, page 2, shows the budgets and expenditures by budget category for the MGO operating budget. The variances show that we are under budget in each category.

The largest variance under budget, totaling $727,053, is in the Personnel compensation and benefits category. This amount represents 38.04% ($727,053 divided by $1,911,433) of the total MGO expense variance.

The second largest variance is in Consulting, in the amount of $468,459, and is 24.51% of the variance. The variance is largely due to decreased spending on outside counsel. There are consulting projects that will be completed this summer, such as the annual update of census figures, the migrant census study, the on-going review of business processes, and updating the grants management system.

Attachment B, page 3, shows the MGO contingency funds by categories. Attachment B, page 4, provides a summary of the expenditures by office and by budget category.

Attachment C, pages 1 and 2, presents a breakdown of the other operating expenses by account code, and we are under budget by $121,816.

Attachment D, page 1, shows a comparative OIG budget and expenditures by budget category, and all are under budget except in the Occupancy Costs Category due to painting of some offices. Attachment D, page 2, presents the OIG Contingency funds by budget category, and there are no expenses.

If you have any questions, please let me know.

Attachments (A – B – C - D)

cc Board of Directors
President
Corporate Secretary
Inspector General

LEGAL SERVICES CORPORATION
CONSOLIDATED OPERATING BUDGET WORKSHEET
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	F I S C A L Y E A R 2 0 1 4						C O M P A R A T I V E	
	ANNUAL BUDGET	ACTUAL	ANNUAL BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
I. DELIVERY OF LEGAL ASSISTANCE								
1. Basic Field Programs	336,332,991	333,685,379	$336,332,991	$2,647,612	0.79	$0	316,345,623	$17,339,756
2. US Court of Vets Appeals Funds	2,506,752	-	2,506,752	2,506,752	100.00	-	2,506,752	(2,506,752)
3. Grants From Other Funds	273,366	-	273,366	273,366	100.00	-	33,918	(33,918)
4. Technology Initiatives	6,875,828	3,060,538	6,875,828	3,815,290	55.49	-	951,353	2,109,185
5. Hurricane Sandy Disaster Relief Funds	75,959	-	75,959	75,959	100.00	-	-	-
6. Pro Bono Innovation Funds	2,500,000	-	2,500,000	2,500,000	100.00	-	-	-
TOTAL DELIVERY OF LEGAL ASSISTANCE	348,564,896	336,745,917	348,564,896	11,818,979	3.39	-	319,837,646	16,908,271
II. HERBERT S. GARTEN LOAN REPAYMENT ASSISTANCE PROGRAM	2,439,193	-	2,439,193 *	2,439,193	100.00	-	511,824	(511,824)
	ANNUAL BUDGET	ACTUAL	EIGHT - TWELFTHS OF THE FY 2014 COB	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
III. MANAGEMENT & GRANTS OVERSIGHT								
1. M & G O Operating Budget	19,603,400	$11,157,500	13,068,933	1,911,433	14.63	294,973	10,773,564	383,936
2. M & G O Research Initiative	200,113	126,140	133,409	7,269	5.45	41,667	45,412	80,728
3. M & G O Contingency Funds	3,526,282	-	2,350,855	2,350,855	100.00	-	-	-
TOTAL MANAGEMENT & GRANTS OVERSIGHT	23,329,795	11,283,640	15,553,197	4,269,557	27.45	336,640	10,818,976	464,664
IV. INSPECTOR GENERAL								
1. I G Operating Budget	5,303,700	3,218,096	3,535,800	317,704	8.99	101,390	3,067,227	150,869
2. I G Contingency Funds	233,981	-	155,987	155,987	100.00	-	-	-
TOTAL INSPECTOR GENERAL	5,537,681	3,218,096	3,691,787	473,691	12.83	101,390	3,067,227	150,869
TOTAL	$379,871,565	$351,247,653	$370,249,073	$19,001,420		$438,030	$334,235,673	$17,011,980

* $834,029 LRAP ACCOUNTS RECEIVABLE

LEGAL SERVICES CORPORATION
CONSOLIDATED OPERATING BUDGET WORKSHEET
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	F I S C A L Y E A R 2 0 1 4						C O M P A R A T I V E	
	ANNUAL BUDGET	ACTUAL	EIGHT - TWELFTHS OF THE FY 2014 COB	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
III. MANAGEMENT & GRANTS OVERSIGHT								
1. Board of Directors	$393,900	$181,413	$262,600	$81,187	30.92	$0	$180,497	$916
2. Executive Office	1,204,725	701,921	803,149	101,228	12.60	-	588,098	113,823
3. Legal Affairs	1,306,450	744,081	870,967	126,886	14.57	40,555	644,845	99,236
4. Government Relations/Public Affairs	1,116,575	610,712	744,383	133,671	17.96	2,727	669,093	(58,381)
5. Human Resources	862,200	444,989	574,800	129,811	22.58	21,113	468,318	(23,329)
6. Financial & Admin Services	3,612,475	2,161,603	2,408,317	246,714	10.24	48,486	2,011,884	149,719
7. Information Technology	2,032,825	963,928	1,355,217	391,289	28.87	181,552	926,355	37,573
8. Program Performance	4,273,550	2,532,922	2,849,033	316,111	11.10	540	2,697,280	(164,358)
9. Information Management	596,100	379,334	397,400	18,066	4.55	-	382,085	(2,751)
10. Compliance & Enforcement	4,204,600	2,436,597	2,803,067	366,470	13.07	-	2,205,109	231,488
MANAGEMENT & GRANTS OVERSIGHT SUBTOTAL	$19,603,400	$11,157,500	$13,068,933	$1,911,433	14.63	$294,973	$10,773,564	$383,936
11. M & G O Research Initiative	200,113	126,140	133,409	7,269	5.45	41,667	45,412	80,728
12. M & G O Contingency Funds	3,526,282	-	2,350,855	2,350,855	100.00	-	-	-
TOTAL MANAGEMENT & GRANTS OVERSIGHT	$23,329,795	$11,283,640	$15,553,197	$4,269,557	27.45	$336,640	$10,818,976	$464,664

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014
MANAGEMENT AND GRANTS OVERSIGHT

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		F I S C A L Y E A R 2 0 1 4					C O M P A R A T I V E	
	ANNUAL BUDGET	ACTUAL	EIGHT - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	13,526,375	8,290,530	9,017,583	727,053	8.06	-	7,965,625	324,905
TEMP. EMPLOYEE PAY	746,525	440,411	497,683	57,272	11.51	-	364,214	76,197
CONSULTING	984,505	187,878	656,337	468,459	71.37	207,005	255,662	(67,784)
TRAVEL/TRANSPORTATION EXPS	1,164,945	490,467	776,632	286,165	36.85	-	451,223	39,244
COMMUNICATIONS	120,700	48,595	80,467	31,872	39.61	-	48,582	13
OCCUPANCY COST	1,801,500	1,140,000	1,201,000	61,000	5.08	-	1,140,611	(611)
PRINTING & REPRODUCTION	78,550	35,756	52,366	16,610	31.72	21,695	32,640	3,116
OTHER OPERATING EXPENSES	902,300	479,715	601,531	121,816	20.25	66,273	478,715	1,000
CAPITAL EXPENDITURES	278,000	44,148	185,334	141,186	76.18	-	36,292	7,856
TOTAL	19,603,400	11,157,500	13,068,933	1,911,433	14.63	$294,973	10,773,564	383,936

rdsbco.visa.xls B

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014
MANAGEMENT AND GRANTS OVERSIGHT CONTINGENCY FUNDS

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		F I S C A L Y E A R 2 0 1 4					C O M P A R A T I V E	
BUDGET CATEGORY	ANNUAL BUDGET	ACTUAL	EIGHT - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	$2,068,500	-	1,379,000	1,379,000		-	-	-
TEMP. EMPLOYEE PAY	-	-	-	-		-	-	-
CONSULTING	-	-	-	-		-	-	-
TRAVEL/TRANSPORTATION EXPS	-	-	-	-		-	-	-
COMMUNICATIONS	-	-	-	-		-	-	-
OCCUPANCY COST	-	-	-	-		-	-	-
PRINTING & REPRODUCTION	-	-	-	-		-	-	-
OTHER OPERATING EXPENSES	1,457,782	-	971,855	971,855		-	-	-
CAPITAL EXPENDITURES	-	-	-	-		-	-	-
TOTAL	$3,526,282	-	2,350,855	2,350,855		$0	-	-

rdsbco.visa.xls B

LEGAL SERVICES CORPORATION
OPERATING EXPENSES FOR FISCAL YEAR 2014
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014
MANAGEMENT AND GRANTS OVERSIGHT

BUDGET CATEGORY	BOARD OF DIRECTORS	EXECUTIVE OFFICE	LEGAL AFFAIRS	GOV'T REL PUBLIC AFFS	HUMAN RESOURCES	OFFICE FINANCIAL & ADMIN SRVCS
COMPENSATION & BENEFITS	-	672,391	669,923	564,875	414,029	745,996
TEMPORARY EMPLOYEE PAY	-	3,232	32,400	16,249	-	2,860
CONSULTING	46,217	425	12,666	-	23,693	-
TRAVEL/TRANSPORTATION EXPS	94,792	22,118	5,326	12,358	136	2,345
COMMUNICATIONS	1,896	2,226	1,800	2,223	1,177	1,758
OCCUPANCY COST	-	-	-	-	-	1,140,000
PRINTING & REPRODUCTION	-	-	-	-	-	35,756
OTHER OPERATING EXPENSES	38,508	1,529	21,966	15,007	5,954	232,888
CAPITAL EXPENDITURES	-	-	-	-	-	-
TOTAL	$181,413	$701,921	$744,081	$610,712	$444,989	$2,161,603

BUDGET CATEGORY	INFORMATION TECHNOLOGY	PROGRAM PERFORMANCE	INFORMATION MANAGEMENT	COMPLIANCE & ENFORCEMENT		TOTAL MGT & GRANTS OVERSIGHT
COMPENSATION & BENEFITS	661,905	2,080,575	363,978	2,116,858		8,290,530
TEMPORARY EMPLOYEE PAY	-	246,045	-	139,625		440,411
CONSULTING	89,950	14,927	-	-		187,878
TRAVEL/TRANSPORTATION EXPS	12,290	167,354	-	173,748		490,467
COMMUNICATIONS	22,934	8,358	9	6,214		48,595
OCCUPANCY COST	-	-	-	-		1,140,000
PRINTING & REPRODUCTION	-	-	-	-		35,756
OTHER OPERATING EXPENSES	132,701	15,663	15,347	152		479,715
CAPITAL EXPENDITURES	44,148	-	-	-		44,148
TOTAL	$963,928	$2,532,922	$379,334	$2,436,597		11,157,500

OTHER OPERATING EXPENSES FOR THE EIGHT - MONTH PERIOD ENDING MAY 31, 2014

ANNUAL BUDGET	ACTUAL	EIGHT -TWELFTHS OF THE FY 2014 BUDGET	UNDER / (OVER) BUD VS ACT VARIANCE
$902,300.00	479,715.00	601,531.00	121,816.00

ACCOUNT CODES	DESCRIPTION	COST CENTERS		YTD EXPENSE
		BOARD OF DIRECTORS	14,777.34	
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	1,248.77	
		FINANCIAL & ADMIN SERVICES	6,227.02	
		INFORMATION TECHNOLOGY	77,470.81	
		PROGRAM PERFORMANCE	50.00	
5600	**EQUIPMENT RENTAL**	TOTAL		99,773.94
		BOARD OF DIRECTORS	69.48	
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	0.00	
		HUMAN RESOURCES	19.99	
		FINANCIAL & ADMIN SERVICES	27,701.88	
		INFORMATION TECHNOLOGY	4,002.63	
5610	**OFFICE SUPPLIES**	TOTAL		32,326.66
		HUMAN RESOURCES	19.02	
		FINANCIAL & ADMIN SERVICES	1,832.80	
		INFORMATION TECHNOLOGY	4,555.98	
		PROGRAM PERFORMANCE	561.99	
5611	**OFFICE EQUIPMENT**	TOTAL		6,969.79
		FINANCIAL & ADMIN SERVICES	128,500.36	
5620	**COMMERICAL INSURANCE**	TOTAL		128,500.36
		LEGAL AFFAIRS	16,398.85	
		CHIEF DEVELOPMENT UNIT	1,529.05	
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	13,659.36	
		HUMAN RESOURCES	224.99	
		FINANCIAL & ADMIN SERVICES	34,517.44	
		INFORMATION TECHNOLOGY	46,647.89	
		OFFICE OF PROGRAM PERFORMANCE	299.00	
5640	**DATA PROCESSING**	TOTAL		113,276.58

OTHER OPERATING EXPENSES FOR THE EIGHT - MONTH PERIOD ENDING MAY 31, 2014

ANNUAL BUDGET	ACTUAL	EIGHT -TWELFTHS OF THE FY 2014 BUDGET	UNDER / (OVER) BUD VS ACT VARIANCE
$902,300.00	479,715.00	601,531.00	121,816.00

ACCOUNT CODES	DESCRIPTION	COST CENTERS		YTD EXPENSE
		BOARD OF DIRECTORS	23,649.00	
		HUMAN RESOURCES	475.00	
5650	**ADVERTISING & CLIPPING SERVICES**	TOTAL		37,914.94
		FINANCIAL & ADMIN SERVICES	50.00	
5660	**DUES & MEMBERSHIPS**	TOTAL		318.00
		LEGAL AFFAIRS	4,666.67	
		HUMAN RESOURCES	32.95	
		FINANCIAL & ADMIN SERVICES	461.00	
		OFFICE OF PROGRAM PERFORMANCE	961.24	
		INFORMATION MANAGEMENT	8,225.90	
		OFFICE OF COMPLIANCE AND ENFORCEMENT	152.00	
5670	**SUBSCRIPTIONS**	TOTAL		14,499.76
		HUMAN RESOURCES	1,929.35	
		FINANCIAL & ADMIN SERVICES	17,905.19	
5680	**EMPLOYEE LECTURES/OTHER ACT.**	TOTAL		19,834.54
		BOARD OF DIRECTORS	12.50	
		LEGAL AFFAIRS	632.50	
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	99.00	
		HUMAN RESOURCES	3,252.59	
		FINANCIAL & ADMIN SERVICES	15,692.68	
		INFORMATION TECHNOLOGY	24.03	
		INFORMATION MANAGEMENT	6,588.32	
5690	**OFFICE EXPENSES**	TOTAL		26,301.62
		TOTAL OTHER OPERATING EXPENSES		**$479,716.19**

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014
INSPECTOR GENERAL

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		F I S C A L Y E A R 2 0 1 4					C O M P A R A T I V E	
	ANNUAL BUDGET	ACTUAL	EIGHT - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	$4,265,700	2,755,027	2,843,801	88,774	3.12	-	2,645,006	110,021
TEMP. EMPLOYEE PAY	50,000	6,734	33,333	26,599	79.80	-	2,678	4,056
CONSULTING	500,000	242,524	333,333	90,809	27.24	101,390	220,682	21,842
TRAVEL/TRANSPORTATION EXPS	276,000	130,015	184,000	53,985	29.34	-	143,609	(13,594)
COMMUNICATIONS	37,000	19,083	24,667	5,584	22.64	-	12,486	6,597
OCCUPANCY COST	2,000	2,325	1,333	(992)	(74.42)	-	-	2,325
PRINTING & REPRODUCTION	19,000	10,148	12,667	2,519	19.89	-	5,424	4,724
OTHER OPERATING EXPENSES	74,000	40,861	49,333	8,472	17.17	-	28,709	12,152
CAPITAL EXPENDITURES	80,000	11,379	53,333	41,954	78.66	-	8,633	2,746
TOTAL	$5,303,700	3,218,096	3,535,800	317,704	8.99	101,390	3,067,227	150,869

rdsbco.visa.xls B

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHT-MONTH PERIOD ENDING MAY 31, 2014
FOR FISCAL YEAR 2014
INSPECTOR GENERAL CONTINGENCY FUNDS

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		F I S C A L Y E A R 2 0 1 4					C O M P A R A T I V E	
BUDGET CATEGORY	ANNUAL BUDGET	ACTUAL	EIGHT - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM-BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	-	-	-	-		-	-	-
TEMP. EMPLOYEE PAY	-	-	-	-		-	-	-
CONSULTING	-	-	-	-		-	-	-
TRAVEL/TRANSPORTATION EXPS	-	-	-	-		-	-	-
COMMUNICATIONS	-	-	-	-		-	-	-
OCCUPANCY COST	-	-	-	-		-	-	-
PRINTING & REPRODUCTION	-	-	-	-		-	-	-
OTHER OPERATING EXPENSES	233,981	-	155,987	155,987		-	-	-
CAPITAL EXPENDITURES	-	-	-	-		-	-	-
TOTAL	$233,981	-	155,987	155,987		$0	-	$0

rdsbco.visa.xls B

Revised Consolidated Operating Budget
FY 2014

FINANCIAL & ADMINISTRATIVE SERVICES

MEMORANDUM

TO: Robert J. Grey, Jr., Finance Committee Chairman

FROM: David L. Richardson, Treasurer/ Comptroller ***dlr***

DATE: July 7, 2014

SUBJECT: Review of Fiscal Year ("FY") 2014 Consolidated Operating Budget ("COB"), Expenses, and Internal Budgetary Adjustments ("adjustments")

Following Section 3 of LSC's *Guidelines for Adoption, Review and Modification of the Consolidated Operating Budget (Guidelines)*, each office director has reviewed his or her office's budget and expenses for the seven-month period ending April 30, 2014, and provided a projection of spending for the remainder of the fiscal year. As a result of this process, the President has approved the following adjustments:

- Executive Office ("EO") – Consulting expenses of $8,500 are projected for the firm assisting with the renewals of state registrations for fundraising. The $8,500 for these projected costs was available from personnel compensation and benefits within the EO budget because of the delay in filling the development associate position.
- Human Resources ("OHR") – With the decision to move to an integrated payroll / human resources management system, the costs associated with the conversion and the monthly costs were originally split between OHR and Office of Financial and Administrative Services ("OFAS"). We are combining these costs in OFAS. Consulting expenses of $6,700 and other operating expenses of $11,800 were, therefore, moved to the OFAS budget.
- OFAS – Because of the retirement of an employee and the delay in filling the position, funds totaling $15,000 were moved from personnel compensation and benefits to Temporary Employee Pay to a accommodate summer hire until the selected candidate can begin work in August.
- Information Technology ("OIT") – OFAS is scheduled for an update for its accounting software. Consulting funds of $5,000 were moved to OFAS for the completion of this project.

The adjustments were needed to align our projected spending plan with the budget. With these adjustments, expenses for FY 2014 should be approximately $18,600,000.

FY 2013 Office of Inspector General ("OIG") Budget Review

The OIG also conducted a review of budget and expense and completed a projection. No adjustments are needed. OIG spending for FY 2014 should be approximately $4,800,000.

If you have any questions or need additional information, please let me know.

Temporary Operating Authority for FY 2015

Legal Services Corporation
America's Partner For Equal Justice

FINANCIAL & ADMINISTRATIVE SERVICES

MEMORANDUM

TO: Robert J. Grey, Jr., Finance Committee Chairman

FROM: David L. Richardson, Treasurer/ Comptroller ***dlr***

DATE: June 25, 2014

SUBJECT: Temporary Operating Authority

This is the last scheduled quarterly Board of Directors' meeting prior to the beginning of Fiscal Year ("FY") 2015 on October 1, 2014. Because of this, resolution 2014-0XX has been prepared for your consideration to authorize Temporary Operating Authority with a Temporary Operating Budget (TOB) of $379,871,565. This amount equals the FY 2014 Consolidated Operating Budget.

Management is asking that you approve this resolution and recommend it to the Board of Directors. At the next scheduled Board meeting in October, we will present a Temporary Operating Budget for FY 2015.

If you have any questions, prior to the meeting, please do not hesitate to contact me.

Attachments

BOARD OF DIRECTORS

RESOLUTION

Temporary Operating Authority
For Fiscal Year 2015

WHEREAS, the Legal Services Corporation ("LSC") Board of Directors (Board) has reviewed information regarding the status of fiscal year ("FY") 2015;

WHEREAS, the Board of Directors desires LSC to continue operations: and

NOW, THEREFORE, BE IT RESOLVED that the Board hereby grants Temporary Operating Authority with a Temporary Operating Budget for FY 2015 of $379,871,565, of which $348,564,896 is for the *Delivery of Legal Assistance*; $2,439,193 is for the *Herbert S. Garten Loan Repayment Assistance Program*; $23,329,795 is for *Management and Grants Oversight;* and $5,537,681 is for the *Office of Inspector General*.

Adopted by the Board of Directors
On July 23, 2014

_____
John G. Levi
Chairman

Attest:

_____
Ronald S. Flagg
Vice President for Legal Affairs,
General Counsel & Corporate Secretary

ATTACHMENT A

LEGAL SERVICES CORPORATION
PROPOSED TEMPORARY OPERATING BUDGET
FOR THE FISCAL YEAR 2015

	(1) FY 2014 FUNDING	(2) FY 2013 CARRYOVER	(3) COURT OF VETS APPEALS & ADJUSTMENTS	(4) FY 2015 TEMPORARY OPERATING BUDGET
I. DELIVERY OF LEGAL ASSISTANCE				
1. Basic Field Programs	335,700,000	632,991	-	336,332,991
2. U.S. Court of Veterans Appeals Funds	-	6,752	2,500,000	2,506,752
3. Grants From Other Funds	-	273,366	-	273,366
4. Technology Initiatives	3,450,000	3,425,828	-	6,875,828
5. Hurricane Sandy Disaster Relief Funds	-	75,959	-	75,959
6. Pro Bono Innovation Funds	2,500,000	-	-	2,500,000
DELIVERY OF LEGAL ASSISTANCE TOTALS	341,650,000	4,414,896	2,500,000	348,564,896
II. HERBERT S. GARTEN LOAN REPAYMENT ASSISTANCE PROGRAM	1,000,000	1,439,193	-	2,439,193
III. MANAGEMENT & GRANTS OVERSIGHT				
1. M & G O Operating Budget	18,000,000	3,975,656	(2,207,656)	19,603,400
2. M & G O Research Initiative	-	200,113	-	200,113
3. M & G O Contingency Funds	-	1,154,026	2,207,656	3,526,282
TOTAL - MANAGEMENT & GRANTS OVERSIGHT	18,000,000	5,329,795	-	23,329,795
IV. INSPECTOR GENERAL				
1. OIG Operating Budget	4,350,000	1,187,681	(249,981)	5,303,700
2. OIG Contingency Funds	-	-	249,981	233,981
TOTAL - OFFICE OF INSPECTOR GENERAL	4,350,000	1,187,681	-	5,537,681
TOTAL BUDGET	$365,000,000	$12,371,565	2,500,000	$379,871,565

ATTACHMENT B

LEGAL SERVICES CORPORATION
PROPOSED TEMPORARY OPERATING BUDGET
FOR MANAGEMENT AND GRANTS OVERSIGHT
AND INSPECTOR GENERAL
FOR FISCAL YEAR 2015

BUDGET CATEGORY	BOARD OF DIRECTORS	EXECUTIVE OFFICES	LEGAL AFFAIRS	GOVERNMENT RELATIONS & PUB AFFS	HUMAN RESOURCES	OFFICE FINANCIAL & ADMIN SRVCS
COMPENSATION & BENEFITS	0	1,109,925	1,000,850	951,600	653,900	1,191,500
TEMP. EMPLOYEE PAY	0	10,500	60,000	51,325	0	25,400
CONSULTING	108,900	8,500	165,000	40,000	61,600	17,700
TRAVEL & TRANSPORTATION	223,000	63,950	17,900	29,300	98,100	18,300
COMMUNICATIONS	5,400	6,600	5,200	4,350	2,450	14,500
OCCUPANCY COSTS	0	0	0	0	0	1,800,000
PRINTING & REPRODUCTION	0	600	0	6,500	0	71,450
OTHER OPERATING EXPENSES	56,600	4,650	57,500	33,500	27,650	412,125
CAPITAL EXPENDITURES	0	0	0	0	0	85,000
TOTAL	393,900	1,204,725	1,306,450	1,116,575	843,700	3,635,975

BUDGET CATEGORY	INFORMATION TECHNOLOGY	PROGRAM PERFORM	INFORMATION MANGEMENT	COMPLIANCE & ENFORCE	MGT & GRNTS OVERSIGHT	INSPECTOR GENERAL
COMPENSATION & BENEFITS	1,019,950	3,464,300	568,400	3,544,450	13,504,875	4,249,700
TEMP. EMPLOYEE PAY	0	395,550	0	218,750	761,525	50,000
CONSULTING	468,800	67,000	0	50,000	987,500	500,000
TRAVEL & TRANSPORTATION	39,000	308,350	1,000	369,550	1,168,450	276,000
COMMUNICATIONS	40,400	22,600	100	20,600	122,200	37,000
OCCUPANCY COSTS	0	1,500	0	0	1,801,500	2,000
PRINTING & REPRODUCTION	0	0	0	0	78,550	19,000
OTHER OPERATING EXPENSES	266,675	14,250	26,600	1,250	900,800	90,000
CAPITAL EXPENDITURES	193,000	0	0	0	278,000	80,000
TOTAL	2,027,825	4,273,550	596,100	4,204,600	19,603,400	5,303,700

Adopting LSC's Appropriation Request for FY 2016

LSC

BOARD OF DIRECTORS

Legal Services Corporation
America's Partner For Equal Justice

RESOLUTION

ADOPTING LSC'S APPROPRIATION REQUEST FOR FISCAL YEAR 2016

WHEREAS, the Board of Directors ("Board") of the Legal Services Corporation("LSC" or "Corporation") has received and carefully considered information regarding the Corporation's Fiscal Year ("FY") 2016 appropriation request;

WHEREAS, the Board has determined that LSC is a program in vital need of additional funding to provide for the legal services needs of people in poverty:

NOW, THEREFORE, BE IT RESOLVED that the Corporation will request of Congress an appropriation of $486,900,000 for FY 2016 to be allocated as follows:

$ 451,300,000 for Basic Field;
$ 5,000,000 for Technology Initiative Grants;
$ 1,000,000 for Loan Repayment Assistance Program;
$ 5,000,000 for Pro Bono Innovation Fund:
$ 19,500,000 for Management & Grants Oversight; and
$ 5,100,000 for the Office of Inspector General.

Adopted by the Board of Directors
On July 22, 2014

John G. Levi
Chairman

Attest:

Ronald S. Flagg
Vice President for Legal Affairs,
General Counsel, and
Corporate Secretary

Board of Directors

BOARD OF DIRECTORS

July 22, 2014

Agenda

OPEN SESSION

1. Pledge of Allegiance

2. Approval of agenda

3. Approval of minutes of the Board's Open Session meeting of April 8, 2014 and the Board's Telephonic Open Session meeting of May 22, 2014

4. Chairman's Report

5. Members' Reports

6. President's Report

7. Inspector General's Report

8. Consider and act on Resolution 2014-XXX in recognition of distinguished service by John C. Meyer

9. Consider and act on resolution recognizing Charles De Monaco of Fox Rothschild for his pro bono representation of LSC in *Dreier v. LSC*

10. Consider and act on the report of the Delivery of Legal Services Committee

11. Consider and act on the report of the Finance Committee

12. Consider and act on the report of the Audit Committee

13. Consider and act on the report of the Operations and Regulations Committee

14. Consider and act on the report of the Governance and Performance Review Committee

15. Consider and act on the report of the Institutional Advancement Committee

16. Report on implementation of recommendations of the Pro Bono Task Force Report and Pro Bono Innovation Fund

17. Public comment

18. Consider and act on other business

19. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

CLOSED SESSION

20. Approval of minutes of the Board's Closed Session of April 8, 2014

21. Management Briefing

22. Inspector General Briefing

23. Consider and act on General Counsel's report on potential and pending litigation involving LSC

24. Consider and act on list of prospective funders

25. Consider and act on motion to adjourn meeting

Draft Minutes of April 8, 2014 Open Session Meeting &

May 22, 2014 Open Session Telephonic Meeting

Legal Services Corporation
Meeting of the Board of Directors

Open Session

Tuesday, April 8, 2014

DRAFT

Chairman John G. Levi convened an open session meeting of the Legal Services Corporation's ("LSC") Board of Directors at 9:34 a.m. on Tuesday, April 8, 2014. The meeting was held at the F. William McCalpin Conference Center, LSC Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Board members were present:

John G. Levi, Chairman
Martha L. Minow
Sharon L. Browne
Robert J. Grey, Jr.
Charles N.W. Keckler
Victor B. Maddox
Laurie I. Mikva
Father Pius Pietrzyk (by telephone)
Julie A. Reiskin
Gloria Valencia-Weber
James J. Sandman, *ex officio*

Also attending were:

Richard L. Sloane	Chief of Staff and Special Assistant to the President
Lynn Jennings	Vice President for Grants Management
Patrick Malloy	Grants Management/Legislative Fellow
Kendall Munna	Office of the President
Wendy Rhein	Chief Development Officer
Rebecca Fertig Cohen	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
David L. Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services
Carol A. Bergman	Director, Office of Government Relations and Public Affairs
Traci Higgins	Director, Office of Human Resources
Katherine Ward	Executive Assistant, Office of Legal Affairs
Mark Freedman	Senior Assistant General Counsel, Office of Legal Affairs
Stefanie Davis	Assistant General Counsel, Office of Legal Affairs

Jeffrey E. Schanz	Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit, Office of the Inspector General
Joel Gallay	Special Counsel to the Inspector General, Office of the Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General
Magali Khalkho	Resource Management Specialist, Office of the Inspector General
Noel Rosengart	Office of the Inspector General
Kathryn Silvestri	Office of the Inspector General
Cyndy Robinson	Office of the Inspector General
Carla Smith	Office of the Inspector General
Charles Becker	Office of the Inspector General
Michael Shiohama	Office of the Inspector General
Lora M. Rath	Director, Office of Compliance and Enforcement
Janet LaBella	Director, Office of Program Performance
Herbert S. Garten	Non-Director Member, Institutional Advancement Committee
Frank Strickland	Non-Director Member, Institutional Advancement Committee
Allan J. Tanenbaum	Non-Director Member, Finance Committee, General Counsel, Equicorp Partners
Don Saunders	National Legal Aid and Defenders Association (NLADA)
Terry Brooks	American Bar Association, Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Dominique Martin	Law99.com

The following summarizes actions taken by, and presentations made to, the Board:

Mr. Strickland led the Pledge of Allegiance.

MOTION

Mr. Grey moved to approve the agenda. Mr. Keckler seconded the motion.

VOTE

The motion passed by a voice vote.

MOTION

Ms. Valencia-Weber moved to approve the minutes of the Board's meeting of January 25, 2014. Mr. Grey seconded the motion.

VOTE

The motion passed by a voice vote.

Chairman Levi gave the Chairman's Report. He recognized Allan Tanenbaum who would be escorting baseball Hall of Famer, Hank Aaron, onto the baseball field in celebration of the 40th anniversary of breaking Babe Ruth's record. He thanked the board for its continuing hard work and acknowledged several individuals for making the Washington, D.C. Board meeting and events a success.

President Sandman gave the President's Report, which included updates on implementing measures to demonstrate LSC's effectiveness reaching different constituencies; the status of LSC's business process analysis in grant making and grant oversight functions; a demonstration of a risk management and transition planning tool; an update on the LSC compensation study; and the results of the Grantees Activity Report. He answered board members' questions.

Inspector General Schanz briefed the board on the Office of Inspector General's activities. Inspector General Schanz informed the board of Ronald "Dutch" Merryman' s retirement. He answered board members' questions.

MOTION

Father Pius moved to adopt the resolution recognizing outstanding service of Ronald D. Merryman. Ms. Reiskin seconded.

VOTE

The motion passed by voice vote.

Inspector General Schanz continued his report commending his staff for the recognition received from the Council of Integrity and Efficiency for Inspectors General (CIGIE); he then introduced each person to the board.

MOTION

Father Pius moved to adopt the resolution commending the Office of Inspector General for the CIGIE award. Mr. Grey seconded.

VOTE

The motion passed by voice vote.

Father Pius gave the report of the Delivery of Legal Services Committee. He was followed by Mr. Grey who gave the report of the Finance Committee.

MOTION

Mr. Grey moved to adopt the revised consolidated operating budget for fiscal year 2014 and corresponding resolution. Ms. Browne seconded.

VOTE

The motion passed by voice vote.

Mr. Maddox gave the Audit Committee report.

Mr. Keckler gave the Operations and Regulations report.

MOTION

Mr. Keckler moved to approve the proposed final rule under 45 CFR Part 1613.

VOTE

The motion passed by voice vote.

MOTION

Mr. Keckler moved to adopt the revisions to 45 CFR Part 1626 as final rule.

VOTE

The motion passed by voice vote.

MOTION

Mr. Keckler moved to adopt the proposed Notice of Proposed Rulemaking under 45 CFR Part 1614 for publication and comment for a 60-day period.

VOTE

The motion passed by voice vote.

Ms. Browne gave the Governance and Performance Review Committee report.

Chairman Levi gave the Institutional Advancement Committee report.

Ms. Jennings and Mr. Flagg provided updates on the Pro Bono Innovation Fund and Pro Bono Task Force Report implementation.

Chairman Levi invited public comment, and received none.

MOTION

Father Pius moved to authorize an executive session of the Board meeting. Dean Minow seconded the motion.

VOTE

The motion passed by voice vote.

The Board continued its meeting in closed session at 11:20 a.m.

Legal Services Corporation
Telephonic Meeting of the Board of Directors

Open Session

Thursday, May 22, 2014

DRAFT

Chairman John G. Levi convened an open session telephonic meeting of the Legal Services Corporation's ("LSC") Board of Directors at 3:09 p.m. on Thursday, May 22, 2014. The meeting was held at the F. William McCalpin Conference Center, Legal Services Corporation, 3333 K Street, N.W. Washington, D.C. 20007.

The following Board members were present:

John G. Levi, Chairman
Martha L. Minow
Sharon L. Browne
Robert J. Grey, Jr.
Charles N.W. Keckler
Victor B. Maddox
Laurie Mikva
Gloria Valencia-Weber
James J. Sandman, *ex officio*

Also attending were:

Lynn Jennings	Vice President for Grants Management
Rebecca FertigCohen	Special Assistant to the President
David Richardson	Comptroller and Treasurer
Ron Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs
Jeffrey Schanz	Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General
Joel Gallay	Special Counsel to the Inspector General, Office of the Inspector General
John Seeba	Assistant Inspector General for Audit, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
Carol A. Bergman	Director, Office of Government Relations and Public Affairs
Treefa Aziz	Government Affairs Representative, Office of Government Relations

Nupur Khullar	Intern, Office of Government Relations
Silove Barwari	Intern, Office of Government Relations
Lora Rath	Deputy Director, Office of Compliance and Enforcement

The following summarizes actions taken by, and presentations made to, the Board:

Chairman Levi called the meeting to order.

MOTION

Ms. Browne moved to approve the agenda. Father Pius seconded the motion.

VOTE

The motion passed by voice vote.

The Board members discussed the Office of the Inspector General's (OIG) Semi-Annual Report to Congress for the reporting period of October 1, 2013 through March 30, 2014, and the accompanying transmittal letter from the Board to Congress. The OIG and LSC management responded to Board members' questions.

MOTION

Father Pius moved to approve the transmittal letter accompanying the OIG's Semi-Annual Report to Congress for the reporting period of October 1, 2013 through March 30, 2014. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

Chairman Levi invited public comment, and received none. There was no new business to consider.

MOTION

Father Pius moved to adjourn the meeting. Mr. Grey seconded the motion.

The meeting of the Board adjourned at 3:15 p.m.

RESOLUTION

Recognizing & Appreciation of Outstanding Service By

John C. Meyer

LSC

BOARD OF DIRECTORS

Legal Services Corporation
America's Partner For Equal Justice

RESOLUTION
IN RECOGNITION AND APPRECIATION OF OUTSTANDING SERVICE BY JOHN C. MEYER

WHEREAS, John C. Meyer has performed thirty years of outstanding service to the Legal Services Corporation ("LSC" or "Corporation") in numerous positions, including service as LSC's Deputy General Counsel; Associate Director of and Program Counsel in the Office of Field Services; Director of the Office of Management Services; Deputy Director of the Office of Monitoring, Audit, and Compliance; and Director of and Program Counsel in the Office of Information Management;

WHEREAS, John has contributed significantly to the development and enhancement of the systematic collection of data from LSC's grantees, overseeing the creation of LSC's systems for collecting, analyzing, and presenting data about the work of LSC's grantees, and providing helpful and authoritative guidance to grantees;

WHEREAS, John's leadership and commitment to LSC's mission of providing high-quality civil legal services to low-income Americans have been a great asset to the Corporation;

NOW, THEREFORE, BE IT RESOLVED that the LSC Board of Directors hereby commends and extends its sincere appreciation to John for his 30 years of outstanding service and many contributions to LSC and to the cause of civil legal assistance for low-income Americans.

Adopted by the Board of Directors
July 22, 2014

John G. Levi
Chairman

Attest:

Ronald S. Flagg
Vice President for Legal Affairs,
General Counsel & Corporate Secretary

RESOLUTION

Recognizing Charles DeMonaco of Fox Rothschild

RESOLUTION

RECOGNIZING AND THANKING FOX ROTHSCHILD LLP

&

CHARLES A. DE MONACO

WHEREAS, the law firm of Fox Rothschild LLP and Charles A. De Monaco, a partner in Fox Rothschild LLP, generously agreed to provide *pro bono* representation to the Legal Services Corporation ("LSC") in *Dreier v. Legal Services Corporation*, Case 2:13-cv-01474-NBF (W.D. PA);

WHEREAS, in in the best tradition of the legal profession Mr. De Monaco gave his time and talent in defending LSC in *Dreier*;

WHEREAS, Mr. De Monaco worked seamlessly with LSC's Office of Legal Affairs in drafting successful motions to dismiss the complaint and amended complaints in *Dreier*;

WHEREAS, the successful conclusion to this litigation reflects the excellence of the work contributed by Fox Rothschild and Mr. De Monaco;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Legal Services Corporation recognizes the generosity of Fox Rothschild LLP and the outstanding representation provided by Mr. De Monaco, and expresses its profound appreciation and gratitude for their valuable *pro bono* litigation efforts on behalf of the national legal services program.

Adopted by the Board of Directors
On July 22, 2014

_____
John G. Levi
Chairman

Attest:

_____
Ronald S. Flagg
Vice President for Legal Affairs,
General Counsel & Corporate Secretary

Pro Bono Task Force Report
Implementation and Pro Bono Innovation Fund Update

LSC PRO BONO TASK FORCE IMPLEMENTATION UPDATE
JULY 2014

I. PRO BONO TASK FORCE OVERVIEW

In March 2011, LSC created a Pro Bono Task Force comprised of judges, corporate general counsel, bar leaders, technology experts, leaders of organized pro bono programs, law firm leaders, government lawyers, law school deans, and the heads of legal aid organizations, to consider how to increase pro bono contributions to civil legal aid. The Task Force divided into working groups and spent months conducting interviews, identifying effective practices, and sharing ideas before reporting its findings and recommendations to the LSC Board of Directors.

In October 2012, the Pro Bono Task Force released its findings and recommendations. Implementation of the recommendations is following two tracks. The first track relates to activities that require a formal process directed by LSC, such as budget requests and the promulgation of regulations. The second track is less formal and engages a broad array of stakeholders. To facilitate implementation, LSC has established a Steering Committee and four subcommittees to work on the remaining recommendations.

II. IMPLEMENTING THE TASK FORCE RECOMMENDATIONS

A. Creation of a Pro Bono Innovation Fund

One of the Task Force's key recommendations is for LSC to work with Congress to create a Pro Bono Innovation/Incubation Fund ("PBIF"). On January 17, 2014, the President signed P.L. 133-76, the Consolidated Appropriations Act of 2014, which included $2.5 million in LSC's appropriation for a new grant program entitled the Pro Bono Innovation Fund ("PBIF" or "Fund").

Purpose. The purpose of the PBIF is to encourage LSC grantees to develop strong pro bono programs that serve larger numbers of low-income clients. The Fund will support innovations that expand the delivery of pro bono legal services. The grant criteria will require both innovations (new ideas or new applications of existing best practices) and replicability (likelihood that the innovation, if successful, could be implemented by other legal aid programs). To ensure accountability, LSC will require PBIF projects to evaluate their experience and report their results.

Goals. The Pro Bono Innovation Fund will provide grants for LSC grantees that address three core goals:

1. ***Engage more lawyers in pro bono service.*** Pro Bono Innovation Fund projects will focus on increasing the number of lawyers and other volunteers that provide pro bono service.

2. ***Address gaps in legal services.*** Pro Bono Innovation Fund projects will use pro bono resources to serve low-income clients whose critical legal needs are not being met.

3. ***Addressing persistent challenges in pro bono delivery systems.*** Pro Bono Innovation Fund projects will seek to address barriers to pro bono service by developing new and replicable solutions that serve clients and engage pro bono volunteers more efficiently and effectively. Improve efficiency, and expand collaboration and resource-sharing with other service providers or stakeholders in a city, state, or region.

Implementation Update:

- The PBIF Notice of Funds Availability was issued on April 22, 2014.
- Applications were due on June 30th.
- We received 78 applications/proposed projects from 41 different states
- There is a total of 78 different grantees involved (68 grantee prime applicants, plus an additional 10 grantees involved as proposed subgrantees)
- Over $15.3 million in requested PBIF funds
- The average request per applicant is approximately $196,000
- The smallest request is for $46,000 and the largest request is for $459,000
- The review process is under way.
    - At least two individuals will read and score every application.
    - All 78 applications receive at least 3 reviews as stated in the NOFA.
    - Assignments will seek to avoid actual or potential conflicts of interest.
    - Assignments will seek to leverage knowledge and expertise of each reviewer.
- Executive Office review will be in August.
- The awardees will be announced at the 40th Anniversary event in September.

B. Revision of LSC's Private Attorney Involvement Regulation

LSC published proposed revisions to 45 C.F.R. Part 1614—Private Attorney Involvement (PAI) as a Notice of Proposed Rulemaking (NPRM) on April 15, 2014. 79 Fed. Reg. 21188 (Apr. 15, 2014). LSC received eight comments prior to the close of the comment period on June 16, 2014. Commenters generally voiced support for LSC's proposed changes to the rule, particularly the expansion of the rule to cover involvement by law students, law graduates, retired attorneys, and other professionals. Commenters also recommended that LSC reconsider some aspects of the rule, primarily the definition of "private attorney" and the new provision governing support to clinics. All comments are available on LSC's PAI rulemaking page at http://www.lsc.gov/rulemaking-lscs-private-attorney-involvement-pai-regulation.

Next steps regarding the revision of the regulations will be discussed at the Operations and Regulations Committee meeting.

Please refer to the full briefing in the Operations and Regulations Committee Section of your briefing book for additional detail.

C. Implementation Steering Committee and Subcommittees

To oversee the implementation of the remainder of the Task Force's recommendation, the LSC Board of Directors established a Steering Committee and collaborated with the ABA's Pro Bono Committee to outline the scope of the subcommittees. The subcommittees are:

1. Pro Bono Toolkit, Technology, and Effectiveness Implementation Subcommittee;
2. Pro Bono Culture Change Subcommittee;
3. Pro Bono Rules Change Implementation Subcommittee

1. Toolkit, Technology, and Effectiveness Implementation Subcommittee

A. Pro Bono Web Page

- The pro bono web page is up and running with approximately 40 examples of best practices. We have also included links to best practices listed on the Pro Bono Institute and APBCo websites. http://www.lsc.gov/pro-bono-programs-best-practices.

- We have been tracking traffic to the pages.
  - 303 unique page views since it was posted in late January.
  - The average time on this page a little over 4 minutes. That's a long time to spend on a web page, and it usually indicates that people are actually reading the page.

Page	Unique Pageviews
Overview page (LSC.gov)	303
Volunteer Recognition	140
Sample PAI Plans	76
Remote Services Using Videoconferencing	102
Document Assembly to Support Volunteers	70
Providing Volunteers With a Central Case Opportunity List	75
Access to the CMS (JusticeServer)	65
Mobile Clinics	66
CLE for Volunteer Recruitment	61
Providing Online Libraries of Support Material	34
Assistance to Microentrepreneurs	31
Online Calendars of Training Opportunities	27

- LSC staff is currently vetting more case studies to prepare for posting.

- We will be strategizing on how to drive more traffic to the web site.

B. Partnering With Pro Bono Experts on OPP Program Visits

- To date, Annie Helms and Bert Ritvo from DLA Piper have participated in two Program Quality Visits conducted by the Office of Program Performance Program Counsel. The first trip was to Community Legal Services in Phoenix, AZ and the

second was to the Legal Aid Bureau of Maryland. LSC staff and DLA Piper representatives recently debriefed the pilot project and both sides are enthusiastic for it to continue. We will make improvements to the model and schedule an additional trip or two this calendar year.

C. Revising the LSC PAI Grant Application Plan

- The subcommittee members have provided their comments to the draft plan.
- Annie has revised the documents to incorporate those comments.
- There seems to be no general consensus around the comments, so we will attempt to redraft a plan for comments for the 2016 grant cycle.

D. Grantees Pro Bono Technology Needs and Funding

- Glenn Rawdon and Ron Flagg are heading up this initiative in coordination with Wendy Rhein. Glenn has developed a list of about a dozen projects in which technology could make a material difference in the delivery of legal services. We will try to identify corporate partners in the technology sector to work with us on and fund these projects.

2. Rules Change Implementation Subcommittee

- Further research is being conducted to determine if those states with mandatory and voluntary pro bono reporting have seen an increase in the number of pro bono hours reported since the implementation of the rules.

3. Culture Change Implementation Subcommittee

A. Statewide Pro Bono Public Relations Campaigns

- Ron has had a conference call with the Subcommittee chairs to discuss launching a pilot program in a couple of states to customize the ONE campaign that was marketed in Florida and Nevada.
- Target states for the pilot include Illinois and Texas.
- Annie Helms has initiated conversations in Illinois to vet the idea.
- Ron and Jim had a call with Betty Torres of the Texas Bar Foundation to explore the idea.

B. Promotion of Access to Justice Commissions in States Currently Without Commissions

- During the work of the Rules Change Subcommittee, the group found that those states with the fewest rules or policies that promote and foster pro bono did not have an Access to Justice Commission.
- Ron and Lynn had a call with Steve Grumm from the ABA to discuss the issue.
- A follow up call with Steve, Esther Lardent and others occurred on June 6th to identify states currently lacking a Commission in which initiatives might be undertaken to create a Commission.

Drake Law School Panelist Bios

July 21, 2014
Drake Law School, Neal & Bea Smith Legal Clinic
Des Moines, Iowa

Justice Daniel J. Crothers, Supreme Court of North Dakota

Justice Daniel J. Crothers was born in January 1957 in Fargo, North Dakota. He grew up in West Fargo, American Samoa, and Albuquerque, New Mexico. He received his undergraduate degree from the University of North Dakota in 1979 and his law degree from the University of North Dakota School of Law in 1982. After law school, he clerked for the New Mexico Court of Appeals and then worked in a Santa Fe law firm. He moved back to North Dakota, practicing law in several law firms until being appointed to the North Dakota Supreme Court in June 2005. He was president of the State Bar Association of North Dakota from 2001-2002 and has served as a member and chair of several Bar Association and Court committees relating to lawyer and judicial ethics and professional conduct. He currently serves on North Dakota's Committee on Judiciary Standards, chairs the Court Services Administration Committee, and is a member of the American Bar Association Cybersecurity Task Force, the ABA Center for Professional Responsibility Policy Implementation Committee, the ABA Judicial Advisory Committee to the Standing Committee on Ethics and Professional Responsibility, and is past-chair of and Special Advisor to the ABA Standing Committee on Client Protection. Crothers was elected in November 2008 to fill an unexpired four-year term and elected in November 2012 to a full ten-year term. He and his wife Holly have two children. Justice Crothers has served 8 years, 10 months, and 14 days on the Bench as of May 28, 2014.

Justice Thomas Kilbride, Supreme Court of Illinois

Thomas L. Kilbride was born in LaSalle. He received a B.A. degree magna cum laude from St. Mary's College in Winona, Minnesota in 1978 and received his law degree from Antioch School of Law in Washington, D.C., in 1981.

Justice Kilbride practiced law for 20 years in Rock Island, engaging in the general practice of law, including appeals, environmental law, labor law, employment matters, and other general civil and criminal matters. He was admitted to practice in the United States District Court of Central Illinois and the United States Seventh Circuit Court of Appeals. He was elected to the Supreme Court of Illinois for the Third District in 2000 and was elected as Chief Justice of the Illinois Supreme Court in October, 2010.

Justice Kilbride is a past board member, past president and past vice-president of the Illinois Township Attorneys Association, a past volunteer lawyer and charter member of the Illinois Pro Bono Center, and a member of the Illinois State Bar and Rock Island County Bar Associations. He has served as volunteer legal advisor for the Community Caring Conference, the charter chairman of the Quad Cities Interfaith Sponsoring committee, volunteer legal advisor to Quad City Harvest, Inc., and a past member of the Rock Island Human Relations Commission.

Judge Robert W. Pratt, U.S. District Court, Southern District of Iowa

Robert W. Pratt is a United States District Court Judge for the Southern District of Iowa. Judge Pratt was nominated on August 2, 1996 and again on January 7, 1997 by President Clinton. He was confirmed by the United States Senate on May 23, 1997 and entered on duty on July 1, 1997. He served as Chief Judge of the Southern District of Iowa from May 1, 2006, until November 1, 2011. Judge Pratt became a senior judge on July 1, 2012.

He earned a B.A. degree in Political Science from Loras College in Dubuque, Iowa and a Juris Doctor degree from Creighton University in Omaha, Nebraska. Judge Pratt worked for the Polk County (Des Moines) Iowa Legal Aid Society from 1972 to 1975. He then practiced law privately with two law firms from January 1, 1975 until September 1, 1985 when he began his own practice which terminated upon his confirmation.

While in practice as a legal aid lawyer he represented low income clients in consumer, housing and civil rights areas. While he continued to represent low income clients in his private practice he also represented labor unions, plaintiffs in personal injury claims and workers compensation and Social Security Disability cases. While practicing privately, he was for a four year period also trying cases as a criminal justice attorney (CJA) for persons accused of crimes. He argued 25 cases in the United States Court of Appeals for the Eighth Circuit and 10 cases before the Iowa Appellate courts as well as trying approximately 40 cases to verdict.

His interests as a judge include information technology and access to justice issues. In addition to his work as a judge in the Southern District of Iowa, Judge Pratt has also sat by designation as a judge on the United States Courts of Appeals for the Eighth and Ninth Circuits.

Justice David R. Stras, Supreme Court of Minnesota

David Stras became an Associate Justice of the Minnesota Supreme Court on July 1, 2010. His current term expires in Jan. 2019. Prior to his appointment, Justice Stras was a member of the faculty of the University of Minnesota Law School from 2004 through 2010.

He taught and wrote in the areas of federal courts and jurisdiction, constitutional law, criminal law, and law and politics. In addition, Stras was co-director of the Institute for Law and Politics at the University of Minnesota. His law review articles have appeared in many academic journals, including the Cornell Law Review, Texas Law Review, Georgetown Law Journal, Northwestern Law Review, Constitutional Commentary, and the Minnesota Law Review. He has also served as of counsel to the law firm of Faegre & Benson LLP in their appellate advocacy group.

Justice Stras received his Bachelor of Arts degree, with highest distinction, in 1995 and his Master of Business Administration in 1999 from the University of Kansas. He also received his law degree from the University of Kansas School of Law in 1999, where he served as Editor-in-Chief of the Criminal Procedure Edition of the Kansas Law Review. While in law school, Stras achieved a number of academic honors, including election to the Order of the Coif.

Following law school, Stras clerked for The Honorable Melvin Brunetti of the United States Court of Appeals for the Ninth Circuit and then for The Honorable J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit.

From 2001 to 2002, he practiced white-collar criminal and appellate litigation with the Washington, D.C., office of Sidley Austin Brown & Wood. Following his year in practice, he clerked for The Honorable Clarence Thomas of the Supreme Court of the United States.

Judge Richard B. Teitelman, Supreme Court of Missouri

Richard B. Teitelman was born in Philadelphia, PA. He received a BA in Mathematics in 1969 from the University of Pennsylvania. He graduated from the Washington University School of Law, St. Louis, MO., in 1973. Teitelman served on the Missouri Court of Appeals beginning in 1998. In February 2002, he was appointed to the Missouri Supreme Court. Judge Teitelman was retained in the 2004 general election for a 12-year term. He was elected chief justice for a 2-year term from July 1, 2011 to June 30, 2013. He is the first legally blind and first Jewish judge to serve on Missouri's highest court.

Judge Teitelman served for 23 years at Legal Services of Eastern Missouri, almost 18 of those years as Executive Director and General Counsel. Under his leadership, the Legal Services program earned a national reputation for the wide range of programs it provides to Missourians who are unable to pay for civil legal services. In honor of his service, the St. Louis legal services building was named for Judge Teitelman and Thomas Hullverson, Esq. in 1999.

As a sole practitioner early in his career, he represented the St. Louis Tax Reform Group and the United Farmworkers of America and litigated a number of First Amendment issues. His dedication to under-represented people has earned him many honors, including the prestigious Missouri Bar President's Award. He is the recipient of the American Council for the Blind's Durward K. McDaniel Ambassador Award, the Women's Legal Caucus Good Guy Award, and the American Bar Association's Make A Difference Award.

Teitelman has served his profession as president of the Young Lawyers Section of the St. Louis Bar Association and president of the St. Louis Bar Association. He serves as the Bar Group Liaison for the Mound City (MO) Bar Association. He has served as president of the St. Louis Bar Foundation. He serves as a board member and past-president of the Bar Association of Metropolitan St. Louis. He is a sustaining member of the Kansas City Metropolitan Bar Association. He is a member of the Association of the Bar of the United States Court of Appeals for the Eighth Circuit. He is a member of the Institute of Judicial Administration of New York University. He has served as a member of the Board of Governors, vice-president and president-elect of the Missouri Bar, and is a member of the Missouri Bar Editorial Board. He has served on the National Council of Bar Foundations of the American Bar Association. He is a lifetime member of the Fellows of the American Bar Association. He is past chair of the ABA's Commission on Mental and Physical Disabilities Law. He is a member of the Executive Committee, the Administration Committee, and the Substantive Programming Committee of the American Judicature Society. He is also on the board of the American Association

Prior to joining the court, Justice Wiggins was active in numerous bar organizations including serving on the Board of Governors of the Iowa State Bar Association, and serving as president of the Iowa Trial Lawyers Association, senior counsel for the American College of Barristers, master emeritus of the C. Edwin Moore American Inn of Court, a founding sponsor of the Civil Justice Foundation, and an advocate for the American Board of Trial Advocates. He served as chairperson of the Judicial Qualifications Commission from 2000 until he joined the Supreme Court. He received the Meritorious Achievement Award from the Iowa Trial Lawyers Association in 1999.

Justice Wiggins is married and has three children. His current term expires December 31, 2020.

Justice John F. Wright, Supreme Court of Nebraska

Judge John F. Wright is one of the seven members of the Nebraska Supreme Court, representing Nebraska's Sixth Judicial District, which is comprised of the western half of the state. He was appointed in January 1994, after having served 2 years as one of the original judges of the Nebraska Court of Appeals.

Upon his graduation from the University of Nebraska College of Law, Judge Wright returned to his hometown of Scottsbluff, Nebraska, to practice law with his father. He practiced law in Scottsbluff from 1970 to 1992.

In addition to his appellate docket, Judge Wright serves as the Court's liaison for administrative matters including problem-solving courts and docket management in trial courts.

Judge Wright and his wife, Deborah, have four grown children and four grandchildren.

of Jewish Lawyers and Jurists. He serves as the ABA Appellate Judges Conference representative on the Judicial Division Judges Network Steering Committee.

Judge Teitelman serves the St. Louis community in a wide variety of roles in his work in equality and accessibility for all people. He is a member of the African-American/Jewish Task Force; the Missouri Library Association; Access & Opportunity Steering Committee, St. Louis 2004 – Living Together in Community Task Force; the Jewish Community Relations Council; and has served on the Midwest regional board of the American Federation for the Blind. In addition, he is a member of the board of Paraquad and the United Way Government Relations Committee. He is a board member of the St. Louis Public Library and the Missouri Library Association, a lifetime member of the Urban League of Metropolitan St. Louis, and a charter member of the St. Louis Film Festival. He is a member of the NAACP Awards Committee (St. Louis).

Teitelman's dedication to these causes had led to several honors including the Missouri Bar's Purcell Award for Professionalism; the American Jewish Congress' Democracy in Action Award; and the Lawyer's Association of St. Louis Award of Honor.

Judge Teitelman is a member of the Order of the Coif of Washington University School of Law. He is a member of the School of Law Alumni Executive Committee and is a past vice-chair of the School's Eliot Society Membership Committee. He is a board member of the American Association of Jewish Lawyers and Jurists. He was honored recently as a Distinguished Alumnus at the school's 2002 Founders Day celebration. He is the recipient of the Lifetime Achievement Award from the St. Louis Society for the Blind and Visually Impaired. In 2004 he received the Distinguished Statesman Award from the Dr. Martin Luther King, Jr. State Celebration Commission of Missouri and the President's Outstanding Service Award from the Bar Association of Metropolitan St. Louis. He is the 2005 recipient of the St. Louis County Bar Association's Distinguished Service Award and the University of Missouri-Columbia School of Law's Distinguished non-Alumni Award, and is a recipient of the St. Louis Historical Society's Governmental Affairs Award. He is a recipient of the American Bar Association 2007 Legislative Advocacy Award. In 2008 he was recognized by the Ethical Society of St. Louis as The Ethical Humanist of the Year. He received the 2009 Clarence Darrow Award from the Saint Louis University School of Law, and is the recipient of the 2009 Spurgeon Smithson Award from The Missouri Bar. He received the Torch Award from the Mound City Bar Association in 2013 as well as the Missouri Asian-American Bar Association's Torch Bearer Award.

Justice David Wiggins, Supreme Court of Iowa

Justice Wiggins, West Des Moines, was appointed to the Supreme Court in 2003.

Justice Wiggins, who was born in Chicago, earned his bachelor's degree from the University of Illinois in Chicago in 1973. He graduated with honors and Order of the Coif from Drake University Law School in 1976. While in law school he served as associate editor of the law review. Justice Wiggins began his legal career as an associate in the West Des Moines law firm of Williams, Hart, Lavorato & Kirtley. He became a partner in the firm in 1979.

The Importance of Community Partnerships
July 21, 2014
Des Moines, Iowa

Joan Boles, Deputy Director, Bay Area Legal Services, Inc.

Joan Cain Boles joined Bay Area Legal Services in 1988 and has been the Deputy Director since 2000. Joan received her undergraduate degree from Southern Illinois University and law degree from The John Marshall Law School, Chicago, in 1982. Joan is Past President of the Hillsborough County Homeless Coalition and actively participates in initiatives that benefit low-income persons and communities. Current responsibilities include oversight of Client Grievance Procedure, LEP, and ADA coordinator. She is the Project Director for the L. David Shear Children's Law Center. Joan is Co-Chair of the Professionalism and Ethics Committee of the Hillsborough County Bar Association.

Neal S. Dudovitz, Executive Director, Neighborhood Legal Services of Los Angeles County

For more than 35 years, Neal Dudovitz has been actively involved in providing innovative legal counsel and services to poor individuals and families. This dedication has allowed him to personally impact the lives of countless people and, at the same time, drive systemic change.

Since 1993, Neal has served as Executive Director of NLSLA, managing all aspects of the organization's $12 million annual budget and staff of over 100 attorneys, paralegals and specialists in addition to inspiring hundreds of volunteer community members and attorneys. In addition to handling program administration, financial operations, fundraising, Board relations and program policy, Neal also supervises the legal work of NLSLA's lawyers and works closely on policy and procedure development.

Prior to his work at NLSLA, Neal was with the National Senior Citizens Law Center, serving as a staff attorney before taking on the role of Deputy Director, which he held for more than a decade. There, Neal administered and supervised the LA office and was lead counsel and co-counsel for significant federal district and appellate court cases. He handled legislative and administrative advocacy before Congress and provided consultation to practicing lawyers throughout the United States. Beginning his career at Legal Services of Eastern Michigan, Neal had specialized in health and mental health law and today runs one the nation's most effective health advocacy programs – Medical Legal Community Partnerships.

Neal's career has been highlighted by numerous appointments and awards, including serving as a delegate to the White House Conference on Aging; being a member of the Lawyer's Advisory Committee for the National Pension Assistance Project; serving on the Board of Directors for the

Legal Aid Association of California; and serving as an Advisory Committee member on the Federal Benefits Law. Neal has also received a Section Achievement Awards from the State Bar of California Legal Services and was named one of the San Fernando Valley Business Journal's Top 25 Lawyers. Neal graduated from the University of Minnesota in 1970 and the Northeastern University School of Law in 1973.

Dennis Groenenboom, Executive Director, Iowa Legal Aid

Dennis Groenenboom serves as the Executive Director of Iowa Legal Aid. A 1978 graduate of the University of Iowa College of Law, Dennis has spent his entire professional career with Iowa Legal Aid. He has worked as a Staff Attorney, Senior Staff Attorney, Managing Attorney, Deputy Director, and serves as the program's third Executive Director, a position he has held since May 1992. Before assuming administrative responsibilities, including development of additional funding sources, Dennis' substantive areas of expertise were in representing individuals with disabilities. He also developed substantial expertise in the area of public benefits and rights of older Iowans.

Dennis is currently participating as a fellow in the Where Health Meets Justice Fellowship convened by the National Center for Medical Legal Partnership, School of Public Health and Health Services and National Legal Aid and Defender Association to build healthcare expertise and resources in the legal aid community. Dennis also serves on the National Legal Aid and Defender Association's Civil Policy Group and Board of Directors. He is currently the Chair of the Civil Policy Group. Dennis has been a member of many sections and committees of the Iowa State Bar Association. He is also active in and has served on the boards of several community and faith based organizations.

Mindy Murphy, President & CEO, The Spring of Tampa Bay

A University of Virginia graduate with degrees in English and Religious Studies, Mindy Murphy is President and CEO of The Spring of Tampa Bay, one of the largest of Florida's 42 certified domestic violence centers.

Since moving to Tampa in 1990, she has served on the Boards of Directors of Helping Hand Day Nursery, the Child Abuse Council, Cornerstone Kids, The Learning Centers, Friends of Tampa Day School and Trinity School for Children. She is a past president of the Junior League of Tampa, having served as its community vice president and chair of several projects geared towards helping children and families. She has served as a youth minister at St. John's Episcopal; as president of the PTA at her son's school; as chair of Karamu for Lowry Park Zoo; as vice chair of Magnolia Ball for Moffitt Cancer Center; and as an Elder at First Presbyterian Church. Nationally, she continues to remain involved with her college alma mater. She was a founding member of the Young Alumni Council of the University of Virginia and also served locally as president of the UVA Alumni Club of Tampa Bay. She has co-chaired all four of her UVA Class Reunions.

In her professional life, Ms. Murphy was previously employed as Director of Development for the Child Abuse Council (now Champions for Children). During her tenure, she was instrumental in securing funding for Baby Bungalow and Kids on the Block.

Currently, she serves on the Boards of Directors for NextGen Alliance Inc. and the Tampa/Hillsborough Homeless Initiative; as a Commissioner on Hillsborough County's Commission on the Status of Women; as a member of the Advisory Board for The Harrell Center at the USF College of Public Health; as a member of the Hillsborough County Community Violence Prevention Collaborative; as a member of the HCC/Ybor City Campus President's Advisory Council and as a regional steering committee member for the statewide Children's Movement of Florida.

Born in Germany, Ms. Murphy lived in Kansas City for five years and in Cincinnati for 15 years before settling in Tampa in 1990. She is the proud parent of a teenage son.

Barbara Kamenir Siegel, Lecturer in Law, University of Southern California, Gould School of Law

Barbara Kamenir Siegel was a supervising and managing attorney at Neighborhood Legal Services of Los Angeles County (NLSLA) from 1997 to 2011. She was the original supervising attorney involved in establishing and implementing the Health Consumer Center, a NLSLA project funded by The California Endowment. The Health Consumer Center (HCC) operates a multi-lingual health rights hotline and advocacy program for low-income residents of Los Angeles County, offering everything from telephone assistance to representation at administrative and court proceedings. In addition, HCC offers outreach and education on health benefit programs and does health policy work at the local, state and federal levels. While at NLSLA Ms. Siegel supervised the initiation of NLSLA's Medical Legal Community Partnerships at the Northeast Valley Health Corporation's Sun Valley Clinic, St. John's Well Child & Family Center and Clinica Oscar Romero.

Now retired from NLSLA, Ms. Siegel currently teaches a Law & Medicine class at the Gould School of Law and Keck School of Medicine at USC. The class, which is both clinical and academic, is teaches law and medical students about the individual and community impact of the social determinants of health.

Prior to joining Neighborhood Legal Services, Ms. Siegel worked at the law firm of Bonne, Bridges, Mueller, O'Keefe & Nichols. Before attending law school, Ms. Siegel worked as a physical therapist specializing in the care of persons with chronic disabilities. In addition to her degree in Physical Therapy, Ms. Siegel has a Masters in Public Health from U.C.L.A. School of Public Health and a law degree from Southwestern University School of Law.

Ms. Siegel is a member of L.A. County's Department of Health Services' Ambulatory Care Advisory Board. She is also on the Board of Proyecto Jardin, a non-profit community garden in Boyle Heights, and was appointed by the L.A.County Board of Supervisors to serve on the City of Agoura Redevelopment Board Oversight Commission.

Eric Tabor, Chief Deputy Attorney General, Iowa Attorney General

Eric Tabor is the Chief Deputy Attorney General for Iowa Attorney General Tom Miller.

Eric is a 1980 graduate of the University of Iowa School of Law (J.D.), having completed his third year at Harvard Law School. He served three years as an Assistant Counsel in the Office of the Legislative Counsel, U.S. House of Representatives. He returned to farm with his family near Maquoketa, Iowa, and became active in politics as a congressional candidate in the Second District of Iowa and as the chair of the Iowa Democratic Party (1993-1994).

In 1995, Eric came to the Iowa Attorney General's Office as an Assistant Attorney General in the Farm Division. Attorney General Tom Miller named him Chief of Staff in 1998 and Chief Deputy in 2013.

He has a twenty-six year old son, Noah.