



January 13, 2011

VIA EMAIL AND U.S. POSTAGE SERVICE MAIL

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Albuquerque, NM

Mr. Levon Henry
Executive Director
DNA-People's Legal Services, Inc.
Route 12, Highway 264
P.O. Box 306
Window Rock, AZ 86515-0306

Mr. Terence M. Gurley, Esq.
Director of Litigation
DNA-People's Legal Services, Inc.
Route 12, Highway 264
P.O. Box 306
Window Rock, AZ 86515-0306

Re: Management Decision - Questioned Cost Proceedings

Dear Messrs. Gillson, Henry, and Gurley:

The Legal Services Corporation ("LSC") has determined, pursuant to 45 C.F.R. Part 1630, that expenditures by DNA-People's Legal Services, Inc. ("DNA") in connection with certain staff salary payments and the mortgage and maintenance costs of property in Flagstaff, Arizona, are disallowed, totaling \$348,218.56 as of the end of January 2011. As per 45 C.F.R. § 1630.7(d), LSC's decision to disallow these costs and the rationale for the decision are provided below.

BACKGROUND

On October 13, 2010, LSC sent DNA a Notice of Questioned Cost ("Notice") in which LSC questioned, as allowable costs, expenditures incurred in connection with DNA's Temporary Workweek Policy and its purchase of real property in Flagstaff, Arizona (attached hereto as Attachment A). LSC's concerns relating to these expenditures arose during LSC's Office of Compliance and Enforcement's ("OCE") Case Service/Case Management System ("CSR/ CMS") On-site Review of DNA

from November 30, 2009 to December 3, 2009, and pursuant to findings in an audit report by DNA's independent auditor released in April 2009.¹

On October 28, 2010, LSC received a request for an extension of time to respond to LSC's Notice (attached hereto as Attachment B). In its request, DNA asserted it had not received the Notice directly, but received it by email from Mr. Gillson on, or before, October 27, 2010. In accordance with 45 C.F.R. § 1630.13(b), LSC granted DNA an extension of until November 29, 2010 to respond to the Notice² (attached hereto as Attachment C).

On November 29, 2010, LSC received DNA's response to LSC's Notice ("DNA's Response") (attached hereto as Attachment D). Pursuant to 45 C.F.R. § 1630.7(d), LSC had sixty (60) days from its receipt of DNA's Response to issue a management decision stating whether LSC will disallow the costs.

DISCUSSION AND ANALYSIS

As explained in LSC's Notice of October 13, 2010, LSC regulations provide uniform standards for the allowability of costs. *See* 45 C.F.R. Part 1630. Generally, expenditures by a recipient are allowable under the recipient's LSC grant or contract only if the recipient can demonstrate that the expenditures meet certain criteria. *See* 45 C.F.R. § 1630.3(a). Costs charged to a grant recipient's LSC fund may be disallowed, or questioned, upon a finding that there has been a violation of a provision of law, regulation, contract, grant, including but not limited to, the requirements in The Accounting Guide for LSC Recipients ("The LSC Accounting Guide"), and The LSC Property Acquisition and Management Manual ("PAMM"). LSC may also disallow a cost that is not supported by adequate documentation, or a cost that is unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances. *See* 45 C.F.R. § 1630.2(g).

Under Part 1630, the recipient bears the burden of proving the allowability of a cost and "may respond with written evidence and argument to show that the cost was allowable, or that the Corporation, for equitable, practical, or other reasons should not recover all or part of the amount, or that recovery should be made in installments." *See* 45 C.F.R. 1630.4, and 45 C.F.R. § 1630.7(c).

A. DNA's Temporary Workweek Policy

As described in detail in the Notice, during OCE's last CSR/CMS on-site visit to DNA, it learned that from July 7, 2008 until September 28, 2009, DNA implemented a new workweek policy allowing 22 employees to work 32 hours per week but be paid for 40 hours per week ("Temporary Workweek Policy"). LSC questioned the cost of the Policy on the following grounds: 1) the cost incurred in implementing the policy was not supported by

¹ LSC provided its detailed rationale for questioning these costs in its Notice of October 13, 2010.

² Pursuant to 45 C.F.R. § 1630.7(c) and 45 C.F.R. § 1630.13(a), DNA's response was originally due by November 12, 2010.

adequate documentation as required by 45 C.F.R. § 1630.2(g)(2), and 2) the cost was unreasonable and did not reflect the actions a prudent person would take in the circumstances. *See* 45 C.F.R. § 1630.2(g)(3).

1. Requirement of Adequate Documentation (45 C.F.R. § 1630.2(g)(2))

In its Notice of October 13, 2010, LSC asserted that the cost DNA incurred in implementing its Temporary Workweek Policy was not supported by adequate documentation as required by 45 C.F.R. § 1630.2(g)(2) or documented in accordance with The LSC Accounting Guide. LSC provided a sample Timesheet for Michael Becenti for period ending December 19, 2008 (attached to the Notice as Attachment A), which logged 64 hours, but listed 80 "Total Hours." LSC also relied on an email from Mr. Henry of August 22, 2008 in which he stated "the amended schedule did not change hourly rate only hours worked per week" and that staff was "still getting 40 hour pay rate for 32 hours worked[.]" *See* Email from Levon Henry dated August 22, 2008 (attached to Notice at Attachment B). LSC's understanding was that some of DNA's staff were working and documenting 32 hours per week while the Temporary Workweek Policy was in effect, but DNA paid them for 40 hours.

In DNA's Response, it asserted that "[i]n all instances the DNA timesheets in question accurately reflected the actual hours worked[]" and "the accurate hours worked during this time period is 32 hours and that is what is reported on the timesheets pursuant to the tested worked week policy." *See* DNA's Response, at 1-2. DNA also argued that LSC has misinterpreted Mr. Henry's email of August 22, 2008 and that the email only addressed the salary rate for hours worked over 32 but less than 40 per week. DNA further asserted that The LSC Accounting Guide does not address salary plans, and that pursuant to DNA's Personnel and Policy Manual, Mr. Henry acted within his authority to create a salary plan for DNA's employees.

After carefully considering DNA's assertions, LSC does not find that DNA has met its burden to show that the cost associated with the Temporary Workweek Policy was properly documented and allowable. DNA provides no explanation for the discrepancies found on timesheets OCE reviewed in its CSR/CMS review in late 2009, or support for its assertion that "[i]n all instances the DNA timesheets in question accurately reflected the actual hours worked." If the timesheets for employees whom took advantage of the Policy were accurate, and these employees' were paid for 32 hours of work per week, DNA should have little difficulty providing LSC with copies of these timesheets and contemporaneous salary calculations to support its assertion. DNA, however, did not provide LSC with any such documentation.

Secondly, DNA provides no evidence to support its interpretation of Mr. Henry's email or its assertion that the Temporary Workweek Policy was a salary plan developed, implemented, and approved as allowed under DNA's Personnel Policies and Procedures Manual. Although DNA is correct that The LSC Accounting Guide does not address salary plans, it does provide standards and illustrative appendices for documenting costs, including payroll costs. The Guide was specifically designed to, among other things, provide LSC recipients with

guidance on how to account for costs in a manner "pursuant to the cost standards of 45 C.F.R. § 1630." See The LSC Accounting Guide (2010 Edition), at 9, 37; The LSC Accounting Guide (1997 Edition), at 33. Under 45 C.F.R. § 1630.3(a), expenditures are only allowable if a recipient can demonstrate that the cost was "consistent with accounting policies and procedures that apply uniformly to both the Corporation-financed and other activities of the recipient," "determined in accordance with generally accepted accounting principles," and "[a]dequately and contemporaneously documented[.]" As such, if DNA cannot show that its payroll costs documentation met these standards, regardless of whether the cost was incurred pursuant to an appropriately designed and implemented salary plan, the cost is not allowable under 45 C.F.R. Part 1630.

LSC acknowledges DNA's statement that its "errors were unintended and, essentially procedural rather than substantive." However, LSC notes that the requirements to properly document expenditures under 45 C.F.R. Part 1630 and The LSC Accounting Guide are procedural by nature - as are many of LSC's other grant conditions and regulations. Similarly, LSC cannot waive these procedural requirements for recipients whom unintentionally deviate from them.

For the reasons set forth above, LSC does not find that DNA has met its burden to show that the cost associated with DNA's Temporary Workweek Policy was properly documented pursuant to 45 C.F.R. § 1630.2(g)(2). As such, LSC disallows the cost.

2. Requirement of Reasonableness (45 C.F.R. § 1630.2(g)(3))

Having already decided that DNA has not met its burden to show that the cost associated with DNA's Temporary Workweek Policy was adequately documented as required by 45 C.F.R. § 1630.2(g)(2) and The LSC Accounting Guide, LSC may disallow the cost without an evaluation of whether the cost is also disallowed under 45 C.F.R. § 1630.2(g)(3).

LSC would like, however, to respond to a number of DNA's assertions. LSC understands and appreciates the difficulties recipients face in retaining experienced and qualified staff in light of recipient's limited financial resources. LSC appreciates DNA's intention to take action to address low staff moral and would not question properly documented and approved costs incurred as a result of, for example, hourly rate salary raises. LSC also recognizes DNA's efforts to inform its Board of Directors in August 2008 that administrative staff were working an amended work schedule, and the Board's decision to continue the schedule in January 2009. LSC cannot condone, however, as reasonable or prudent, the manner in which DNA implemented its efforts (*i.e.*, a manner which resulted in repeated discrepancies on employees' timesheets).

3. Cost Amount

Based on the information available to LSC, LSC calculated the cost DNA incurred in connection with its Temporary Workweek Policy (*i.e.*, the salary amount paid to employees for hours they did not work) as \$147,271.15.³ In its Response, DNA did not challenge this amount or request that LSC recover the amount in installments as allowed under 45 C.F.R. § 1630.7(c). As such, the costs herein questioned, totaling \$147,271.15, will be disallowed and recovered from the next grant check otherwise payable to DNA on or around the first of March, 2011.

B. DNA's Purchase of Real Property

1. Background

As explained in the Notice, DNA's independent auditor's report for Fiscal Year 2008 ("FY08") reported that during 2007, DNA purchased real property to use as new office space in Flagstaff, Arizona (hereinafter referred to as "Flagstaff property") and that during 2008, DNA used LSC funds to pay scheduled note payments for the property without LSC's prior approval as required by 45 C.F.R. § 1630.5(b)(3). *See* Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133 Compliance Supplement for the year ending December 31, 2008, at 34, 39-40 ("[w]ithout obtaining prior approval of LSC (as required) DNA paid the scheduled note payments on the related Real Estate Contract during 2008 using LSC Funds.") (excerpts attached hereto as Attachment E).

The report went on to recommend that "DNA should post haste request approval of LSC for these expenditures[.]" and "[i]n the event of an unfavorable reply, DNA should poste haste seek other funds to meet the debt service on the Flagstaff office and the amounts previously charged to LSC funds." *See id.*, at 40. DNA Management also "concur[ed] with the auditor's recommendations[.]" *See id.*⁴

³ This figure was calculated based on the 2009 salary figures DNA provided to LSC in its 2009 grant activity report and by email.

⁴ DNA's independent auditor's report for Fiscal Year 2009 again reported that "[w]ithout obtaining prior approval of LSC (as required) DNA paid the scheduled note payments on the related Real Estate Contracts during 2008 and 2009 using LSC funds." *See* Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133 Compliance Supplement for the year ending December 31, 2009, at 40 (excerpts attached hereto as Attachment F). The report went on to again recommend that ""[i]n the event of an unfavorable reply [to DNA's request for retroactive prior approval of the expenditures], DNA should immediately seek other funding sources to meet the debt service on the Flagstaff office and the amounts previously charged to LSC funds." *See id.*, at 40. And again, DNA Management "concur[ed] with the auditor's recommendations[.]" *See id.*

2. Evaluation of DNA's Response

In its Notice of October 13, 2010, LSC recounts in detail its correspondence and meetings with DNA's management since the release of DNA's FY08 independent audit report. It also recounts both parties' attempts to bring DNA's Flagstaff property purchase into compliance with the documentation requirements of Section 4 of the PAMM and 45 C.F.R. Part 1630. *See* Notice, at 5-6. In its Response, DNA did not provide LSC with additional documentation or information to rebut LSC's assertions or evidence to show what LSC funds were - or were not - spent in connection to the property. DNA did assert that it had not received LSC's letter of April 30, 2010 regarding the property⁵ but noted it did not respond to an LSC email seeking a response to that letter, and that it would respond to the letter under separate cover. DNA did not, however, request an additional extension of time to respond to LSC's assertions regarding the Flagstaff property as allowed under 45 C.F.R. § 1630.13(b).

On December 14, 2010, LSC received DNA's letter dated December 9, 2010 with additional information and documentation regarding DNA's purchase of the Flagstaff property (attached hereto as Attachment G). Even though this letter was received by LSC outside the questioned cost procedures under 45 C.F.R. Part 1630, LSC has examined it in the interest of equity. The letter, however, neither addressed LSC's assertions in its Notice, nor provided LSC with all of the information it requested in its April 2010 letter, including the exact amounts of LSC funds that have been used in connection to the property.⁶

LSC, however, does not find that DNA has met its burden to show that the purchase was allowable under Part 1630. Although DNA has provided LSC with explanations as to why it did not seek prior approval for the purchase, and with a number of documents and general assertions relating to purchase, it has not provided LSC with a clearly explained, documented, and detailed explanation showing that LSC should allow the cost or that DNA has fulfilled the documentation requirements in Section 4 of the PAMM.

3. Cost Amount

LSC understands that since January 2008, DNA has used LSC funds to make monthly mortgage payments in amounts between \$4,917.42 and \$4,913.42 on, and a monthly maintenance fee of \$632.85 for, the Flagstaff property. DNA has not provided LSC with an alternative calculation of the amount of LSC funds it has spent on the mortgage and

⁵ Letter to Levon Henry dated April 30, 2010 (attached to the Notice as Attachment D).

⁶ For example, LSC's April 30, 2010 letter requested DNA provide "the total dollar value of the mortgage and monthly maintenance payments that have been paid to date by DNA using LSC Funds." In its letter of December 9, 2010, however, DNA stated that it anticipates paying 100% of the mortgage with LSC funds in the future. DNA does not provide LSC with the percentage that is currently being paid with LSC funds or the total dollar value of LSC funds that have been used for the mortgage and maintenance payments.

Mr. Karl Gillson, Board Chairperson
Mr. Levon Henry, Executive Director
Mr. Terence M. Gurley, Esq., Director of Litigation
January 13, 2011
Page 7 of 8

maintenance fees. As such, LSC shall disallow the amount of LSC funds it understands DNA has used for these costs, totaling \$200,947.41,⁷ as of the end of January 2011.

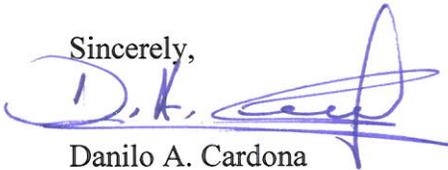
DECISION

LSC disallows the costs related to DNA's Temporary Workweek Policy, totaling \$147,271.15. This amount will be recovered from the next grant check otherwise payable to DNA on or around the first of March, 2011.

LSC disallows the mortgage and maintenance costs related to DNA's purchase of the Flagstaff property, totaling \$200,947.41 as of the end of January, 2011. This amount will be recovered from the next grant check otherwise payable to DNA on or around the first of March 2011, and subsequent grant checks as needed in accordance with this decision.

Pursuant to 45 C.F.R. § 1630.7(e), DNA may appeal this decision in writing to the LSC President within thirty (30) days of its receipt. The appeal should state in detail the reasons why LSC should allow part or all of the questioned cost.

Sincerely,



Danilo A. Cardona
Director
Office of Compliance and Enforcement

⁷ This figure was calculated using the monthly mortgage and maintenance payment amounts DNA provided LSC with its letter of February 27, 2010 and its letter of December 9, 2010. The calculation assumes payment amounts remain constant through the end of January 2011.

ATTACHMENTS

- Attachment A - Notice of Questioned Cost dated October 13, 2010 (with attachments)
- Attachment B - DNA's Request for Extension dated October 27, 2010
- Attachment C - LSC's Response to DNA's Request for Extension dated October 28, 2010
- Attachment D - DNA's Response to the Notice of Questioned Costs dated November 29, 2010 (with attachments)
- Attachment E - Excerpts from Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133 Compliance Supplement for the year ending December 31, 2008
- Attachment F - Excerpts from Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133 Compliance Supplement for the year ending December 31, 2009
- Attachment G - Letter from DNA to LSC dated December 9, 2010 Responding to LSC's Letter of April 30, 2010

Attachment A



VIA ELECTRONIC AND OVERNIGHT DELIVERY

October 13, 2010

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Santa Fe, NM

Karl Gillson
Board Chairperson
P.O. Box 2018
Gallup, NM 87305

Levon Henry
Executive Director
DNA-Peoples Legal Services, Inc.
Route 12, Highway 264
P.O. Box 306
Window Rock, AZ 86515-0306

Dear Messrs. Gillson and Henry:

Enclosed is the Legal Services Corporation's Notice of Questioned Cost dated October 13, 2010, issued pursuant to 45 Code of Federal Regulations Part 1630.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Danilo A. Cardona, Director
Office of Compliance and Enforcement

Enclosure: Notice of Questioned Cost

LEGAL SERVICES CORPORATION

3333 K Street, NW 3rd Floor
Washington, D.C. 20007-3522

<i>In re</i>	*
	*
DNA-PEOPLE'S LEGAL SERVICES, INC.	*
(Recipient No. 703068)	*
	*
Chair: Karl Gillson	*
Executive Director: Levon Henry	*
	*
(Notice of Questioned Costs	*
Dated October 13, 2010)	*

NOTICE OF QUESTIONED COSTS

The Legal Services Corporation ("LSC" or "Corporation") hereby gives notice to DNA-Peoples Legal Services, Inc. ("DNA") that certain expenditures incurred by DNA, amounting to \$147,271.15 in connection to DNA's workweek policy in effect from July 7, 2008 to September 28, 2009, and \$178,762.33 for the purchase and maintenance of real property in Flagstaff, Arizona, are questioned as allowable costs under the provisions of 45 C.F.R. Part 1630.

STATEMENT OF FACTS

1. LSC is a congressionally funded, private, non-membership, nonprofit corporation, organized under the laws of the District of Columbia. Established by the Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996 *et seq.*, as amended, H.R. 6666, Pub. L. 95-222 (December 28, 1977) (the "LSC Act"), LSC is authorized, among other things, to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, to make grants to and contracts with other entities for the purpose of providing legal assistance to clients eligible for legal assistance under the LSC Act, and to make such other grants and contracts as are necessary to carry out the purposes and provisions of the LSC Act. *See* 42 U.S.C. § 2996e(a)(1). LSC also has authority to ensure that its grant recipients comply with the provisions of the LSC Act and the rules, regulations, and guidelines promulgated by LSC pursuant to the LSC Act. *See* 42 U.S.C. § 2996e(b)(1)(A). All LSC grants and contracts are made subject to the provisions, requirements, restrictions, and limitations contained in the LSC Act, applicable appropriations acts and other applicable laws, the regulations promulgated by LSC, and such other rules, policies, guidelines, instructions and directives issued by LSC.

2. DNA is a nonprofit corporation existing under the laws of Arizona, with its main office in Window Rock, Arizona. At all times relevant hereto, DNA received annual grants from LSC for the sole purpose of providing legal assistance to persons eligible for legal assistance under the LSC Act residing in portions of five counties in Arizona, New Mexico, and Utah. In 2007, DNA received an LSC grant in the amount of \$3,273,001, it received \$3,289,125 in 2008, \$3,619,730 in

2009, and is scheduled to receive \$3,620,984 by the end of 2010. At all times relevant hereto, DNA agreed, in writing, to comply with the requirements of the LSC Act, applicable appropriations acts and other applicable laws, the regulations promulgated by LSC, and such other rules, policies, guidelines, instructions and directives issued by LSC, including, but not limited to, the requirements in The Accounting Guide for LSC Recipients ("LSC Accounting Guide"), The LSC Property and Acquisition Manual ("PAMM"), and 45 C.F.R. Part 1630.

A. DNA's Temporary Workweek Policy

3. From November 30, 2009 through December 3, 2009, LSC's Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management Systems ("CSR/CMS") on-site visit at DNA. The visit was designed, *inter alia*, to ensure DNA's compliance with the LSC Act and regulations. During the visit, OCE interviewed management and staff and reviewed relevant sample documentation in order to gain a full understanding and explanation of the programs operations.

4. In the course of reviewing a random sampling of employee timesheets processed and approved in 2008 and 2009, OCE found several inaccurate timesheets. Specifically, OCE found that some employees had been paid for 80 hours of work for several two-week pay periods based on timesheets indicating the employees had only worked 64 hours during those pay periods (*i.e.*, employees were paid for an additional 16 hours over what they logged on their timesheet). *See e.g.*, Timesheet for Michael Becenti for period ending December 19, 2008 (attached hereto as Attachment A).

5. When OCE inquired as to the rationale for the discrepancy, it learned that from July 7, 2008 to September 28, 2009, DNA implemented a temporary workweek policy allowing 22 employees to work 32 hours per week but be paid for 40 hours. *See* Email from Levon Henry dated June 30, 2008; Email from Levon Henry dated August 22, 2008 (attached hereto at Attachment B). OCE also learned that the policy was not offered to all DNA staff, but only to certain non-litigation staff members. DNA did not obtain prior approval of the policy from its Board of Directors but intended to discuss the policy with the Board in January 2009. *See* Email from Levon Henry dated January 14, 2009 (attached hereto at Attachment B).

6. On April 5, 2010, OCE issued a Draft Report on the findings of its CSR/CMS on-site review in which it determined that the use of LSC funds to pay 22 employees from July 7, 2008 until September 28, 2009 for 40 hours per week instead of the 32 hours they logged on their timesheets was inconsistent with 45 C.F.R. Part 1630.

7. By letter dated June 7, 2010, DNA responded to OCE's Draft Report explaining that it believed the cost incurred to implement the policy was necessary and reasonable. DNA claimed that its staff was woefully underpaid and it did not have the money at the time to give staff raises, so instead, it devised a temporary workweek policy to give employees time off. DNA also claimed the policy was reasonable in light of increased gasoline prices, which around the same time reportedly prompted the Navajo Nation to consider implementing a 4-day work week policy to help employees reduce their commuting costs.

B. DNA's Purchase of Real Property

8. In April 2009, DNA's independent auditor released its *Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133 Compliance Supplement* for the year ending December 31, 2008. It reported that during 2007, DNA purchased real property to use as new office space in Flagstaff, Arizona (hereinafter referred to as "Flagstaff property") and that during 2008, DNA used LSC funds to pay scheduled note payments for the property without LSC's prior approval as required by 45 C.F.R. § 1630.5(b)(3).

9. On April 22, 2009, DNA sought advice from LSC regarding its purchase of the Flagstaff property. LSC informed DNA that LSC could not provide retroactive prior approval for the purchase. LSC advised, however, that DNA should and must fulfill the documentation requirements in Section 4 of the LSC Property and Acquisition Manual ("PAMM"), enter into a property agreement establishing LSC's interest in the property as required by Section 4(e) of the PAMM, provide LSC with information and documentation detailing the amount of LSC funds used to date for the purchase and property maintenance costs, and explain to LSC why those costs should—absent prior-approval—be deemed allowable under 45 C.F.R. Part 1630. LSC also informed DNA that if any of the costs were deemed disallowed as per 45 C.F.R. § 1630.2(d), DNA would be required to repay such amounts to LSC. *See* Email to Levon Henry dated April 23, 2009 (attached hereto as Attachment C). In October 2009, DNA requested and was granted an in-person meeting with LSC to further discuss the requirements in the PAMM and 45 C.F.R. Part 1630.

10. Over four months later, in a letter dated February 27, 2010, DNA requested approval, *nunc pro tunc*, to purchase the Flagstaff property in accordance with 45 C.F.R. § 1630.5(b)(3) and provided LSC with various documents and information relating to its purchase. In its response of April 30, 2010, LSC explained—as it had in its previous email of April 23, 2009 and meeting with DNA in October 2009—that it could not give retroactive prior approval for the Flagstaff property purchase, and provided DNA with a list of information LSC needed so it could determine whether the property and maintenance costs were allowable under 45 C.F.R. Part 1630. *See* Letter to Levon Henry dated April 30, 2010 (attached hereto as Attachment D). LSC contacted DNA again by email on May 28, 2010 urging it to respond to LSC's letter of April 30. LSC has to date not received a response to either its letter of April 30, 2010 or its email of May 28, 2010.

11. Based on the information DNA has so far provided LSC, LSC understands that on August 31, 2007, DNA settled on a purchase of property for its new Flagstaff office located at 2323 East Greenlaw Lane, Suites 1 and 2, in Flagstaff, Arizona. Since January 2008, DNA has made monthly mortgage payments in amounts between \$4,917.42 and \$4,913.42 on, and a monthly maintenance fee of \$632.85 for, the property. It is also LSC's understanding that DNA has paid these and all subsequent costs for the Flagstaff property with LSC funds, totaling \$178,762.33¹ as of the end of September 2010.

¹ This figure was calculated using the monthly mortgage and maintenance payment amounts DNA provided LSC with its letter of February 27, 2010. The calculation assumes payment amounts remained constant through 2010.

DISCUSSION AND ANALYSIS

LSC regulations provide uniform standards for the allowability of costs. *See* 45 C.F.R. Part 1630. Generally, expenditures by a recipient are allowable under the recipient's LSC grant or contract only if the recipient can demonstrate that the expenditures meet certain criteria. *See* 45 C.F.R. § 1630.3(a). Costs charged to a grant recipient's LSC fund may be disallowed, or questioned, upon a finding that there has been a violation of a provision of law, regulation, contract, grant, or other agreement or document governing the use of LSC funds, the cost is not supported by adequate documentation, or the cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances. *See* 45 C.F.R. §1630.2(g). Under Part 1630, the recipient bears the burden of proving the allowability of a cost. *See* 45 C.F.R. § 1630.4.

When the Office of Inspector General ("OIG"), the Government Accountability Office ("GAO"), or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to LSC, LSC management shall review the findings of the OIG, GAO, or independent auditor or other authorized audit organization, as well as the recipient's written responses to the findings, in order to determine accurately the amount of the questioned cost, the factual circumstances giving rise to the cost, and the legal basis for disallowing the cost. LSC management may also identify questioned costs in the course of its oversight of recipients. *See* 45 C.F.R. §1630.7(a). If LSC 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, LSC shall provide the recipient written notice of its intent to disallow the cost. The written notice

shall state the amount of the cost and the factual and legal basis for disallowing it. *See* 45 C.F.R. § 1630.7(b).²

A. DNA's Temporary Workweek Policy

As noted previously, during OCE's last CSR/CMS on-site visit to DNA, it learned that from July 7, 2008 until September 28, 2009 DNA implemented a new workweek policy allowing 22 employees to work 32 hours per week but be paid for 40 hours per week. After reviewing OCE's CSR/CMS report and DNA's response in its letter dated June 7, 2010, LSC has determined that there is sufficient basis for questioning and disallowing the cost.

First, LSC finds the cost is not supported by adequate documentation as required by 45 C.F.R. §1630.2(g)(2). In accepting LSC funds, DNA agrees to administer those funds in accordance with, *inter alia*, the LSC Accounting Guide, which provides financial accounting and reporting standards for recipients of LSC funds and describes the internal controls procedures recipients should follow to ensure accounting, reporting, and financial system integrity. The guide recommends that recipients "[r]eview time and attendance records to determine if they have been properly approved by supervisory personnel and that salary payments correspond to hours reported[] [to avoid the risk that an] [e]mployee may be paid for days or hours not worked." *See* Accounting Guide for LSC Recipients (2010 Edition), at 37; Accounting Guide for LSC Recipients (1997 Edition), at 33. DNA incorporated this guidance in its personnel policy manual:

² The recovery of a disallowed cost does not constitute a permanent reduction in the annualized funding level of the recipient, nor does it constitute a termination of financial assistance under 45 C.F.R. Part 1606, or a suspension of funding under 45 C.F.R. Part 1623. *See* 45 C.F.R. § 1630.9(b).

Time sheets must accurately reflect actual hours worked. Supervisors must review, approve and forward time sheets to Accounting on the day they receive the sheets. If a full time employee works less than 8 hours in a regular workday or 40 hours in a week, the difference must be taken as leave or flex-time, and so designated on the time sheet. Absent designation, the hours unaccounted for will be charged first to available annual leave, and then to leave without pay.

DNA Policy Manual, at 10 (emphasis added) (excerpt attached hereto as Attachment E).

DNA disregarded its own policy manual and the guidance provided in the LSC Accounting Guide when it paid employees based on inaccurate totals on timesheets and when it instructed staff responsible for processing timesheets that certain employees were to "still get[] [a] 40 hour pay rate for 32 hours worked." *See* Email from Levon Henry dated August 22, 2009 (attached hereto as Attachment B). As such, LSC finds that the cost is not supported by adequate documentation as required by 45 C.F.R. §1630.2(g)(2) and accordingly, determines that there is sufficient basis for disallowing the cost.

Further, LSC finds that the cost is unreasonable and does not reflect the actions a prudent person would take in the circumstances. *See* 45 C.F.R. §1630.2(g)(3). A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, LSC regulations require consideration of:

- (1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;
- (2) Whether the recipient acted with prudence under the circumstances, considering its responsibilities to its clients and employees, the public at large, LSC, and the federal government; and

(3) Significant deviations from established practices of the recipient which may unjustifiably increase the grant or contract cost.

See 45 C.F.R. §1630.3(b); *see also*, OMB Circular A-122, 2 C.F.R. Part 230, Appendix A.

LSC finds that a cost incurred for paying employees for hours they did not work is not an ordinary or necessary expense. LSC also finds that the new workweek policy was a significant deviation from DNA's practice and policy outlined in its own personnel policy manual. Further, the cost is not one that is expected to have been incurred by a recipient acting with prudence under the circumstances. A prudent recipient would not have implemented a policy that so significantly deviated from the internal controls procedures set out in its own policy manual and the LSC Accounting Guide. At a minimum, a prudent recipient would have sought advice or approval from its Board of Directors before offering its employees such costly benefits and would have designed and documented those benefits in a manner consistent with good accounting practices.

As also noted previously, in its June 7, 2010 response to OCE's Draft Report, DNA asserted that the new workweek policy: 1) was reasonable and necessary because the staff was woefully underpaid and DNA did not have the budget to support raises; and 2) was reasonably prudent in light of extremely high gasoline prices at the time, which had also prompted the Navajo Nation to consider allowing employees to work 40 hours within a 4-day work week to help its employees reduce their transportation costs. LSC is not persuaded by these arguments. According to the information DNA provided LSC in its 2008 and 2009 annual grant activity reports, several of the employees who took advantage of the new workweek policy received raises sometime in 2008 or

2009. Further, although it may be reasonably prudent to allow employees the flexibility of a 4-day workweek in which they could work 40 hours (*i.e.*, 10 hours each day), LSC does not believe it is reasonably prudent to allow employees to work four 8-hour days (*i.e.*, 32 hours) and be paid for five 8-hour days (*i.e.*, 40 hours).

As such, pursuant to 45 C.F.R. §1630.2(g)(2), 45 C.F.R. §1630.2(g)(3), and 45 C.F.R. §1630.7(b), LSC has determined that there is a sufficient factual and legal basis to question and disallow the cost DNA incurred in connection to its temporary work week policy (*i.e.*, the salary amount paid to employees for hours they did not work), totaling \$147,271.15.³

B. DNA's Purchase of Real Property

Pursuant to 45 C.F.R. § 1630.5(b)(3), LSC must pre-approve any purchase of real property before a recipient expends any amount of LSC funds to acquire the property. An advance understanding as to the reasonableness of the purchase guards against the risk that the purchase might come into question during a subsequent audit and found to be unreasonable or disallowed as per 45 C.F.R. § 1630.7. *See also* Legal Services Corporation Cost Standards and Procedures, 62 Fed. Reg. 68219, 68223 (Dec. 31, 1997). Pre-approval is also required for any capital expenditures exceeding \$10,000 to improve real property. *See* 45 C.F.R. § 1630.5(b)(4). Absent prior approval for such expenditures, and absent a showing that the expenditures were otherwise reasonable and allowable, such costs are questionable and potentially disallowed pursuant to 45 C.F.R. § 1630.7(b).

³ This figure was calculating based on the 2009 salary figures DNA provided to LSC in its 2009 grant activity report and by email.

As noted previously, since January 2008, DNA has used LSC funds to make monthly mortgage payments in amounts between \$4,917.42 and \$4,913.42 on, and a monthly maintenance fee of \$632.85 for, a property in Flagstaff, Arizona. After learning that DNA failed to obtain prior approval for these costs as required by 45 C.F.R. § 1630.5(b), LSC corresponded and met with DNA on several occasions over the course of the last seventeen months to encourage and assist it to take the necessary steps to show the costs were reasonable and allowable and to comply with the PAMM and 45 C.F.R. Part 1630. Having not received sufficient information to make this showing, LSC finds it has a sufficient factual and legal basis to question and disallow these costs, totaling \$178,762.33⁴ as of the end of September 2010, and any future expenditures of LSC funds for the Flagstaff property or maintenance charges.

CONCLUSION

For the reasons set forth above, LSC finds that there is sufficient basis for disallowing the following costs that were charged to LSC funds: \$147,271.15 DNA spent implementing its temporary work week policy; and \$178,762.33 DNA has paid for the purchase and maintenance of the Flagstaff property.

Additionally, LSC requires that DNA implement the following corrective actions:

1. Discontinue charging the mortgage payments and maintenance fees for the Flagstaff property to LSC funds.

⁴ This figure was calculated using the monthly mortgage and maintenance payment amounts DNA provided LSC with its letter of February 27, 2010. The calculation assumes payment amounts remained constant through 2010.

In accordance with 45 C.F.R. § 1630.7(c), DNA may, within thirty (30) days of its receipt of this Notice, respond to the undersigned with written evidence and argument to demonstrate that the questioned costs were allowable, or that LSC, for equitable, practical, or other reasons, should not recover all or part of the questioned amount, or that any recovery should be made in installments. If DNA fails so to respond, the costs herein questioned, totaling \$326,033.48, will be disallowed and recovered from the next grant check otherwise payable to DNA on or around the first of December, 2010.

Dated: October 13, 2010

LEGAL SERVICES CORPORATION

A handwritten signature in dark ink, appearing to read "D.A. Cardona", is written over a horizontal line.

BY: Danilo A. Cardona, Director
Office of Compliance and Enforcement

Attachment A

Employee No.	Name	Account No.	PP Ending
1378	Michael Becenti S-0	5000/711202	12/19/2008

	Sat.	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Total
LSC-NA				SR	SR	SR	SR	
LSC-BF								
IOLTA								
AZ VOCA								
AZ CSA								
IRS								
HOPI P.D.								
NARF-DOJ								
AZ-DOJ								
Other:								
TOTAL:								

	Sat.	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Total
LSC-NA				SR	SR	SR	4.5/4.5	
LSC-BF								
IOLTA								
AZ VOCA								
AZ CSA								
IRS								
HOPI P.D.								
NARF-DOJ								
AZ-DOJ								
Other:								
TOTAL:								

Total Hours*	Annual	Sick	Comp/Flex Taken	Comp/Flex Earned	LWOP	Other
80		4				

* (Excluding Comp- or Flex-Earned Time).

Comment: _____

Annual Leave Balance: _____

Sick Leave Balance: _____


Employee Signature


Supervisor/Timekeeper Signature

ACCOUNTING USE ONLY	
Gross Wage	1066.40
FICA	66.63
Medicare	15.46
W-H Tax	129.12
State Tax	
Insurance	
Credit Un	15.00
Pens Loan	
Colonial	
Trav Adv	
Telephone	
Ameritas	
Other	
Net Pay	710.59

Attachment B

Rosalind McClanahan

From: Levon Henry
Sent: Monday, June 30, 2008 5:55 PM
To: All DNA Users
Subject: New workweek policy
Importance: High

All Staff:

Attached is a new policy we will be using for the next three months.

Please read the attached document and should you have any questions please see your Managing Attorney/Advocate.

We will be testing this new policy for the next three months starting July 7 and ending on September 26. At the end of the test period we will evaluate the policy and at that time make a decision to recommend it to the Board of Directors.

I need you help in making this policy effective so please note any issues that may arise over the next three months and pass that information on to the supervisor.

If we are to make the policy permanent I will need the support of the entire program by not letting our case numbers slip, making sure our communities get service and maintaining quality service.

It is now in your hands and let's all pull together to make our Program a quality program.

Thank you.

Levon

Levon B. Henry, Executive Director
lhenry@dnalegalservices.org
DNA People's Legal Services, Inc.
PO Box 306
Window Rock, Navajo Nation (AZ) 86515
928-871-5630 Voice

www.nativelegalnet.org

Work Schedule

A. Definitions

1. "Work week" will be 8 a.m. to 5 p.m. Monday through Thursday or 9 a.m. to 5 p.m. Monday through Friday.
2. "Non-litigation Staff" will include all staff not directly involved in litigation
3. "Required Staff" will include the Executive Director, Litigation Director, Administration Director, Fiscal/Accounting Director, Development Director, Information Technology Director, Administrative Assistant and Executive Secretary.

B. Work Week – Non-Litigation Staff

The work week for Non-Litigation Staff will be Monday through Thursday from 8 a.m. to 5 p.m. The work week will be 32 hours per week; leave hours shall accrue equivalent to hours worked per work week. Should Managers require Non-Litigation Staff to work on Friday of the work week; Non-Litigation Staff will be paid their regularly hourly wage up to 40 hours per week. Non-Litigation Staff will be paid overtime for hours worked above 40 hours per week on approval of Manager.

C. Work Week – Litigation Staff

The work week for Litigation Staff will be Monday through Friday from 9 a.m. to 5 p.m.

D. Required Staff

The Work Week definition shall not apply to Required Staff.

Gloria Hale

From: Levon Henry
Sent: Friday, August 22, 2008 3:27 PM
To: Sylvia Struss; Rosalind McClanahan; Katherine Watchman; Pearl Yazzie; Gloria Hale; Cherylynn Arviso
Subject: RE: Paying Support Staff for Friday Hours

There is one correction:

Hourly rate: \$10.00 (the amended schedule did not change hourly rate only hours worked per week)

Weekly pay: \$400.00 Monday – Thursday (still getting a 40 hour pay rate for 32 hours worked)

Extra pay: \$10.00 Friday (example: if working 4 hours on Friday, see hourly rate; 4 hours x \$10 = \$40.00)

Overtime pay: time and a half (as defined by the Personnel Policy, beyond 40 hours per week)

 Levon B. Henry, Executive Director
levon@dnalegalservices.org
 DN People's Legal Services, Inc.
 PO Box 306
 Window Rock, Navajo Nation (AZ) 86515
 928 371-5630 Voice

www.nativelegalnet.org

From: Sylvia Struss
Sent: Friday, August 22, 2008 2:40 PM
To: Rosalind McClanahan; Katherine Watchman; Pearl Yazzie; Gloria Hale; Cherylynn Arviso
Cc: Levon Henry
Subject: Paying Support Staff for Friday Hours

Hi!

I've confirmed with Levon that, if a support staff person works hours on a Friday (subject to approval by their Managing Attorney/Advocate), or on any other day over and above their 32 hours, they get paid extra hours. The example that he reminded me of from our initial discussions about the new schedule is:

If someone's prior hourly salary was \$10/hour, they got paid \$400 per week, having worked 40 hours. Under the new schedule, they work 32 hours, but get paid the same salary, \$400; their hourly wage has increased by 20%, and is now \$12.50/hour. So if someone worked, say, 4 hours on a Friday:

32 hours worked	= \$400
+4 Friday hours worked x \$12.5/hr	= 50
Total Amount Paid for the week	= \$450

Sylvia J. Struss
 Administrative Director
 DN People's Legal Services, Inc.
 2321 E. Greenlaw Lane, Suite 1
 Flagstaff, AZ 86004
 Tel (928) 774-0653 x4803
 Fax (928) 774-9452
 e-mail: sylvias@dnalegalservices.org

11/10/2009

Gloria Hale

From: Levon Henry
Sent: Wednesday, January 14, 2009 11:03 AM
To: All DNA Users
Subject: Work Week Policy - FEEDBACK

ALL STAFF,

With the Board meeting coming up at the end of the month I'd like to make a recommendation on the Work Week Policy we've been testing for the past 6 months.

1. Staff, would you please send your comments to your Managing Attorney/Advocate or Supervisor.
2. Managers/Supervisors, once you have received all comments, please forward staff comments to me by **Friday, Jan 23**.

Thank you.

Levon

Levon B. Henry, Executive Director
lehenry@dnalegalservices.org
DNA People's Legal Services, Inc.
PO Box 306
Window Rock, Navajo Nation (AZ) 86515
928 471-5630 Voice

www.nativelegalnet.org

Dear Yazzie

From: Levon Henry
Sent: Thursday, August 20, 2009 1:23 PM
To: All DNA Users
Subject: Work Week Policy-Test Period
Importance: High
 DNA Staff:

As you all are aware we have been experimenting with a revised work week policy for several quarters. This revised work week policy was a test to see if it was possible to have a 32 hour work week without affecting client services. The effect of the revised work week is disappointment from the public of offices being closed on Fridays. In addition, at the recent Client Representative meetings the response from the Client Reps is that our offices should be open to the public 5 days a week.

Understanding that the offices should be using the closed office day to catch up on work is difficult for those community members coming in on Fridays looking for help. As our Mission Statement says, "We will focus our resources on those most vulnerable, and on those for whom we can achieve long-term benefits by breaking the cycle of poverty."

From the Program side it was helpful to have a day to catch up on work but we cannot afford to lose the support of the communities; especially in this time of need, for both us and the community. DNA, like other legal aid organizations around the country, is facing funding issues and while we are now healthy there are other legal aid programs cutting back on staff positions and services. DNA funding could become a real issue in the near future and we will need the support of our communities to keep our services flowing. The best way we can gather support is to show our communities we are available for them 5 days a week.

Understanding that you put in many hours to help our clients I will find ways to make that work rewarding; however, starting **September 28** we will resume our standard policy of a 40 hour work week for all employees.

Thank you.

Levon

Levon B. Henry, Executive Director
 Email: [@dnalegalservices.org](mailto:levon@dnalegalservices.org)
 28-71-5630 Voice

www: dnalegalservices.org

Attachment C

LORA RATH

From: LORA RATH
Sent: Thursday, April 23, 2009 2:02 PM
To: Levon Henry
Cc: DANILO CARDONA
Subject: Flagstaff, AZ Building Purchase

Hello Mr. Henry,

As a follow-up to our conversation earlier this afternoon, I would like to memorialize the basics of our conversation and reiterate the steps DNA should begin taking in regards to its recent purchase of real property in Flagstaff, AZ.

As a historical background to the situation, you indicated that the Arizona Foundation had promised that it would provide DNA the necessary funding to purchase real property in Flagstaff. DNA had anticipated that no LSC funds would be used for the purchase. However, while the sale was still pending, the Arizona Foundation indicated that it would not be able to provide the necessary funds. In order to allow the sale to go forward, the owner of the property offered to extend a loan to DNA for the purchase price. DNA accepted that offer and has been using LSC funds for mortgage payments. As DNA originally anticipated that no LSC funds would be used, prior approval for the purchase under 45 CFR Part 1630 was not sought by DNA.

As we discussed today, LSC can not provide DNA with retroactive prior approval for the purchase. However, certain steps can – and must – be taken by DNA to cure the situation moving forward. First, DNA must fulfill all of the documentation requirements of Section 4 *Acquisition Procedures for Real Property* of the LSC Property and Acquisition Manual and, assuming the PAMM's requirements are adequately complied with, enter into a property agreement with LSC which establishes LSC's interest in the real property. Such property agreement will need to be signed by both LSC and DNA and filed as appropriate under Arizona law. Second, DNA must provide LSC with information and documentation regarding all LSC funds used to date for the purchase and maintenance of the property. DNA should also provide an explanation as to why these expenditures should be deemed "allowable costs" under 45 CFR 1630. As I explained, at this point in time, absent prior approval, DNA's use of LSC funds for this purpose can be deemed a questioned cost by the OIG, LSC management, your auditor etc. However, based upon the evidence DNA is able to provide, LSC may determine that the expenditures are "allowable" despite the absence of prior approval. If LSC determines the expenditures to be allowable, the property agreement will be drafted to show that LSC's interest in the property extends backward to the time of purchase and includes all LSC funds expended on the property. If any of the costs are deemed "disallowed", DNA would be required to repay such amounts to the LSC funding line. All information should be sent to the attention of Danilo Cardona or myself.

If you have any questions regarding the documentation requirements of the PAMM, or this process in general, please do not hesitate to contact me via email or my direct number listed below.

Thanks,

Lora

Lora M. Rath
Deputy Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007
202-295-1524

9/2/2010

Attachment D



you

April 30, 2010

Levon Henry
Executive Director
DNA-Peoples Legal Services, Inc.
PO Box 306
Window Rock, AZ 86515-0306

President
Victor M. Fortuno

Board of Directors
John G. Levi
Chicago, IL
Chair

Martha Minow
Cambridge, MA
Vice Chair

Sharon L. Browne
Sacramento, CA

Jonann C. Chiles
Little Rock, AR

Thomas A. Fuentes
Lake Forest, CA

Robert J. Grey, Jr.
Richmond, VA

Charles N. W. Keckler
Arlington, VA

Victor B. Maddox
Louisville, KY

Thomas R. Meites
Chicago, IL

Laurie Mikva
Evanston, IL

Hon. Sarah M. Singleton
Santa Fe, NM

**Re: Purchase of Real Property – 2323 East Greenlaw Lane, Suites 1 and 2,
Flagstaff, AZ 86005
Recipient No. 70306**

Dear Mr. Henry:

We are in receipt of your program's February 27, 2010 letter (which was hand delivered to our office on March 2, 2010) requesting approval, nunc pro tunc, of DNA-Peoples Legal Services, Inc.'s (DNA) expenditure of LSC funds to purchase real property located at 2323 East Greenlaw Lane in Flagstaff, AZ. As was previously explained to you by a member of the Office of Compliance and Enforcement (OCE) staff – both verbally and via email, LSC can not provide retroactive prior approval for that purchase. LSC regulations require, at 45 CFR Part 1630, that prior approval be sought – and obtained - prior to LSC funds being expended to purchase real property. Absent such prior approval, any such costs charged to LSC funds are subject to questioned cost proceedings unless the costs can be determined to be reasonable pursuant to LSC regulations. The steps that DNA should – and must take – in regards to the purchase referenced above were outlined for you in an email dated April 23, 2009 from a member of my staff. See attached. Therefore, DNA's letter of February 27, 2010 will be treated as a request that LSC determine that the costs related to the purchase of the referenced real property which have previously been charged to LSC, as well as those costs to be charged to LSC in the future, are reasonable. Given the information provided thus far, LSC can not yet make that determination.

As explained to you previously, before LSC can determine the reasonableness of these costs, DNA must, at minimum, fulfill all of the documentation requirements set forth in Section 4 *Acquisition Procedures for Real Property* of the LSC Property and Acquisition Manual (PAMM). Additionally, DNA must provide evidence sufficient to support a finding that the total costs to be incurred for this purchase do not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. See 45 CFR Part 1630.3(b). The information submitted by DNA at this point in time

does not fulfill the PAMM's requirements nor does it meet those of Part 1630 and also raises several issues that must be clarified before LSC can reach any determination.

According to the information provided, the sequence of events is as follows:

- 1) Late 2003 – DNA staff moved into the Ice House Professional building;
- 2) Sometime in 2005 – the owner of the Ice House Professional building indicated the property might be sold and, if sold, DNA would possibly need to move to another location;
- 3) In late 2006/early 2007 – DNA began discussions with the Arizona Foundation for Legal Services and Education (AZFLSE) regarding capital needs. According to DNA, AZFLSE suggested that DNA include a new Flagstaff office in its funding request to AZFLSE;
- 4) Sometime in 2007 – DNA began looking for another location for its Flagstaff office;
- 5) Sometime in 2007 – DNA learned that the funding from AZFLSE would not be a grant but would instead be a loan;
- 6) August 31, 2007 – DNA settled on the real property referenced above. According to DNA, the building's owner agreed to "carry the loan" for DNA;
- 7) November 17, 2007 – DNA's Board of Directors acknowledged and accepted two loans from AZFLSE; one for \$200,000 and one for \$168,239.89. The promissory notes provided with the February 2010 letter are dated September 7, 2007 and November 2, 2007 respectively. There was no evidence provided regarding any payments made on these loans.
- 8) January 30, 2008 – DNA made its first mortgage payment to Pioneer Title Agency, Inc. the trustee for TBM Enterprises, LLC. This payment and all others made since that time have been charged to LSC funds.
- 9) April 22, 2009– DNA informed a member of the OCE staff of the circumstances surrounding the 2007 purchase and was informed both orally and in writing (on April 23, 2009) that retroactive prior approval was not possible but that steps must be taken to cure the situation or DNA would be subject to questioned cost proceedings;
- 10) October 23, 2009 – DNA's Executive Director met with a member of the OCE staff to discuss the requirements of the PAMM.
- 11) March 2, 2010 – DNA's Executive Director hand delivered a letter and several documents to LSC.

If any of the information outlined above is incorrect or if DNA has additional information regarding the timeline of events, please submit such information along with your response to this letter.

Before LSC can make a determination as to the reasonableness of DNA's purchase – absent prior approval - of the real property referenced above, several questions must be answered and additional information submitted for consideration as outlined below.

ADDITIONAL ITEMS AND EXPLANATIONS REQUIRED:

- 1) Page 2 of the February 27, 2010 letter, refers to an agreement between DNA and AZFLSE which extended the terms of repayment to begin on January 1, 2010.
 - a. Does this statement mean that, prior to January 1, 2010, DNA did not make any repayments on either of the AZFLSE loans? If so, please explain why the Promissory Note dated November 2, 2007 indicates that the entire unpaid balance, plus interest accrued, shall be paid in full on or before April 1, 2009.¹
 - b. What is meant by the statement in the February 2010 letter that “the first six installments, totaling \$38,000, will be converted from a capital loan to a grant award on a monthly basis”?
 - c. What has been the interest rate applied to the principal – and the corresponding amount in dollars?²
 - d. What amount, if any, of LSC funds have already been used to repay the loans from AZFLSE? What amount, if any, of LSC funds will be used in the future to repay the AFLSE loans?
- 2) The cost analysis provided in the February 27, 2010 letter is insufficient to fulfill the requirements of the PAMM. The PAMM requires an analysis of the average annual cost of the acquisition, including the costs of a down payment, interest and principal payment on debt acquired to finance the acquisition, closing costs, renovation costs, and the costs of utilities. *See PAMM at Section 4(c)(1) and (2).*
 - a. Please provide a spreadsheet of the cost analysis of renting versus purchase of the property for the life of the loan(s).³ The analysis should include the costs associated with the loans from both AZFLSE and TBM Enterprises, LLC and should also take into account the projected annual increases in monthly rent as contemplated on page 2 of the February 2010 letter.
 - b. What services and/or costs are included in the monthly maintenance fee of \$632.85? For example, who pays for electric, gas, water, sewer, cleaning services etc.? If any of these, or similar, services and/or costs fall outside of the

¹ The due date in the same paragraph on promissory note dated September 7, 2007 is blank so an explanation as to the due date – past or future – for that loan must also be provided.

² Both promissory notes indicate that interest “shall accrue at a rate of one percent above the short-term applicable federal rate under Section 127(d) of the U.S. Internal Revenue Code of 1986, as amended.” The actual corresponding rates of interest must be provided for the life of the loan to date.

³ Although a copy of the loan agreement between DNA and TBM Enterprises, LLC has not yet been provided, DNA’s February 2010 indicates the loan is for 30 years. Therefore, the cost analysis should cover that period of time and take into account probable increases in all associated costs of both renting and owning.

maintenance fee and are paid for separately by DNA, the actual expenditures for each service/cost must be included in the cost analysis taking into consideration projected annual increases for the life of the loan(s).

- c. DNA's February 27, 2010 letter indicates that the monthly mortgage payment is \$4,917.42 yet the spreadsheet provided indicates the payments have been \$4,913.42 since May 2008, with the higher amount being paid from January through April 2008. Please explain this discrepancy.
- 3) What is the total dollar value of the mortgage and monthly maintenance payments that have been paid to date by DNA utilizing LSC funds? What is the total dollar value – or proportion - that DNA anticipates allocating to LSC funds in the future?
- 4) What is the total dollar of other occupation costs charged to LSC funds to date. What is the total dollar value – or proportion - that DNA anticipates allocating to LSC funds in the future?
- 5) Resolution No. 2007-06, whereby the DNA Board of Directors approved the Capital Loan from AFLSE, notes that the purchase of the real property referenced above was "\$822,705 plus Settlement Charges, for a total of \$825,686.51 and \$702,705 is financed through the former owner, under a 30-year mortgage, the estimated cost of the "build out" of the office space is \$258,830.59."
 - a. The February 27, 2010 letter indicates that "DNA entered into an agreement to purchase the Greenlaw office for \$822,705 and with a down payment of \$200,000 from AZFLSE, the mortgage amount is \$702,705 at 7.5% interest." The Settlement Statement provided with that letter states that the borrower (DNA) put down deposit/earnest money of \$20,000 and provided cash of \$102,981.51. Please explain the discrepancy between the information in these two documents.
 - b. What "build out" was/is contemplated for the Greenlaw building? Were any LSC funds utilized to undertake such construction? If so, how much LSC money was spent, for what purpose and when did the construction take place?
- 6) Finally, in addition to responding to the issues raised above, please provide this Office with a copy of:
 - a. the agreement between DNA and AZFLSE which extended the term of repayment to begin on January 1, 2010;
 - b. the loan agreement(s) referred to in each promissory note referenced above;
 - c. the sales contract between DNA and TBM Enterprises, LLC;

- d. the loan documents between DNA and TBM Enterprises, LLC – Pioneer Title Agency, as Trustee; and
- e. the DNA's Board approval of the purchase of the Greenlaw property.

In addition to the information requested above, please review the requirements of both the PAMM and 45 CFR Part 1630 to ensure that DNA submits all the necessary information. If you have any questions or need further assistance with regard to this matter, please contact Lora M. Rath at (202) 295-1524. Once LSC receives the additional information and documentation, DNA's submission will be reviewed in its totality in conjunction with 45 CFR Part 1630 and the PAMM, and if all information is completed, a recommendation will be forwarded to President Fortuno.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. A. Cardona', with a large, stylized flourish extending to the right.

Danilo A. Cardona, Director
Office of Compliance and Enforcement

Cc: Victor M. Fortuno, President
Karen J. Sarjeant, Vice President for Programs and Compliance

Attachment E

Except from Personnel Policy

obtain required approval or promptly report overtime hours does not eliminate the right to overtime compensation, but may be grounds for discipline.

(b) Overtime Pay

With prior written approval of the Executive Director, non-exempt staff who work overtime may receive cash payment in the next paycheck for the overtime work. Payment is at 1½ times the employee's hourly wage for each hour of over-time worked. The regular hourly wage is calculated by dividing gross annual salary by 2,080 (52 weeks of 40 hours).

3) Definition of Hours Worked

The definition of "hours worked" is contained in the Fair Labor Standards Act regulations, 29 CFR Part 785. In compliance with those regulations, DNA does not count as hours worked for attendance at lectures, meetings, training programs, and similar activities if:

(a) Attendance is outside of the employee's regular working hours;

(b) Attendance is voluntary;

(c) The course, lecture, or meeting is not directly related to the employee's job;
and

(d) The employee does not perform any productive work while attending.

Attendance is not voluntary if the employee is given to understand or led to believe that present working conditions or continued employment would be adversely affected by non-attendance.

Commuting time from home to work is not work time. Time spent traveling as part of the job during the regular workday is work time. Business travel away from home is work time if it occurs during regular work hours, or for those hours during which actual work or travel is performed. "Hours worked" does not include lunch breaks or any time away from work on leave, comp-time or flex-time.

F. Time and Attendance Records

All employees must complete time sheets and submit them to

their Managing Attorney or the Unit Director on the last day of each pay period. Time sheets must accurately reflect actual hours worked. Supervisors must review, approve and forward time sheets to Accounting on the day they receive the sheets. If a full time employee works less than 8 hours in a regular workday or 40 hours in a week, the difference must be taken as leave or flex-time, and so designated on the time sheet. Absent designation, the hours unaccounted for will be charged first to available annual leave, and then to leave without pay.

G. Pay Periods

Employees are paid every 2 weeks, on the Friday following the end of each pay period. Paychecks will not be processed until the employee's time sheet has been signed and received. If an employee is out of the office on the last day of a pay period, the employee's paycheck may be processed; however, the employee must sign their time sheet as soon as they return to the office.

H. DNA Loan Forgiveness Program

1) Effective Date

The DNA Loan Forgiveness Program ("Program") became effective on July 14, 1990.

B.2) Program Administration

(a) The Executive Secretary has responsibility for administering the Program. Litigators who wish to participate in the Program must complete an initial application provided by the Executive Secretary. The Executive Secretary, consistent with these guidelines, determines which loans are eligible for forgiveness and the loan forgiveness amount to which each Litigator is entitled. The Director of Administration shall review and approve each application.

(b) The Executive Director may review extraordinary situations not specifically addressed by these guidelines on a case-by-case basis.

3) Eligibility

All Litigators who have originally been employed by DNA as full-time employees and who have outstanding educational loans which became due on or after the effective date of the Program may be eligible under the Program. Litigators whose work schedule has later been modified after their three-year commitment retain

Attachment B



DNA-PEOPLE'S LEGAL SERVICES, INC.

VIA ELECTRONIC AND U.S. POSTAL SERVICE DELIVERY

October 27, 2010

Administration
PO Box 306
Window Rock, AZ 86515
928-871-4151
928-871-5036 Fax

Chinle DNA
PO Box 767
Chinle, AZ 86503
928-674-5242
928-674-2410 Fax

Flagstaff DNA
123 E. Greenlaw Lane
Flagstaff, Az 86004
928-774-0653
928-774-9452

Crownpoint DNA
PO Box 116
Crownpoint, NM 87313
505-786-5277
505-786-7275 Fax

Fort Defiance DNA
PO Box 306
Window Rock, AZ 86515
928-871-4151
928-871-5036 Fax

Hopi DNA
PO Box 558
Havas Canyon, AZ 86034
928-738-2251/5345
928-738-5343 Fax

Mexican Hat DNA
PO Box 310458
Mexican Hat, UT 84531
435-739-4380
435-739-4384 Fax

Farmington DNA
709 North Butler
Farmington, NM 87401
505-325-8886
505-327-9486 Fax

Shiprock DNA
PO Box 987
Shiprock, NM 87420
505-368-3200
505-368-3212 Fax

Tuba City DNA
PO Box 765
Tuba City, AZ 86045
928-283-5265
928-283-5460 Fax

Website:
www.nativelegalnet.org

Danilo A. Cardona
Director
Legal Services Corporation
3333 K Street, NW
3rd Floor
Washington, DC 20007-3522

Dear Mr. Cardona:

I have been directed to prepare our response to your letter of October 13, 2010, which enclosed the LSC Notice of Questioned Cost of October 10, 2010. That letter has never been directly received by us here at Window Rock, but was electronically received by Mr. Gillson and been forwarded it to us.

We fully recognize the gravity of these matters, and the severe impact of the potential penalties. We believe we can provide mitigating evidence to demonstrate to your satisfaction that the questioned costs are, in fact, allowable.

But to do this, we need more time, and we ask for your permission.

I am writing, therefore, to acknowledge receipt, to state that we are preparing a response, and to respectfully request that we be allowed an additional thirty (30) days in which to respond, ie, until December 15, 2010.

May I please have your reply to this request at your first available opportunity? My direct line is 928-871-5640; my email address is tgurley@dnalegalservices.org.

Thank you for your consideration.

Very truly yours,


Terence M. Gurley, Esq.
Director of Litigation



Attachment C



October 28, 2010

VIA EMAIL AND MAIL DELIVERY

Mr. Terence M. Gurley, Esq.
Director of Litigation
DNA-People's Legal Services, Inc.
Route 12, Highway 264
P.O. Box 306
Window Rock, AZ 86515-0306

President
Victor M. Fortino

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 Korrell
Seattle, WA

Victor B. Maddox
Louisville, KY

Laurie Mikva
Evanston, IL

Fr. Pius Pietrzyk, OP
Zanesville, OH

Julie Reiskin
Denver, CO

Gloria Valencia-Weber
Albuquerque, NM

Re: DNA-People's Legal Services, Inc.'s Notice of Questioned Costs

Dear Mr. Gurley:

We are in receipt of DNA's letters of October 27 and October 28, 2010 requesting a thirty (30) day extension to respond to LSC's Notice of Questioned Cost ("Notice") dated October 13, 2010. We are also in receipt of your letter of October 28, 2010 explaining and apologizing for an expression that had been inadvertently included in your extension request of October 27.

On October 13, 2010, LSC sent the Notice to Mr. Karl Gillson, DNA's Board Chairman, and Mr. Levon Henry, DNA-People's Legal Services, Inc.'s ("DNA") Executive Director, via email and mail. As such, LSC anticipated a response from DNA with thirty (30) days from its receipt as required under 45 CFR § 1630.7(c), or by November 12, 2010.

LSC understands that the basis for DNA's extension request is that it never directly received the Notice but that Mr. Gillson recently forwarded it to DNA. DNA does not, however, explain the basis for its calculation that a thirty (30) day extension would give DNA until December 15, 2010 to respond, provide any evidence supporting its assertion of delay, or provide any other concrete reason why it will need more than thirty (30) days from its receipt of the Notice to respond.

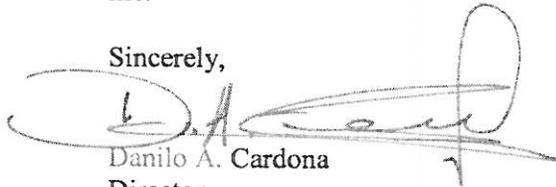
Under 45 CFR § 1630.13(b), LSC may grant a recipient an extension of time to respond to a Notice of Questioned Cost upon a "written request for good cause." LSC finds that DNA's request lacks sufficient support and specificity to justify a significant extension. However, LSC believes DNA should have a full thirty (30) days from its receipt of the Notice to respond as required under 45 CFR § 1630.7(c).

Under 45 CFR § 1630.13(a), time limits for DNA's response shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure. In light of DNA's confirmation that it was in receipt of the Notice as of October 27, 2010 (or sooner), LSC will anticipate a response from DNA on November 29, 2010, by COB Eastern Standard Time.

LSC also requests that DNA please confirm that Mr. Henry's email address is lhenny@dnalegalservices.org, and that, if possible, DNA provide LSC with a non-P.O. Box address it can use to send DNA correspondence via Federal Express so to avoid any future delays in communicating with the program.

If you have any questions relating to this matter, please do not hesitate to contact me.

Sincerely,

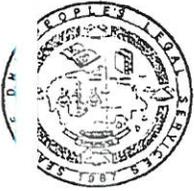
A handwritten signature in black ink, appearing to read 'Danilo A. Cardona', written over a horizontal line. The signature is stylized and includes a large loop at the end.

Danilo A. Cardona

Director

Office of Compliance and Enforcement

Attachment D



DNA-PEOPLE'S LEGAL SERVICES, INC.

VIA ELECTRONIC AND U.S. POSTAL SERVICE DELIVERY

November 29, 2010

Danilo A. Cardona
Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW 3rd Floor
Washington, DC 20007-3522

Dear Mr. Cardona:

We acknowledge that we made mistakes, and the Administration takes full responsibility for them.

But we implore you to recognize that the errors were unintended and, essentially, procedural rather than substantive. All funds were used for the betterment of the program and the clients we serve, even though with hindsight we can now see how the implementation was mishandled.

A. DNA's Temporary Workweek Policy.

1. 45 CFR § 1630.2(g)(2) – The cost is not supported by adequate documentation.

The Notice of Questioned Cost, at page 8, in regard to cost not supported by adequate documentation, states, "The [LSC Accounting] guide recommends that recipients '[r]eview time and attendance records to determine if they have been properly approved by supervisory personnel and that salary payments correspond to hours reported[] [to avoid the risk that an] [e]mployee may be paid for days or hours not worked.'" The Notice also cites DNA's personnel policy manual that "Time sheets must accurately reflect actual hours worked." The Notice concludes that "DNA disregarded its own policy manual and the guidance provided in the LSC Accounting Guide when it paid its employees based on inaccurate totals on timesheets and when it instructed staff responsible for processing timesheets that certain employees were to 'still get [a] 40 hour pay rate for 32 hours worked.'"

In all instances the DNA timesheets in question accurately reflected the actual hours worked.

The LSC Notice takes the August 22 email out of context when it concludes that DNA paid our "employees based on inaccurate totals on timesheets and when it instructed staff responsible for processing timesheets that certain employees were to still get a 40 hour pay rate for 32 hours worked." When taken in the light of a

Administration
PO Box 306
Tucson, AZ 86515
928-871-4151
928-871-5036 Fax

Chino DNA
PO Box 767
Chino, AZ 86503
928-674-5242
928-674-2410 Fax

Flagstaff DNA
13 E. Greenlaw Lane
Flagstaff, AZ 86004
928-774-0653
928-774-9452

Crownpoint DNA
PO Box 116
Crownpoint, NM 87313
505-786-5277
505-786-7275 Fax

Fort Defiance DNA
PO Box 306
Tucson, AZ 86515
928-871-4151
928-871-5036 Fax

Hopi DNA
PO Box 558
Kane Canyon, AZ 86034
928-738-2251/5345
928-738-5343 Fax

Mexican Hat DNA
PO Box 310458
Mexican Hat, UT 84531
435-739-4380
435-739-4384 Fax

Farmington DNA
709 North Butler
Farmington, NM 87401
505-325-8886
505-327-9486 Fax

Shiprock DNA
PO Box 987
Shiprock, NM 87420
505-368-3200
505-368-3212 Fax

Tuba City DNA
PO Box 765
Tuba City, AZ 86045
928-283-5265
928-283-5460 Fax

Website:
www.nativelegalnet.org



salary increase the focus of the August 22 email is the payment of hours worked beyond 32 hours in one week. That for hours worked on a Friday, or beyond the 32 hours but less than 40 hours, the staff person would receive the same rate of pay as a normal work day. And that only after 40 hours worked would the staff person receive time and a half pay pursuant to the DNA policy manual. The accurate hours worked during this time period is 32 hours and that is what is reported on the timesheets pursuant to the tested worked week policy.

The Accounting Guide for LSC Recipients (2010 Edition/1997 Edition) does not speak to salary plans for Recipients' employees.

DNA's Personnel Policies and Procedures Manual (2001 Edition/2009 Edition) state "The Executive Director is responsible for developing and implementing a job classification schedule and salary plan for DNA. The Board of Directors must approve any Salary Plan. Supervisors assist in preparing the salary plan and job description for employees in their area of responsibility...The Board of Directors must approve any changes or modifications to the Salary Plan." DNA Policy, Section V. Compensation (B).

As stated in the email communication from Levon Henry in regard to the "New work week policy," "We will be *testing* this new policy for the next three months starting July 7 (2008) and ending on September 26 (2008). At the end of the *test* period we will evaluate the policy and at that time make a decision to recommend it to the Board of Directors." (Emphasis added).

Thus, it is clear that this policy was under constant and on going review.

1. 45 CFR § 1630.2(g)(3) – The cost is unreasonable and does not reflect the actions a prudent person would take in the circumstances.

- i. Whether the cost is a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract.

Salary increases are generally recognized as ordinary and necessary for the operation of DNA.

Regarding this issue, we must begin by stressing that this was not some spendthrift frenzy, where Administration just came in one day and decided to cut everybody's work week. We were facing serious problems with staff morale. Given the raging unemployment statistics on the Navajo nation, we didn't encounter resignation from employment, but a more insidious type of resignation, where many of our staff, especially longtime staff, were just wearing out, wearing down. We had recently had to provide raises to our lawyers, in order to remain even marginally competitive in the job market (not only are we routinely trumped by private law firms, we are also always outbid by the various tribal governmental agencies that hire advocates and lawyers).

We did not have adequate funding to provide raises for our support staff. We knew it; and we also knew that we nevertheless had to do something to boost morale.

Our solution was *time*. If we couldn't give raises, maybe we could give time off. We determined to do this *only if* it did not negatively impact client service, and positively impacted staff morale

and litigator productivity. The idea was that a skeleton support staff crew would be in the offices on Friday, but that all litigators would be there, and thus have a private, "no appointments" work day to get caught up on their cases, engage in the necessary research, actually have the opportunity to think and plan and strategize their cases, etc. (I suspect you know, and all experienced litigators, including the undersigned, know that in a busy law practice, more time is frequently more valuable than more money).

ii. Whether the recipient acted with prudence under the circumstances, considering its responsibilities to its clients and employees, the public at large, LSC, and the federal government.

We strenuously dispute the OCE finding that this was "unreasonable and does not reflect the actions a prudent person would take in the circumstances". In fact, it was very reasonable, given the severe and bleak economic realities we faced in attempting to address staff lethargy. Also, we did in fact get board approval, although we acknowledge it took the form of ratification after the fact, and should have been done before implementation of the proposed new work week policy.

There was, nevertheless, board approval. The August 2, 2008 Board minutes reflect the report by the Executive Director to the Board in which the "Amended work schedule" is highlighted in the report. The Board accepts the Executive Directors report. In addition, the January 31, 2009 Board minutes specifically addressed the "Weekly Schedule" wherein the Board President, Karl Gillson states, "Mr. Henry advised me that staff wish to continue with this experimental weekly schedule, thus he wishes to table this. I think [it] is a good idea." The DNA Board of Directors was updated on this matter. And this 18 member board includes 7 private attorneys, 4 government lawyers, and several private business owners. The fact that this policy was approved by such people contradicts the finding that that the policy was unreasonable and not prudent. In fact, it supports the exact opposite, that reasonable and prudent people here on the ground recognized the problem we faced, and supported trying a novel and unique possible solution.

Upon further study, as you know, the policy was rescinded. But the rescission does not mean the policy was unreasonable or not prudent.

iii. Significant deviations from established practices of the recipient which may unjustifiably increase the grant or contract cost.

Given the conditions we confronted, a twenty percent (20%) increase in salary is not a significant deviation and does not unjustifiably increase the grant or contract cost. In the end there is no increase in the grant to DNA from LSC and the salary plan is within the management determination of DNA.

As part of the DNA salary plan, all employees are given a merit increase on their anniversary date of hire after a recommendation by their respective supervisor. This merit increase ranges from 2% to 4% depending on the years of service to DNA. It is noted that the merit increase does not conform to the cost of living increase as typical to other organizations and DNA does not provide a cost of living increase.

B. Flagstaff Property Purchase.

Understanding that LSC prior approval is not retroactive for the Flagstaff property purchase, DNA is committed to working with LSC on submitting all required documentation. However, for unknown reasons, we did not receive the April 30, 2010 letter which outlines the additional items and explanations required until the October 13, 2010 Notice of Questioned Costs (Notice). We acknowledge this does not excuse the non-response to the follow up email of May 28, 2010, which should have triggered a reply on or before December 8, 2010. DNA will be filing, under separate letter, the complete response to the LSC request for additional information. In addition, DNA is prepared to complete documents that include LSC as a joint property owner.

Regarding the Flagstaff purchase, the facts are these: we were approached by a state funding source offering grant money for "bricks and mortar" improvement. It was these funds, and only these funds, that were intended for this purchase. We had a desperate need to find other quarters in Flagstaff, due to the imminent ejection from our former office space (landlord had announced plans to not renew lease); and also the difficulty of access which our clients had.

After commitments were made, contracts entered into (all based on the promised grant from the state funding source), we were suddenly informed by this funding source that the money would not be forthcoming, or at least, not forthcoming in the promised fashion

The original enthusiasm for the Flagstaff purchase was triggered by the promised availability of these non-LSC funds. Had they not been in the picture, the move would not have happened as it did, when it did. We would have been forced to bide our time, and see what was available for rent in the market when the looming eviction actually occurred.

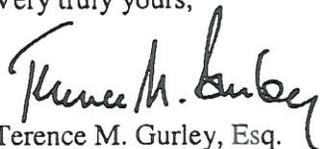
At no time were we attempting in any way to skirt LSC requirements regarding prior notice for purchase or expenditure in excess of \$10,000. We had been assured that these non-LSC funds were a grant, and were too far into the process when we suddenly were informed that what was once a "grant" had to be redesigned as a "loan".

We have been funded by LSC for more than 40 years. We are very proud of our heritage as the largest and oldest LSC program primarily serving Native America. We treat LSC funds with the highest fiduciary respect. We sincerely believed we were operating within LSC requirements in both these instances.

We ask for your understanding and your reconsideration of these findings so that we might be able to maintain the high standards of service we have been able to set, and only with the crucial LSC support, in servicing the legal needs of our clients.

We assure you that the lesson has been learned, and these errors will not be repeated.

Very truly yours,



Terence M. Gurley, Esq.
Director of Litigation

Attachments DNA Board Meeting Minutes for August 2, 2008 and January 31, 2009

BOARD OF DIRECTORS MEETING

Jicarilla Inn & Casino
Dulce, New Mexico

August 2, 2008

M I N U T E S

BOARD MEMBERS PRESENT:

Robert C. Begay
Flora K. Ben
Diandra D. Benally
Donovan D. Brown, Sr.
Robert Charley
William Cooke
Karl Gillson
Charley Long, Sr.
Stanley Montoya
Butch O'Neal
Sarah J. Riggs
Leo Sheppard, Sr.
Ella R. Wilson

BOARD MEMBERS ABSENT:

David Barrow
Milagros Cisneros
Faith C. Klepper
Faron Morgan
Mack (Herm) Olsen
Craig Soland
Richard C. Wade

STAFF MEMBERS PRESENT:

Levon B. Henry
Terence M. Gurley
Rosalind McClanahan
Rena Taliman
Kathy Gallagher
Esther Keeswood-Begay

(Meeting Sign-In Sheet attached)

MEETING CALLED TO ORDER: Meeting was called to order at 9:18 a.m. by Board President Karl Gillson.

ROLL CALL, INVOCATION, AND INTRODUCTIONS: Roll call was done by Rena Taliman, Administrative Assistant. Invocation was done by Stanley Morgan after which he welcomed all present and said he felt privileged to have DNA visit Dulce. New Board member, Flora K. Ben was introduced. She will be representing Coconino County Advisory Committee. Introductions of all present followed.

APPROVAL OF AGENDA: Sarah E. Riggs moved that items, Board Compensation and Salary Increases for Attorneys, be added to the Agenda under 11. Other Business. In order to retain lawyers she felt that salary increases were necessary. Ella R. Wilson also moved that discussion was needed regarding the DNA Newsletter. After a brief discussion, Leo Sheppard, Sr. made a motion to approve the agenda as amended and Robert Charley seconded the motion. **MOTION PASSED UNANIMOUSLY.** The request for attorney salary increases to be handled administratively.

APPROVAL OF MAY 3, 2008 BOARD MEETING MINUTES: Robert C. Begay requested that a correction be made to the Minutes. He is affiliated with the San Juan Chapter and NOT San Juan County. Motion to approve the minutes as corrected was made by Leo Sheppard, Sr. and second by Charley Long Sr. **MOTION PASSED UNANIMOUSLY.**

BUDGET AND AUDIT COMMITTEE MEETING REPORT: Report was made by Ella R. Wilson, Chairperson of the Committee with input from Rosalind McClanahan, Fiscal Manager. There are three different worksheets. The first financial report covers LSC monies only as of June 30, 2008. The LSC budget is **\$3,617,945**; less expenses to 6/30/08 is **(\$1,602,733)**; less projected expenses from 7/08 to 12/08 is **(\$1,803,172)**; resulting with a projected remaining balance/carryover of **\$212,040** (12/31/08). The **Personnel** budget is projected to have a remaining balance of **\$54,294**. Individuals are being hired including an advocate for the Chinle Office and another at the Tuba City Office. It appears like most of the offices that have vacancies will have them all filled soon. A managing attorney position will open at the Hopi Office with the transfer of Brian Quint to the Tuba City Office

so that all budget balances will be in the "black". Any money that comes in is usually spread around to where it is needed. Because of large medical health claims, increase in group health and dental insurance premiums will occur. The NAPAP Program remained with our employee benefits programs because they could not afford to go on their own and most of the large claims are theirs. Rosalind explained the balance sheets. There is an investment of \$1,152,775 in the SmithBarney Account all in CDs, and \$226,653 total cash in bank. This money will be used for payroll. LSC gives us funds for a year and is invested until it is needed. There are funds in the amount of \$91,612 for accrued vacation leave in case LSC ever shuts down. Average payroll per pay period is \$70,000-80,000. DNA will get around \$200,000 Civil Legal Services funding with additional monies which will allow us to hire an advocate.

Discussion followed. There is a petty cash account in the amount of \$50 for whenever there is a need for a small purchase. The petty cash and litigation accounts at each office are audited. Wells Fargo is the bank utilized by DNA. Bank of America is used to cover the New Mexico service area. Donovan Brown, Sr. made the motion to accept the financial report. Second to the motion was made by Sarah J. Riggs. MOTION PASSED UNANIMOUSLY.
(Financial Report is at Tab 5 of the Board packet.)

Report By Levon B. Henry, Executive Director: Mr. Henry thanked Mr. Montoya for help with the arrangements made for the meetings held here today. His report consisted of the:

- 1) **Client Representative Meetings:** Client rep. meetings have been scheduled. On August 4th, the meetings will begin with Tuba City and Shiprock on August 5th. On August 11th, 12th, and 13th in Chinle, Crownpoint, and Fort Defiance agencies. These meetings are being coordinated by Anita Natonabah. All meetings will begin at 9:00 a.m. Elections of new representatives are scheduled along with sharing of information so that all attending representatives know what is going on at DNA.
- 2) **Amended work Schedule:** The administrative staff held meetings and decided to allow the non-litigation staff to go on an amended work schedule. Other governments have talked about going to a four-day work week. This is a response to changes in the economy. The amended schedule is in a testing phase right now for the next three months through September 30th. The staff will work Monday through Thursday, 8 a.m. to 5 p.m. The litigation staff will work Monday through Friday, 9 a.m. to 5 p.m. The non-litigation staff appreciate the extra time off since they do not have to come in on Fridays and will even save on the high cost of gas. This change does not apply to the administrative staff. They work the normal 8 a.m. to 5 p.m. hours, Monday through Friday. At the end of the testing period, an evaluation will be done taking an account of cases that were opened or closed, and on the community response. After this evaluation is complete, it will be brought back to the Board for approval one way or another.
- 3) **Legal Services Corporation (LSC) Budget Package:** The Fiscal Year 2009 budget has been submitted to Congress in the amount of \$390 million, an increase of \$40 million over last year's budget. The budget package has moved through the Senate Appropriations Committee and through the House Committee. With the upcoming elections there is a prediction that the federal budget will be operating under a continuing resolution through early 2009 until a new budget is passed.
- 4) **LSC Directors Meeting - June 9 & 10, 2008:** A meeting for all program executive directors was held to discuss recruitment and retention of attorneys, leadership transition, and technology matters. We have eight new staff members, six attorneys and two tribal court advocate trainees. We are now fully staffed. Brian Quint, Managing Attorney at Hopi will be Managing Attorney at Tuba City and we will have a vacancy there.
- 5) **American Indian Probate Reform Law:** DNA will be working with retired

DNA-PEOPLE'S LEGAL SERVICES, INC.
DNA BOARD OF DIRECTORS MEETING

COURTYARD BY MARRIOTT LAKE POWELL
PAGE, ARIZONA

January 31, 2009

M I N U T E S

BOARD MEMBERS PRESENT:

Leo Sheppard
Faron Morgan
Flora K. Ben
Sarah J. Riggs
Karl Gillson
Robert Charley
Ella Wilson
David Barrow
William Cooke
Robert C. Begay
Butch O'Neal
Charley Long, Sr.
Laura McDermott
Milagros Cisneros

BOARD MEMBERS ABSENT:

Richard Wade
Craig Solan
Diandra D. Benally

STAFF MEMBERS PRESENT:

Levon B. Henry
Rosalind McClanahan
Kathy Watchman
Kathy Gallagher
Ronda Lewis
Terence Gurley
Sylvia Struss

(Meeting Sign-In Sheet Attached)

MEETING CALLED TO ORDER: Meeting was called to order at 9:07 a.m. Board President Karl Gillson.

ROLL CALL AND INVOCATION: Roll call was done by Mr. Gillson and invocation by Sarah J. Riggs.

APPROVAL OF THE AGENDA: Mr. Charley made a motion to approve the agenda. Mr. Morgan seconded the motion. Before we vote we wished to amend it, Mr. Henry?

Levon: I wished to add 11 D (Executive Session) on a personnel matter.

Karl: As amended all in favor say I. PASSED UNANIMOUSLY.

Karl: Technology was not functionally properly

Ella: Please view your Budget & Audit report. The Budget & Audit Committee meet this morning. If you go to the attachment after the financial report for December 31,

2008 it tells at the bottom of the third column remaining balance is what we have adjusted \$196,536 is the balance and this is subject to be audited which will be done?

Rosalind: Starting in February, 2009.

Ella: I just wanted to let you know what we had spent so far this year and what was projected. The Budget & Audit Committee did review the report and we looked at the personnel and the non-personnel. Ms. McClanahan who is the Fiscal Manager did inform us that there was some additional income. Discussion regarding the report.

Kathy G.: Discussion regarding Capital Campaign. We have not really asked people for money. We have forty-eight (48) donors and I have chart and these people and they must love DNA because they give. What's going to be the impact on people the community? I need the Board's involvement.

Karl: I'm suggesting you finish your presentation at the next Board Meeting with a power point.

Kathy: I'm at a point to where I can't go alone anymore. I need a group to work with me. I see a group of hands.

Karl: Let's right down the group of hands we see. Okay we have, Ella, Faron, Sarah, Robert, Flora and myself maybe we can meet after meeting.

OLD BUSINESS: No old business.

NEW BUSINESS: A. Weekly Schedule

Karl: Mr. Henry advised me that staff wish to continue with this experimental weekly schedule, thus he wishes to table this. I think is a good idea. Do we have any motions; Judge Motion, second by Faron Morgan. All in favor; MOTION PASSED UNANIMOUSLY.

B. Approval of Certification of Program Integrity. Levon explains certification, under LSC regulations we just serve by the Program DNA is not associated with any other programs.

C. Personnel position: ADR / Mediation

Levon: Services we provide and staff we have even though were increasing those numbers of cases I think this past year we are up 500 cases. Actually, we close an additional 500 cases and open an additional 800 cases above and beyond what we typically do so were well above the 3000 numbers in terms of opening cases. So we are increasing our services to our community. The position would be basically recruiting peace makers in the community and training and talking and working with our litigation staff. The question did come up earlier about considering our financial picture right now,

do we have the financial capacity to add one more staff member and they way I look at it right and talking with the accounting department. I believe we do have that capacity.

Faron: Is this peace making the same thing as the one the Navajo Nation has? Or would they be overseeing from the Chapter?

Levon: No this is totally within DNA office.

Sarah: Would this peace maker cover the whole five (5) agencies?

Levon: One coordinator, yes. We also looking at Jicarilla and other area we do serve.

Sarah: What would be the salary?

Levon: I think it would be depending on experience but I would say looking at thirty (30) or thirty-five (35) thousand.

Continued discussion regarding the position.

Karl: All in favor of creating a new position. Motion by Faron; second followed by Sarah; (Voting results; 5 in favor; 4 not in favor). MOTION PASSED UNANIMOUSLY.

Karl: Okay, you got your position.

EXECUTIVE SESSION: Board entered Executive Session at 11:40 a.m.

MEETING RECONVENED AT 12:30 P.M.

NEXT MEETING: Will be in Albuquerque, New Mexico this will be good for our Auditor.

ADJOURNMENT: Motion by Mr. Sheppard to adjourn; second by Ella Wilson. MOTION PASSED UNANIMOUSLY. Meeting adjourned at 12:48 p.m.

Attachment E

Report on Compliance with Requirements Applicable to Each Major
Program and Internal Control over Compliance in Accordance
With OMB Circular A-133

The Board of Directors
DNA-People's Legal Services, Inc.:

Compliance

I have audited the compliance of DNA-People's Legal Services, Inc. (DNA) with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement that are applicable to each of its major federal programs and the requirements of Legal Services Corporation for the year ended December 31, 2008. DNA's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of DNA's management. My responsibility is to express an opinion on DNA's compliance based on my audit.

I conducted my audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in government Auditing Standards, issued by the Comptroller General of the United States; and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Those standards and OMB Circular A-133 require that I plan and perform the audit to obtain reasonable assurance about whether noncompliance with the type of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about DNA's compliance with those requirements and performing such other procedures as I considered necessary in the circumstances. I believe that my audit provides a reasonable basis for my opinion. My audit does not provide a legal determination of DNA's compliance with those requirements.

As described in the items 1, 2 and 3 of the accompanying schedule of findings and questioned costs Legal Services Corporation regulations were not complied with in the instances that follow: a) one office did not verify citizenship eligibility prior to commencing representation, b) two offices did not obtain a signed statement of facts as required, and c) one instance of noncompliance with cost standards and procedures. Compliance with such requirements is necessary, in my opinion, for DNA-People's Legal Services, Inc. to comply with requirements applicable to that program; the noted noncompliance appears to be isolated instances and misunderstandings.

In my opinion, except for the noncompliance described in the preceding paragraph, DNA complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended December 31, 2008.

Internal Control over Compliance

The management of DNA is responsible for establishing and maintaining effective internal control over compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing my audit, I considered DNA's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine my auditing procedures for the purpose of expressing my opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, I do not express an opinion on the effectiveness of DNA's internal control over compliance.

A control deficiency in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect noncompliance with a type of compliance requirement of a federal program on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to administer a federal program such that there is more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that material noncompliance with a type of compliance requirement of a federal program will not be prevented or detected by the entity's internal control.

My consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. I did not identify any deficiencies in internal control over compliance that I consider to be material weaknesses, as defined above.

DNA's responses to the findings identified in my audit are described in the accompanying schedule of findings and questioned costs. I did not audit DNA's response and, accordingly, I express no opinion on it.

This report is intended for the information of the management, the Board of Directors, the audit committee, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

April 9, 2009

A handwritten signature in black ink, appearing to read "My [unclear]". The signature is written in a cursive style with a long horizontal line extending to the right.

DNA-People's Legal Services, Inc.
Schedule of Findings and Questioned Costs
Year Ended December 31, 2008

complaint.”

Effect of Condition: Affirmative representation commenced in which DNA was representing a plaintiff without having obtained the required “dated written statement signed by each plaintiff.”

Cause of Condition: Case handler(s) failed to prepare and have the client (plaintiff) sign and date the required statement of facts.

Recommendation: DNA should instruct all case handlers, particularly the case handler of this case, the requirements of Regulation 1636 requiring client identity and statement of facts.

Response: Management concurs with the auditor's recommendation.

2. Reportable Condition: Legal Services Corporation Section 1626 states “except when the only service is brief advice and telephone consultation, a citizen seeking representation must attest in writing in an LSC approved form to the fact of his or her United States citizenship.”

Effect of Condition: two clients, whose files did contain the required citizenship documentation, were represented.

Cause of Condition: Case handler(s) failed to obtain the written attest of citizenship in violation of the established DNA policies and LSC Regulations.

Recommendation: DNA should remind the subject case handler(s) of the importance of documenting citizenship with the approved form.

Response: Management concurs with the auditor's recommendation.

3. Reportable Condition: Legal Services Corporation Section 1630 states “unless prior approval has been obtained from the Corporation, no LSC funds may be used for: purchase of real property.

Effect of Condition: during 2007 DNA purchased real property with the intention of using private funding to purchase and remodel an office in Flagstaff, Arizona. In 2007 adequate private funds were raised and borrowed for the Flagstaff office purchase and remodel. However, without obtaining prior approval of LSC (as required) DNA paid the scheduled note payments on the related Real Estate Contract during 2008 using LSC funds.

Cause of Condition: Failure of DNA to follow through with the private fund raising to comply with DNA's intentions and LSC regulations.

DNA-People's Legal Services, Inc.
Schedule of Findings and Questioned Costs
Year Ended December 31, 2008

Recommendation: DNA should post haste request approval of LSC for these expenditures. In the event of an unfavorable reply, DNA should immediately seek other sources funds to meet the debt service on the Flagstaff office and the amounts previously charged to LSC funds.

Response: Management concurs with the auditor's recommendations and has requested the required LSC approval.

D. Prior Year -- Findings and Questioned Costs -- Major Federal Award Programs Audit

Management continues to take corrective action and exhaustive case review in order to significantly reduce a repeat of the audit findings from December 31, 2007:

- a) As a result of these efforts there was no repeat of finding of the December 31, 2007 reportable condition C-1 which was a repeat of a finding from December 31, 2006. The only office involved in the 2007 noncompliance did not have any findings for 2008 – and obtained a signed retainer agreement from all clients regardless whether or not required.
- b) Finding C-2 is a repeat finding from the December 31, 2007 which reported instances in which clients were represented without a retainer agreement. Management continues to instruct case handlers of the Legal Services Corporation regulations and requirements.

Attachment F

Report on Compliance with Requirements Applicable to Each Major
Program and Internal Control over Compliance in Accordance
With OMB Circular A-133

The Board of Directors
DNA-People's Legal Services, Inc.:

Compliance

I have audited the compliance of DNA-People's Legal Services, Inc. (DNA) with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement that are applicable to each of its major federal programs and the requirements of Legal Services Corporation for the year ended December 31, 2009. DNA's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of DNA's management. My responsibility is to express an opinion on DNA's compliance based on my audit.

I conducted my audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in government Auditing Standards, issued by the Comptroller General of the United States; and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Those standards and OMB Circular A-133 require that I plan and perform the audit to obtain reasonable assurance about whether noncompliance with the type of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about DNA's compliance with those requirements and performing such other procedures as I considered necessary in the circumstances. I believe that my audit provides a reasonable basis for my opinion. My audit does not provide a legal determination of DNA's compliance with those requirements.

As described in the items 1, 2 and 3 of the accompanying schedule of findings and questioned costs Legal Services Corporation regulations were not complied with in the instances that follow: a) one office did not verify and obtain attestation of citizenship eligibility prior to commencing representation, b) one office did not obtain a signed retainer agreement prior to commencing representation, and c) one instance of noncompliance with cost standards and procedures. Compliance with such requirements is necessary, in my opinion, for DNA-People's Legal Services, Inc. to comply with requirements applicable to that program; the noted noncompliance appears to be isolated instances and misunderstandings.

In my opinion, except for the noncompliance described in the preceding paragraph, DNA complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended December 31, 2009.

Internal Control over Compliance

The management of DNA is responsible for establishing and maintaining effective internal control over compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing my audit, I considered DNA's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine my auditing procedures for the purpose of expressing my opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, I do not express an opinion on the effectiveness of DNA's internal control over compliance.

A control deficiency in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect noncompliance with a type of compliance requirement of a federal program on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to administer a federal program such that there is more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that material noncompliance with a type of compliance requirement of a federal program will not be prevented or detected by the entity's internal control.

My consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. I did not identify any deficiencies in internal control over compliance that I consider to be material weaknesses, as defined above.

DNA's responses to the findings identified in my audit are described in the accompanying schedule of findings and questioned costs. I did not audit DNA's response and, accordingly, I express no opinion on it.

This report is intended for the information of the management, the Board of Directors, the audit committee, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.



April 8, 2010

DNA-People's Legal Services, Inc.
Schedule of Findings and Questioned Costs
Year Ended December 31, 2009

Effect of Condition: Representation commenced in which DNA was representing two clients without having obtained the required "retainer agreement" signed by the client

Cause of Condition: Case handler(s) failed to prepare and have the client sign and date the required retainer agreement.

Recommendation: DNA should instruct all case handlers, particularly the case handler of this case, the requirements of Regulation 1611 requiring client retainer agreements.

Response: Management concurs with the auditor's recommendation, and notes that LSC program letter 09-2 dated December 12, 2009 concerning self-inspection of cases indicates that the national error rates in reported cases, including obtaining retainer agreements where appropriate, is 3-3.5% It further states that only error rates of more than 10% require corrective action. After reviewing 90 DNA cases, the auditor found errors two of those cases, an error rate of 2.2%.

2. Reportable Condition: Legal Services Corporation Section 1626 states "except when the only service is brief advice and telephone consultation, a citizen seeking representation must attest in writing in an LSC approved form to the fact of his or her United States citizenship."

Effect of Condition: Two clients, whose files did contain the required citizenship documentation, were represented.

Cause of Condition: Case handler(s) failed to obtain the written attestation of citizenship in violation of the established DNA policies and LSC Regulations.

Recommendation: DNA should remind the subject case handler(s) of the importance of documenting citizenship with the approved form.

Response: Management concurs with the auditor's recommendation, and notes that, LSC program letter 09-2 dated December 12, 2009 concerning self-inspection of cases indicates that the national error rates in reported cases, including obtaining citizenship signatures, is 3-3.5% It further states that only error rates of more than 10% require corrective action. After reviewing 90 DNA cases, the auditor found errors two of those cases, an error rate of 2.2%.

3. Reportable Condition: Legal Services Corporation Section 1630 states "unless prior approval has been obtained from the Corporation, no LSC funds may be used for: purchase of real property.

DNA-People's Legal Services, Inc.
Schedule of Findings and Questioned Costs
Year Ended December 31, 2009

Effect of Condition: during 2007 DNA purchased real property with the intention of using private funding to purchase and remodel an office in Flagstaff, Arizona. In 2007 adequate private funds were raised and borrowed for the Flagstaff office purchase and remodel. However, when private funding declined (due to current economic conditions) and without obtaining prior approval of LSC (as required) DNA paid the scheduled note payments on the related Real Estate Contract during 2008 and 2009 using LSC funds.

Cause of Condition: Due to the Country's current economic conditions DNA's was unable to follow through with the private fund raising to comply with it's intentions and LSC regulations.

Recommendation: DNA has submitted required documents to Legal Services Corporation seeking retroactive approval of the these expenditures. In the event of an unfavorable reply, DNA should immediately seek other funding sources to meet the debt service on the Flagstaff office and the amounts previously charged to LSC funds.

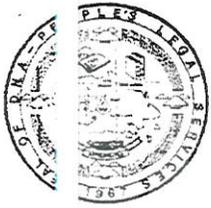
Response: Management concurs with the auditor's recommendations and has submitted the required documentation to LSC for approval of the Office of Compliance and Enforcement. Management believes that the request will be looked upon favorably.

D. Prior Year -- Findings and Questioned Costs -- Major Federal Award Programs Audit

Management continues to take corrective action and exhaustive case review in order to significantly reduce a repeat of the audit findings from December 31, 2008:

- a) As a result of these efforts there was no repeat finding of the December 31, 2008 reportable condition C-1 which reported on instances of noncompliance with obtaining a dated written statement signed by each plaintiff supporting the complaint."
- b) Finding C-2 is a repeat finding from the December 31, 2008 which reported instances in which clients were represented without a retainer agreement. Management continues to instruct case handlers of the Legal Services Corporation regulations and requirements.
- c) Management continues in its' attempts to resolve the December 31, 2008 reportable condition C-3. See item C-3 above.

Attachment G



Loan

DNA-PEOPLE'S LEGAL SERVICES, INC.

December 9, 2010

OFFICE OF COMPLIANCE AND ENFORCEMENT

2010 DEC 14 A 10: 57

LEGAL SERVICES CORP RECEIVED

Administration
Box 306
Window Rock, AZ 86515
908-871-4151
928-71-5036 Fax

Danilo Cardona, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW – 3rd Floor
Washington, DC 20007-3522

Chino DNA
Box 767
Chino, AZ 86503
908-674-5242
928-74-2410 Fax

RE: DNA Property Acquisition

Flagstaff DNA
2323 Greenlaw Lane
Flagstaff, Az 86004
908-774-0653
908-774-9452

Dear Mr. Cardona:

Crownpoint DNA
Box 116
Crownpoint, NM 87313
505-786-5277
505-86-7275 Fax

As we committed previously attached is additional information requested by LSC related to the property acquisition by DNA for the Flagstaff office building.

Defiance DNA
Box 306
Window Rock, AZ 86515
908-871-4151
928-71-5036 Fax

1) Agreement between DNA and AZFLSE.

Hopi DNA
Box 558
Keams Canyon, AZ 86034
928-88-2251/5345
928-38-5343 Fax

The attached documents show the agreement between DNA and AZFLSE including the addenda to the original agreement. The agreement, as it now stands, between DNA and AZFLSE is the loan repayments are made to AZFLSE by way of grant disbursements to DNA whereby the grant disbursements go toward the loan repayment. Prior to January 01, 2010 DNA did not make any payments on the AZFLSE loan. This is a no-interest loan to DNA from AZFLSE. No LSC funds have been used to repay the AZFLSE loan and DNA does not anticipate using LSC funds for the AZFLSE loan.

Mexican Hat DNA
Box 310458
Mexican Hat, UT 84531
435-739-4380
435-39-4384 Fax

2) Average Annual Cost of the Acquisition

Flagstaff DNA
70 North Butler
Farmington, NM 87401
505-325-8886
505-27-9486 Fax

a. The spreadsheet is included with this letter on the cost analysis of the rental property and the purchased property. The monthly maintenance fee of \$632.85 includes all maintenance outside of the general office space, including roof repair, snow removal, maintaining the aesthetics of the complex, parking lot repair. The utilities are paid by a separate billing including a separate billing for electric and the gas bill is proportioned among the building owners. DNA's LSC funds are used for utility payments. A cleaning service is contracted at \$500 per month paid by DNA's LSC funds.

Shiprock DNA
Box 987
Shiprock, NM 87420
505-368-3200
505-68-3212 Fax

b. The discrepancy between the \$4,917.42 monthly mortgage payment and the previous information provided indicating a \$4,913.42 payment is an error. The amount of \$702,705, with an annual interest rate of 7.5%, amortized over 30 years requires a monthly mortgage payment of \$4917.42.

Tuba City DNA
Box 765
Tuba City, AZ 86045
908-283-5265
928-83-5460 Fax

3) Total Dollar Value of Mortgage and Monthly Maintenance Payments

Website:
www.livelegalnet.org



To date DNA has paid \$171,985.69 toward the mortgage, this includes \$20,332.53 in principal and \$151,653.16 in interest payments. This is 35 monthly payments to date and a balance of 325 monthly payments. Future mortgage payments are 325 monthly payments for a total of \$1,596,861.50 with \$682,390.15 in principal and \$914,471.35 in interest. DNA anticipates allocating 100% of LSC funds to the monthly payments in the near future; however, with a capital campaign DNA anticipates allocating a lower percentage of LSC funds to the monthly mortgage payments with the intent of reducing the percentage to zero.

1) Other Occupation Costs

With respect to the total dollar of other occupation costs charged to LSC to date, there are no other costs relative to the property acquisition. Other costs for the daily operation of the office will be included if requested.

2) Mortgage Document, Settlement Document and Build Out

- a. The AZFLSE loan of \$200,000 was distributed with \$102,981.15 for the down-payment and closing costs for the Flagstaff property, \$64,707.65 for the initial payment to the contractor for a materials order (new front glass door, windows, doors for interior offices, steel/lumber and sheetrock for walls, carpet, tile, etc). The remaining \$32,310.84 was to be used for an initial payment to a contractor to build the Tuba City DNA office; however, this project was never started.
- b. No LSC funds were used for the build-out. All funds were from the AZFLSE loan. The Flagstaff property suite did not have interior walls, flooring, exterior windows which had to be constructed prior to occupying the space.

3) Additional Documents

All additional documents are attached.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. B. Henry', written in a cursive style.

Levon B. Henry
Executive Director