



LEGAL SERVICES CORPORATION
Office of Program Performance

PROGRAM QUALITY REPORT

FOR

Memphis Area Legal Services, Inc.
Recipient Number: 643030

April 7 - 11, 2008

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INTRODUCTION

The Legal Services Corporation (LSC) Office of Program Performance (OPP) conducted a Program Quality Visit to Memphis Area Legal Services, Inc. (MALS) from April 7 – 11, 2008. The on-site visit team included OPP Program Counsel Tillie Lacayo (team leader) and Willie Abrams, and LSC Consultant Sheldon Roodman.

OPP seeks to ensure that all recipients of LSC funds are providing high quality, efficient, and effective legal services to eligible clients. The purpose of the April 2008 visit was to assess the overall quality of legal services provided by MALS to eligible clients, including the program's engagement with and service to the low-income community, the effectiveness of its legal representation and other program activities, and its leadership, management, and administration. In performing its evaluation, OPP relies on the LSC Act and Regulations, the LSC Performance Criteria, LSC Program Letters, and the ABA Standards for the Provision of Civil Legal Aid.

Careful consideration was given to MALS' most recent grant competition and renewal applications, case and matters service reports,¹ and other reports and documentation submitted to LSC in recent years. Factors that were considered during the evaluation visit include staffing, office location, intake system, private attorney involvement, technology, legal work management and supervision, quality and quantity of legal work, leadership, program administration, resource development, coordination within the delivery system, and experience and reputation. The team reviewed numerous documents submitted by MALS in advance of the visit, including responses to a survey of staff and writing samples submitted by advocates as examples of the best recent work.

MALS provides legal services through its main office, located in Memphis and covering Shelby County, and through a small rural office located in Covington, about 40 miles from Memphis. The Covington office covers the three rural counties of Fayette, Lauderdale, and Tipton.

The team visited both MALS' offices. Team members interviewed the executive director, the general counsel, the director of advocacy, the chief financial officer, the manager of access, data integrity, and technology, the director of PAI, managing attorneys, staff attorneys, paralegals, and administrative and support staff. Also interviewed were board members, judges before whom program advocates appear, regional and state justice community partners, community organization personnel, and members of the private bar. Due to time constraints, some interviews were conducted by telephone.

OVERVIEW OF PROGRAM AND SERVICE AREA

MALS was established in 1970 to provide legal services to the poor in Memphis. Through strong community and bar support the program has expanded over the years to cover all of Shelby county and the adjoining rural counties of Fayette, Lauderdale, and Tipton. MALS counts among its alumni the current mayor of Shelby County, a U.S.

¹ Effective January 1, 2008, "Matters Services" are now known as "Other Services".

District Court judge, the chief Bankruptcy Court judge, and several other prominent members of the judiciary. Data compiled during the 2000 census estimated the poverty population of MALS' service area to be 155,210 persons, or approximately 16% of the total population. The program's service area encompasses 2,389 square miles. As of the date of the 2000 Census, the poverty population of the service area was 74.81% African-American, 20.86% White, 2.85% Hispanic, 1.37% Asian, and .21% Native American.

MALS has received LSC funding since 1974. In 2007, MALS received \$1,370,636 in basic field funding from LSC. Non-LSC funding for 2007 was approximately \$1,497,486.

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

Criterion 1. Periodic comprehensive assessment and ongoing consideration of legal needs.

Finding 1: A broad-based assessment of the legal needs of the poor in MALS' service area was most recently conducted in 2003. The needs assessment was supplemented by the program in 2005. MALS' current priorities reflect the legal needs of its client community.

A statewide comprehensive needs assessment, with separate regional analyses for each of the four LSC-funded programs in the state, was conducted through the Tennessee Alliance for Legal Services (TALS) during 2003. TALS contracted with the University of Tennessee College of Social Work Office of Research and Public Service to conduct the statewide survey. The methodology used was a telephone survey consisting of interviews of 15 to 20 minutes' duration.

The TALS-coordinated needs assessment was updated by MALS in 2005 using focus groups of attorneys, representatives of affinity organizations and agencies, and MALS staff.

MALS' program priorities are clearly reflective of the legal needs of the poor in the service area. Moreover, they are adjusted regularly as needs of the client population change, as evidenced by the program's response to the influx of Katrina evacuees during 2005 and to increased predatory lending and sub-prime mortgage problems that have disproportionately affected the client population over the past year. Interviews with staff, members of the board, and community organizations and agencies reflect that MALS staff coordinates and interacts regularly with its community partners in a way that enables the program to remain apprised of the changing legal needs of the client community.

MALS' substantive priority areas are family and children, housing and real property, health, consumer/utilities, income maintenance, and individual and civil rights.

Criteria 2 and 3. Setting goals and objectives, allocating resources, developing strategies, and implementing processes to achieve goals.

Finding 2: MALS has clearly defined program goals and objectives. Through its 2005 strategic plan and its 2008 business plan it has developed an organizational blueprint for achieving its goals.

In 2005 MALS was selected by the Alliance for Nonprofit Excellence in Memphis to participate in its Program for Nonprofit Excellence (PNE). The PNE is a three-year program to help agencies with limited financial resources better meet community needs by developing organizational health, sustainability and high performance strategies to meet their goals.² During its participation in the PNE, the program has received the services of a management consultant equivalent to a grant of \$25,000 a year.

In 2005 MALS engaged in broad-based strategic planning that culminated in the drafting of a written plan. The strategic plan has guided the program's activities during its participation in the PNE. It contains goals and objectives, action steps, and assigned areas of responsibility.

The program has also crafted a thorough and well-developed business plan for 2008 that seeks to ensure that MALS' goals and objectives become a reality. The plan was developed by staff, with each substantive law unit or component of MALS producing individual sections of the plan. The business plan contains goals, desired outcomes, and strategies for achieving them. It designates lead persons responsible for the various tasks necessary to achieve plan goals and contains target dates for their completion.

Recommendation:

- LSC applauds MALS' development of what is, in essence, a comprehensive and detailed organizational work plan. As with all work plans, the challenge MALS now faces is implementation of the plan and periodic adjustment and fine-tuning of the goals and objectives contained therein. Throughout the year, MALS should assess its progress in meeting plan goals and make necessary adjustments to the plan.

Criterion 4. Evaluation and adjustment.

Finding 3: MALS regularly evaluates the outcomes of its advocacy and other services to the client community and makes appropriate adjustments to its priorities and delivery system.

Information obtained from the program before and during the on-site visit reflects that MALS regularly evaluates the outcomes of both its advocacy and other services provided

² The Alliance for Nonprofit Excellence provides core strengthening, management training, and grant-seeking assistance. The PNE has received national recognition as "one of a group of cutting edge capacity building initiatives across the country".

to the poor. MALS maintains its organizational focus on results achieved for clients, including the value of cash settlements obtained, the value of savings to clients attributable to loan modifications and restructuring, and the lasting results of legal work accomplishments (e.g. the removal of architectural barriers in large housing complexes.) MALS calculated that its litigation in the area of predatory lending has resulted in restructured loans saving plaintiffs over \$2.25 million, and in cash recoveries of over \$300,000. Its EarnBenefits program has successfully enabled clients to secure benefits valued at more than \$400,000. Its income tax services resulted in nearly \$50,000 in tax refunds to clients during 2007.

MALS adjusts its priorities to reflect changes in the legal needs of the client population. The program responded rapidly to the sub-prime mortgage fall-out by seeking additional funding in this area to both educate clients and provide them with legal representation. MALS also mobilized to assist Katrina evacuees, which garnered special recognition honors from the Memphis Bar Association for one of the program's consumer law attorneys.

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

Criterion 1. Dignity and Sensitivity

Intake

Finding 4: MALS' intake system is primarily telephonic. Intake policies, procedures, and oversight are centralized and uniform throughout the program.

Intake at MALS is conducted by a staff of five intake counselors in the Memphis office and one intake counselor/receptionist in the Covington office. Most intake in both offices is done telephonically.

The intake counselors obtain from the applicant basic demographic and eligibility information and a brief description of their legal problem. The intake counselors are non-attorneys who perform a preliminary screening function and do not provide counsel and advice to callers. After the intake is completed, it is given to the PAI director³ to evaluate cases that may be suitable for placement with a PAI attorney.⁴ After the PAI director reviews the intakes, she gives those not suitable for placement with a pro bono attorney to the appropriate substantive unit managing attorney. Both the initial screening process and the review by the PAI director appear to occur reasonably expeditiously.

³ The PAI director is an experienced attorney who, until recently, served a dual role at MALS as Director of Internal Operations and PAI.

⁴ The fair housing intakes are exempt from this process because some grants funding the program's Fair Housing work are not means-tested. Covington intakes are also exempt, because of the scarcity of private attorneys to accept pro bono referrals in the three counties served by that office.

In Memphis, each intake counselor is assigned to a substantive law unit and conducts intake only for that unit. The intake counselor in Covington, who also serves as the office receptionist, performs intake for all substantive law areas in that office. One of the five intake staff persons in Memphis is a “floating” intake counselor, who helps with overflow and performs intake for Spanish speakers with limited English proficiency. The receptionist in Memphis, who is bilingual, also helps with overflow intake on an as-needed basis.

When intake is performed by the receptionist in either office, it is conducted in the waiting area. Although the receptionist in Memphis is sensitive to the privacy concerns of persons seeking services, her desk and the nearby client waiting area receive a fair amount of foot traffic throughout the day, due to their location.

During the LSC visit the program was undergoing management restructuring, including a transition in the supervision of intake staff. Pursuant to the recent restructuring, the program’s general counsel will have responsibility for oversight of the intake process, with the individual units’ managing attorneys providing day-to-day supervision of intake relative to its substantive law aspects. The newly designated manager of access, data integrity, and technology will bear responsibility for the general management and supervision of the receptionist and intake staff. Her responsibilities will include management of the flow and distribution of work. She will also ensure that program procedures are consistently followed, that intake staff receive regular training, that all the information necessary to determine eligibility for services is obtained during the intake process, that the information is accurately entered into the case management system, and that all LSC requirements are complied with. The new division of managerial responsibilities with regard to intake has the potential to achieve greater efficiencies in the system and seems workable.

The program has written policies governing the intake process itself, and related aspects such as case acceptance/rejection, case assignment, and case processing. Interviews reflect that the program’s intake policies are generally followed. There do not appear to be inordinate delays in the intake process. However, there is some occasional variance among managing attorneys in their turnaround times on intakes.

Recommendations:

- The floating intake counselor and the receptionist in Memphis should receive training in all substantive law areas in which they conduct intake.
- All intake interviews should be conducted in a setting that allows for privacy of communication and protects client confidentiality.
- The program should consider allowing the intake counselors, under the supervision of their managing attorneys, to provide limited advice in discrete areas of law, to the extent allowed by state rules of professional responsibility.

- MALS should regularly assess how well the new intake management structure is functioning and make any necessary adjustments or modifications to ensure efficiency and smooth operation of the intake system.
- LSC's intake focus team is available to provide technical assistance to grant recipients concerning their intake systems. MALS may wish to contact the focus team for feedback concerning greater efficiencies that might be achieved under the current system.

Language Access and the Limited English Proficient Population

Finding 5: The program strives to maximize access to services for the client population with limited English proficiency. There is an LEP policy, an LEP coordinator, and bi-lingual staff fluent in the major non-English language, Spanish.

MALS' efforts to serve the growing Hispanic population in its service area are commendable. The program has developed an LEP plan, responsibility for which rests with the LEP coordinator, who also supervises the intake staff. The receptionist in the program's Memphis office is fluent in Spanish, as is the floating intake counselor, who is Hispanic and bi-cultural. Staff interviewed have been instructed in the use of Language Line.

Criterion 2. Engagement with the low-income population (client and community relations, work with community groups and organizations.)

Finding 6: The program engages in regular community legal education efforts in its priority areas. It has a community education coordinator who is directly supervised by the executive director.

MALS staff work collaboratively with an array of human services organizations, client-centered groups, and governmental agencies that serve the low-income population, including coalitions for the homeless, housing counseling networks, faith-based organizations, client councils, organizations representing the elderly, domestic violence shelters, victims advocate centers, housing authorities, community development organizations, child advocacy groups, consumer and credit counseling groups, organizations representing racial and ethnic minorities, job corps, health departments, and adult learning centers. Advocates in the Covington office are attempting to organize a coalition of groups that work with the rural poor in the three counties covered by that office and held an initial organizational meeting of group representatives in late 2007.

Since 2005 MALS has participated in EarnBenefits, a comprehensive program that connects low-income persons with a wide range of income-enhancing benefits that have a proven impact on long-term job retention. Through numerous education and outreach events, MALS has provided detailed information to clients on over twenty benefits programs available to low-income persons and has helped many persons apply for benefits. During the two-year period prior to the LSC visit, the program screened more

than 1,700 persons and assisted over 900 eligible individuals obtain one or more benefits for which they qualified.

Under a grant awarded the program by Freddie Mac, MALS has spearheaded a campaign to raise public awareness concerning the dangers of predatory mortgage lending. As part of the campaign, MALS initiated a broad-based media advertising strategy, including billboard, radio, and television ads, and fielded a large volume of calls from persons seeking information about mortgage loans.

Interviews with representatives of community organizations and with staff and board members confirm that the program is actively engaged with the low-income population and with organizations and agencies that serve the poor.

MALS' Operations Manual contains a provision addressing the program's expectations in the area of community education. The relevant provision states that "[a]ttorneys and other advocates are expected to participate in community education and outreach activities, when requested". Despite the "when requested" language, on-site interviews reflect that program staff take a proactive approach to community education and seek out opportunities to educate the client community and publicize the availability of MALS' services.

The range of community education activities encompass in-person community group presentations, radio spots and public service announcements, legal education for lay service providers at academic institutions, and outreach to client groups and partner organizations.

MALS has a community education coordinator recently appointed to the position. Her responsibilities include coordinating staff appearances at community education events and programs, developing and maintain relationships with service providers and community partners, assisting in the development of website community education and outreach materials, and maintaining an updated community education activities list. Under the new management structure of the program, the community education coordinator is under the direct supervision of the executive director, rather than the general counsel.

Recommendations:

- The program should re-assess whether the community education coordinator position should instead be supervised by the general counsel. Placing the position under the supervision of the general counsel, who oversees the overall delivery of client services, will help ensure the ongoing integration of community education into the program's overall advocacy.
- LSC commends the program for its initial efforts of Covington staff to organize a coalition of service providers in the sparsely populated counties served by the

office. We encourage MALS to conduct follow-up meetings of interested persons in the near future.

Criterion 3. Access and utilization by the low-income population.

Finding 7: The locations of MALS' offices facilitate reasonable access for members of the client population.

The program's main office, which also houses its administrative staff, is located in downtown Memphis. It is accessible by public transportation, is less than two blocks from the county and federal courts, and is close to government agencies serving the low-income population. The Covington office, in Tipton county, is located in the town's only shopping center, along a major highway.

The program's offices are accessible to persons with disabilities and have appropriate signage and waiting areas. Each office is well-maintained and provides legal education materials and other informative literature in the client waiting areas.

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

Criterion 1. Legal Representation.

Experience and diversity of staff

Finding 8: MALS has a good balance of highly experienced, less-experienced, and newer advocates.

MALS has a good balance of highly experienced, less experienced, and newer advocates. The program's executive director has over thirty years of legal services experience. Its general counsel has nearly thirty years of experience as an attorney. The program has an accomplished director of advocacy who has 28 years of experience with MALS and has served in his current position for 18 of those years. Its managing attorneys have close to twenty years -- and some cases more --- experience providing legal services. The program, including management and administration, has a very diverse staff.

Legal Work Management and Supervision

Finding 9: MALS has effective systems and policies in place for legal work management and supervision. The policies are generally followed throughout the program. The program's general counsel and director of advocacy work closely with staff and, together with the managing attorneys, ensure proper supervision of legal work.

The program provides legal representation to clients in an effective and high quality fashion. Legal work in the Memphis office is conducted through four specialty units: Consumer, Fair Housing/Housing, Income Maintenance/Health/Elderlaw, and Family/Domestic Violence. The Covington office attorneys are generalists. The program also has designated special projects, whose work is encompassed by the substantive law units.⁵

At the time of the visit, the specialty units and rural office were staffed with the following advocates: Consumer – a managing attorney, one staff attorney, and one paralegal; Fair Housing/Housing – a managing attorney, four staff attorneys, and a paralegal; Family/Domestic Violence – a managing attorney and two staff attorneys; Income Maintenance/Health/Elder Law – a managing attorney, one staff attorney and one contract attorney, two full-time paralegals, and one part-time paralegal (in Rural Office half-time); Rural Office – a managing attorney, one staff attorney, and a part-time paralegal (in Income Maintenance/Health/Elder Law unit half-time).

The director of advocacy coordinates the program's systemic legal work. His responsibilities include identifying and developing legal issues, theories, and strategies; assisting with the orientation of new legal staff; handling complex/systemic litigation with other program attorneys; training and mentoring newer advocates; participating in community education activities; and conducting statewide and other training. He also maintains a caseload. He views helping newer lawyers develop their capacity to undertake systemic work as an essential part of his job. He states that he tries to meet with the specialty units at least bi-weekly. He also encourages collaboration across substantive law areas as well as co-counseling. For example, the Family Law unit and the Fair Housing Center collaborated to provide representation to a victim of domestic violence facing eviction and raised a Fair Housing Law claim in her defense. The director of advocacy is listed as an attorney of record on every staff case filed in federal court and on appeals from state court. He reports regularly to the board of directors at each meeting concerning the program's advocacy. Through his efforts, the program secured a two-year National Consumer Law Center (NCLC) fellowship.

The program's general counsel is charged with ensuring the high quality of the program's advocacy and its effective and efficient delivery of legal services. As such, he directly supervises the program's managing attorneys and has general oversight responsibility for the program's legal work. He is also the managing attorney of the program's consumer unit. His responsibilities overlap somewhat with those of the director of advocacy in the area of training in that he, too, bears responsibility for ensuring that legal staff have the necessary skills to perform their jobs well. Like the director of advocacy, he also

⁵ MALS' special projects include the Memphis Fair Housing Center (enforces the Fair Housing Act), the Home Preservation Project (provides representation in housing cases, including working to combat predatory mortgage lending), the B.J. Wade Community Law Fellowship (provides representation in consumer cases), the Domestic Violence/Opportunity Plus Project (provides both legal representation and assistance achieving self-sufficiency to victims of domestic violence), the EarnBenefits project (helps the poor access benefits to which they may be entitled), the senior component (provides legal assistance to the elderly), the University of Memphis Law School Clinic (housed at MALS and works in coordination with program advocates), and the PAI program.

maintains an active, but reduced, caseload. He received special accolades in 2007 for his work on a major consumer law case taken to the Tennessee Supreme Court.

The program's managing attorneys are charged with the day-to-day supervision of MALS' advocates and are responsible for case assignment and conducting the weekly case review/acceptance meetings. The substantive units are relatively small and managing attorneys often supplement more formal management practices, such as case reviews of open cases, with frequent and ongoing discussions of cases with the advocates they supervise. Co-counseling between experienced and newer advocates occurs regularly at MALS.

Attorneys and paralegals are aware of key issues within the substantive areas in which they work. Both the Consumer and Fair Housing Units regularly consider the relationship between individual case issues and the broader issues affecting the client community. The director of advocacy works with all specialty units to help identify issues that affect the client community and can be used to address systemic problems. Regular e-mails from the director of advocacy provide updates on relevant legal developments.

MALS' Operations Manual contains provisions that address several aspects of legal work management and supervision, such as program expectations for case handlers, substantive law unit meetings, tickler systems, monthly case status reports and regular meetings of advocates with the director of advocacy. MALS also has a Case Management Procedures Manual that addresses intake and screening, case acceptance and rejection, case assignment, processing case files, handling emergencies, case management and case work oversight, appeals, and impact litigation. Model briefs, memoranda and pleadings are available to staff on a shared drive.

The program, overall, has sound legal work management practices in place which are generally followed, including annual written performance evaluations, periodic case file reviews, review of advocates' select written work by their managing attorneys, and use of an automated tickler and calendar.

The program has appropriate legal research tools available to staff and, in addition, has the University of Memphis law school as a local resource.

Recommendation:

- The program's general counsel has multiple responsibilities in what is a newly created position. The program should, after a reasonable period, re-assess the responsibilities assigned to the position of general counsel, to ensure that they remain realistic.

Quality of Legal Work

Finding 10: The program’s advocacy in the areas of consumer law and housing has been exemplary and the advocacy in other substantive areas is good. The program is working to expand MALS’ systemic advocacy into other substantive law areas, beyond consumer and housing.

Interviews with judges before whom MALS advocates practice, on-site interviews with staff, and a review of the writing samples submitted reflect that the program is doing solid legal work and that advocates are providing competent and professional representation to clients. MALS attorneys have been described by area judges using such terms as “excellent” and “highly respected”. Its paralegals are viewed by one administrative law judge as indistinguishable from attorneys in their hearing preparation, knowledge of the applicable law and facts, and professionalism.

The writing samples from MALS exhibited well-researched and persuasive legal writing involving creative and challenging issues. The samples confirm that program advocates are thoroughly familiar with the fundamentals of motion, trial and appellate practice, as well as advocacy in administrative forums.

In response to the pre-visit document request from LSC, MALS provided a description of fourteen recent significant cases, all but two of which had been filed in federal court. The cases dealt with a range of issues in the areas of fair housing, predatory lending, utilities/public services, the Equal Credit Opportunity Act (ECOA), the Homeownership Equity Protection Act (HEPA), the Real Estate Settlement Procedures Act (RESPA), the Truth-in-Lending Act (TILA), the Racketeer Influenced and Corrupt Organizations (RICO) Act, Tennessee’s property quarantine statute, the Americans with Disabilities Act (ADA), and Article 9 of the Uniform Commercial Code.

Among MALS’ litigation accomplishments in recent years is the successful prosecution of seventeen companion predatory mortgage lending cases in U.S. District Court against mortgage brokers, home improvement contractors, real estate agents, appraisers, closing agents and “upstream” lenders. The lawsuits were based on a novel theory that the predatory lending schemes constituted violations of the civil RICO statute and the Fair Housing Act. Mediation among the parties resulted in the restructuring of loans with significant reductions in principal balances and interest rates and forgiveness of arrearages. The lawsuits yielded settlements equivalent in value to nearly \$3,000,000 for clients. One defendant agreed to fund a new program that would assist victims of predatory lending in the restructuring of their loans.

The program’s Fair Housing Center has filed major lawsuits on behalf of the Memphis Center for Independent Living against a number of developers, builders, architects and civil engineers in the area who produced large apartment complexes with significant barriers to accessibility for persons with disabilities. Part of the settlement of these

lawsuits included the retrofitting of 442 units and the establishment of a retrofit fund available to people with disabilities, who live in housing not covered by the Fair Housing Act's accessibility requirements. The director of advocacy is working closely with Fair Housing Center staff on over 20 such cases pending in federal court.

Though most of MALS' major impact work in recent years has been in the consumer and housing areas, all of its substantive units maintain a big-picture view. For example, the program's family law unit has challenged the judicial commissioners' practice in Shelby County of issuing a second ex parte order of protection rather than an extended ex parte order of protection, which limits the relief available to victims of abuse when the orders are violated.

Quantity/Substantive areas of Legal Work (CSR Analysis)

Finding 11: MALS' case closings are low. The number of cases closed per year by the program's Covington office are especially low, given the nature of the office's legal work.

CSRs as a whole are low for MALS. However, the number of closed cases per 10,000 poor persons has risen since 2003 (from 166 to 187). The extended service closed cases per 10,000 declined from 2003 to 2006 (from 57 to 42), then rose during 2007 to 50.

The program has been doing a fair amount of work in the time-consuming areas of foreclosures, predatory lending, and fair housing. The focus on such labor-intensive cases could account, in part for lower case closings. The program's consumer, predatory lending, and fair housing work is done primarily in federal court and typically involves a multiplicity of claims and defendants. These cases require a significant amount of time to develop and litigate. Cases dealing with mortgage loans often involve convoluted and complex financing schemes. MALS advocates use formal discovery such as documents requests, written interrogatories, depositions and requests for admission as a matter of course in these cases. As one judge interviewed observed, the cases are very discovery and writing-intensive.⁶

In addition to MALS' extensive legal work in the areas of fair housing, predatory lending, and foreclosure, its participation in the PNE and the effort such active participation entails has undoubtedly consumed significant staff time over the past couple of years. However, LSC considers this a short-term investment of time with the prospect of significant long-term gains for the program.

CSRs are particularly low for the program's Covington office, staffed by two full-time attorneys and a part-time paralegal, and cannot be easily explained by the complexity of the cases handled by that office. Covington closed a total of 202 cases during 2007, only 57 of which involved the provision of extended services. In addition, the Covington office's extended service cases -- with the exception of the administrative law cases

⁶ The judge also candidly observed that opposing parties on occasion appear to be attempting to "paper MALS to death" in these cases.

handled by its part-time paralegal -- were overwhelmingly in the area of family law. This may change during 2008. Both attorneys in Covington stated during their interviews that the office has recently begun to receive more requests for assistance with consumer law problems.

Apart from the Covington office, the program's work overall, is reasonably well-balanced among the various substantive law priority areas. MALS closed 35.3% of its cases during 2007 in the area of income maintenance, 22.8% in housing, 17.7% in family law, and 9.7% in consumer/finance.

Recommendations:

- As a regular part of its ongoing self-assessment, MALS should examine the CSRs for both its offices and for each specialty unit, to determine the extent to which the program's case statistical outcomes and goals are being met, and make appropriate adjustments in program goals, objective and strategies, where warranted;
- The program should assess the reasons for the Covington office's particularly low case closures and the predominance of family law extended service cases in that office. The program should work to achieve a better balance of cases in its priority areas in the Covington office;
- The program should examine the allocation of resources between its two offices to determine whether a reallocation of staff is appropriate.

Staff Training - Access to Legal Expertise

Finding 12: MALS staff is offered the opportunity to attend a variety of regional, state and national trainings. Both substantive and skills trainings are provided.

MALS affords its staff appropriate substantive and skills trainings nationally, locally and statewide. The program's director of advocacy, its general counsel, and its managing attorneys are excellent in-house training resources and are often presenters at state and regional trainings.⁷

MALS advocates have attended a variety of substantive law and skills trainings, including the annual TALS Equal Justice Conference,⁸ the National Fair Housing Conference; HUD trainings on reverse mortgages, loss mitigation, and foreclosure;

⁷ For example, the managing attorney of the Fair Housing Center has served as a trainer at the TALS Equal Justice Conference and the Tennessee Human Relations Commission.

⁸ The conference provides training in both substantive law areas and legal skills for legal services staff throughout the state. Substantive law training areas during the 2007 Equal Justice Conference included foreclosure, predatory lending, fair housing, elder law, Medicaid, TennCare, orders of protection, and disability. The conference also provided regulatory training on the recent CSR Handbook revisions and the eligibility of battered immigrants for LSC-funded services, as well as a session on the LSC Performance Criteria.

National Institute of Trial Advocacy training; Tennessee Housing Development Authority training; the NLADA fall conference, the ABA-NLADA Equal Justice Conference; Memphis Bar Association training on collaborative lawyering; domestic violence trainings; dependency and neglect trainings; social security trainings; and numerous CLE seminars for Tennessee lawyers. Newer advocates have attended skills trainings in areas such as taking depositions, trial skills, and negotiating settlements of claims.

Support staff have received an array of skills training in MS Word, PowerPoint, Outlook, Excel and Access, as well as case management intake training on Kemps Prime at the 2007 statewide Equal Justice Conference. A conference for legal services support staff is being contemplated by TALS for 2009.

Criterion 2. Private Attorney Involvement.

Finding 13. MALS has a thoughtful, comprehensive and effective written private attorney involvement component, which seeks to engage private attorneys in a wide range of program activities.

To help ensure that private attorneys are an integral part of the program's work, MALS' PAI is directed by one of the program's five managing attorneys, assisted by an administrative staff person. She is highly effective, due in no small measure to her active involvement in the legal community on both state and local levels. For example she serves on the State Bar Board of Governors and was recently elected as a fellow of the Tennessee Bar Foundation. She is a past president of the Tennessee Lawyers Association for Women and serves on its board of directors. She also serves on the Memphis Bar Association Board of Directors. The coordinator of the Tennessee Access to Justice Committee stated that she considers MALS' pro bono work to be "a model for the state". Judges, private attorneys, and board members interviewed all praised the program's pro bono efforts, especially the leadership provided by the PAI directing attorney.

MALS' PAI, which is overwhelmingly pro bono, is conducted through its Volunteer Lawyers Project. A contract attorney handles TennCare eligibility cases at a reduced fee for children in foster care.

In addition to direct representation in extended service cases, other pro bono opportunities at MALS include the following:

- "Attorney of the Day" advice clinics in General Sessions Court;
- The Volunteer Lawyers "Saturday Advice Clinics";
- The University of Memphis Law School Clinic (housed at MALS and handling domestic violence, elder law, juvenile advocacy, and a few additional civil matters);
- The Rural/Urban Telephone Advice Clinic (a joint project with West Tennessee Legal Services that is staffed by volunteer attorneys with large law firms who provide telephone advice to callers in consumer matters);

- The Atticus Finch Referral Network that identifies and recruits key attorneys in the Memphis area's larger law firms to accept and place cases;
- Co-counseling with MALS attorneys;
- Conducting community education presentations;
- The HIV/AIDS project

In the early stages is a Corporate Counsel Pro Bono Initiative.

MALS' PAI recruitment efforts are ongoing and have proven reasonably successful, with roughly 12.5% of eligible attorneys in the service area agreeing to participate. The number of closed PAI cases per year has increased since the PAI director joined the program in mid-2004.

The program has written procedures for PAI referral, oversight, and follow-up that are reasonable and appear effective. The program appropriately tracks its PAI cases, provides support and training to private attorneys, and honors participating attorneys in collaboration with state and local bar associations throughout the year. The program has developed a handbook for its volunteer attorneys. Client satisfaction with cases handled through PAI is assessed via surveys distributed to all clients during advice and counsel clinics and in one-third of all PAI extended cases.

Criteria 3 and 4. Other program services to the eligible client population and other program activities on behalf of the eligible client population.

Finding 14: MALS staff offers other program services throughout the area, such as pro se and mediation assistance.

In addition to direct client representation, MALS also provides *pro se* support, and also mediation assistance through its PAI director, its general counsel and the managing attorney of the Covington office, all of whom are certified mediators. The family law unit conducts regular pro se clinics in Memphis.

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

Criterion 1. Board Governance.

Finding 15: MALS has a board of directors that works well with the executive director and is supportive of the program's mission. Board members have the skills to provide support to the program in a variety of ways.

MALS has a 30-person board composed of members with diverse backgrounds, ethnicities, and experience. The board has been strengthened by the recent addition of an attorney/certified public accountant, who currently serves as board treasurer, a corporate counsel for FedEx, and two board members who are Hispanic.

The board meets quarterly, receives financial and other written materials from the executive director in advance of each meeting, and appears to be fulfilling its policy and oversight functions well. The board has a number of functioning committees.⁹

Board members contribute to the program in a variety of ways that go beyond merely attending meetings. For example, a board member who is senior counsel of litigation at International Paper obtained the use of the company's offices for the 2008 board retreat. Board members also help recruit a member of the private bar each year to chair the program's Annual Campaign. One client board member serves on both the TALS Board of Directors and the National Consumer Law Center Board. Two board members also serve on Tennessee's Access to Justice Committee. The board member who is a FedEx corporate counsel facilitated the provision of negotiation skills training for newer attorneys at MALS.

Attendance at board meetings has, at times, been on the low side and some board members have been more actively engaged in supportive activities than others. The incoming board president is enthusiastic and highly committed to giving the board new direction and energy to fulfill its responsibilities. He expressed a number of good ideas during his interview, including leveraging board member contacts to increase fundraising and enhancing board members' knowledge of the program by having them attend staff meetings.

Recommendation:

- LSC recommends that the program regularly incorporate into board meetings presentations from various staff persons concerning the program's work. These presentations could also include client testimonials of how MALS advocates have made a difference in their lives.¹⁰

Criterion 2. Leadership.

Finding 16: MALS has an experienced team of upper level leaders who are highly skilled and who work well together. Its executive director has taken action in several areas to improve MALS' delivery system and to enhance its ability to attract and retain high quality staff.

The executive director has over thirty years of legal services experience, serving initially as a staff attorney, then as a managing attorney in two legal services programs, and more recently as an executive director, first in Mississippi and then in Tennessee. He has been executive director of MALS for nearly ten years. He was recently elected as a fellow of

⁹ Board committees include the following: Executive, Budget and Audit, Private Attorney Involvement/Bar Relations, Personnel/Grievance, Long Range Planning, and Resource Development/Public Relations.

¹⁰ The director of advocacy provides a litigation /advocacy update at each board meeting but individual staff persons do not customarily address the board concerning their advocacy efforts.

the Tennessee Bar Foundation and has served on the Memphis Bar Association's Board of Directors.

The executive director is supported by a dedicated and experienced staff. He has selected a talented group of leaders for upper-level management positions, who are well-equipped to move the program forward.

Over the past few years MALS' executive director has taken positive action in several areas to strengthen the program overall as an organization. Some of his accomplishments include the following:

- The creation of an internal LRAP, recently approved by the board of directors;
- Raising the starting salaries for new lawyers to make them more competitive and providing pay increases to all staff;
- Increasing participation in the program's capital campaign;
- Receipt of a large cy pres award that will allow the program's NCLC fellow to continue his excellent work in this area;
- Joining the state health insurance plan, thereby decreasing the overall cost of health insurance to the program;
- Participating in the Program for Non Profit Excellence (PNE) and development of a comprehensive business plan;
- Restructuring upper-level management of the program to improve its effectiveness.

Criterion 3. Overall management and administration.

Finding 17: MALS management and administration is in capable hands. Its management restructuring holds the promise of strengthening the program in the coming years.

In consultation with its PNE consultant, MALS underwent significant management restructuring in the months before the LSC visit. The program's current management/administrative structure consists of an executive director, a general counsel, a director of advocacy, a director of private attorney involvement, a chief financial officer/human resources manager, a director of development (currently vacant), five managing attorneys and a manager of access, data integrity, and technology.

Because of the newness of the program's management structure, LSC cannot yet assess its efficacy over time. The visit team concluded that the new structure is sound and workable, in theory. Interviews conducted by the team with program managers while on site - including an interview with the program's PNE consultant - reflect that the program has capable persons in its key management and administrative positions.

Technology

Finding 18: The program's technology adequately supports its delivery system.

Program staff are comfortable with technology and utilize it to help them to perform their job functions with increased efficiency. All staff have reasonably up-to-date computers, on-line research capacity, internal and external email, and Internet access.

The program contracts with a local company for its information technology needs. The company has assigned an employee to work with MALS, who is on-site 24 hours a week and seems very capable. He has assessed the program's technology needs and is working with MALS to enhance its technological capacities. He is a member of the statewide legal services technology committee.

The program has a continuity of business operations plan in case of a natural disaster. The program's data is backed-up regularly and is safely stored off-site. The program also has an Internet use policy.

During 2007 the program installed a new server and upgraded to the latest version the Kemps Prime for case management. Staff has received training in the use of the new CMS. The program is in the process of reestablishing its technology training center within the Memphis office. The center will contain free-standing terminals for use with on-line tutorials in the Microsoft Office software products. The program has also begun re-designing and updating its website.

Criteria 5. Human Resources Administration.

Finding 19: The program maintains effective human resources administration and has capable staff to review and update its fringe benefits.

The program's chief financial officer is also its human resources administrator. She is assisted by two administrative support staff persons.

The program has a small retirement plan whereby it will match up to 50% of an employee's contribution (up to 4% of salary) to a 403(b) account. Participation in the pension plan has been low thus far and MALS recognizes the need to improve its pension contributions. Though the program now participates in the state health insurance plan and has benefited economically in doing so, the employee's share of family coverage at MALS is costly. MALS recognizes the need to re-assess the cost allocation between the program and staff for family coverage.

Criterion 6. Internal Communication.

MALS holds all-staff meetings quarterly. In addition, the program uses e-mail appropriately for communication among staff. The director of advocacy uses email regularly to keep staff apprised of legal developments in MALS' priority areas.

Morale

Finding 20: Morale at MALS is low and in great need of improvement. Communication from management to staff has been poor at times, contributing to the morale problem.

Interviews conducted while on site reflect that morale is low at MALS and that communication between management and staff is in great need of improvement. Lingering sentiments related to the reductions in force that occurred a couple of years ago and to the dismissal of employees in the recent past may well be contributing factors to low morale. However, poor communication from management to staff is also a significant issue. Low morale and the reasons therefore were discussed with the executive director and with upper-level program managers on the final day of the visit. The executive director expressed appreciation of the need to work on improving morale and communications and on team building throughout the program during the coming year.

Recommendation:

- The program should use the opportunities presented by the management restructuring process to address the significant morale issue that exists. The program should focus its efforts on team building, possibly with the assistance of an outside facilitator, and on improving communications between upper-level management and staff. Low morale, regardless of the cause, can have the effect of diverting energies that would otherwise go toward serving clients, into far less productive activity.

Criterion 7. General Resource Development and Maintenance.

Finding 21: MALS' funding base is reasonably diverse. Over the past couple of years MALS has obtained significant additional funding for the program.

MALS has successfully obtained a variety of grants consistent with its mission, including funds from the city of Memphis, Community Development Block Grants; Title III funding; HUD grants; United Way grants, funding from private foundations, and IRS funding. The program also receives IOLTA funding and filing fees/bail bond money from the State of Tennessee. In late 2007 the program received a \$185,481 cy pres award, obtained through the efforts of a MALS board member.

The program also has an annual campaign, chaired each year by a prominent member of the private bar. The 2007 campaign yielded contributions totaling \$427,321, a 25% increase from 2006.

LSC funding constituted less than 50% of MALS' overall funding during 2007. The percentage of non-LSC funding is likely to increase in 2008 due to additional sums obtained by MALS this year through a second cy pres award of approximately \$30,000,

increased funding for housing counseling, a Fair Housing Initiative Program grant in the amount of \$274,973, an increase in IOLTA funding of \$52,907, and grants of nearly \$500,000 to help address the sub-prime mortgage crisis. The program is currently seeking additional cy pres awards of around \$150,000.

Criterion 7. Coherent and comprehensive delivery structure.

Finding 22: The program has a reasonable, thoughtful, and effective overall delivery system. Its choices on the allocation of resources to competing activities appear reasonable, balanced, and consistent with its mission.

MALS is a mid-sized, predominately urban program, that also serves a small rural population. The program's priority areas adequately address the legal needs of the client-eligible population. Its delivery system, overall, is reasonable, sound and effective. In addition to direct legal services, the program's services encompass community education, pro se activities, mediation assistance, collaborative work with local, regional, state and national partners, and private attorney involvement.

The program engages in ongoing assessment of its operations, with a view toward constant betterment. It appears to have benefited significantly from its participation in the PNE. MALS has been in an ongoing state of change over the past couple of years, born of a desire for improvement, increased efficiency, and greater broad-based advocacy on behalf of the poor. However, morale has suffered of late and the program needs to devote time to bringing about major improvement in this area.

MALS has the leadership, staff expertise, and capacity to engage in strong systemic work in all its priority areas and has shown a desire and commitment to move in that direction in the future.

Criterion 8. Participation in an integrated legal services delivery system.

Finding 23: MALS works actively with its equal justice partners throughout the state to strengthen Tennessee's legal services delivery system.

MALS is an active participant in the regional and statewide justice community and legal services delivery system in Tennessee.

The program has provided statewide leadership in the area of predatory lending advocacy. The executive director is a former president of the NLADA Board of Directors and is on the Southeast Project Director's steering committee, the Tennessee Bar Association's House of Delegates, and the TALS Board of Directors. He is also chair of the TALS statewide training committee. The program's general counsel chairs the statewide housing/consumer task force. The PAI director is on the statewide access to justice committee.

Both the PAI director and the program's director of advocacy are past recipients of Tennessee Bar Association awards for public service. The program's general counsel is a past recipient of the B. Riney Green award, presented each year by TALS to the attorney who works the most toward promoting inter-program cooperation and strengthening the provision of legal aid in Tennessee.

Tennessee has the following statewide legal services taskforces, coordinated by TALS: Special Education, Employment, Benefits, Housing/Consumer, Health, Technology, Family, Community Education, Training, Cy Pres, Immigration, Disaster legal services, and Civil Gideon. MALS staff are active participants on TALS task forces.