



**FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement**

DNA-Peoples Legal Services, Inc.
November 30-December 3, 2009
Case Service Report/Case Management System Review

Recipient No. 703068

I. EXECUTIVE SUMMARY

Finding 1: DNA's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, case review revealed numerous instances where the information in the case files did not match the information in the ACMS.

Finding 2: DNA's intake procedures generally support the program's compliance requirements. However, improvements to DNA's eligibility policies and forms are required to ensure that its intake procedures fully support the program's compliance-related requirements.

Finding 3: During the review period, DNA's eligibility guidelines incorrectly established a higher maximum income ceiling which allowed DNA to improperly accept a number of clients. As a result, DNA is in non-compliance with the income eligibility requirements of 45 CFR § 1611.4 and § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3 and applicable LSC instructions for clients whose income did not exceed 125% of the Federal Poverty Guidelines ("FPG"). It is noted, however, that since the onsite review, DNA drafted a new eligibility guideline policy and submitted it to LSC for review.

Finding 4: DNA maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: DNA is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that seven (7) files lacked a required citizenship attestation.

Finding 6: DNA is not in compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: DNA is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: DNA is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff case files which contained no description of the legal assistance provided.

Finding 10: DNA's application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: DNA is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as numerous staff cases reviewed were untimely closed or dormant.

Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: A review of DNA's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 16: DNA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, DNA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of PAI cases.

Finding 17: DNA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 18: DNA is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' Fees).

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 29: Bank reconciliations for the operating, payroll, litigation, salary advance and client trust accounts were reviewed and found to be performed untimely and inaccurately.

Finding 30: The DNA Personnel Policies Manual did not have a policy regarding salary advances.

Finding 31: DNA's Internal Control Worksheet revealed a lack of adequate segregation of duties and/or internal controls.

Finding 32: DNA implemented a work week policy for non-litigation staff that was in effect from July 7, 2008 through September 25, 2009. A review of the policy revealed that it did not meet the standards governing allowability of costs as outlined in 45 CFR Part 1630 (Cost Standards and Procedures).

II. BACKGROUND

On November 30 through December 3, 2009, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") onsite visit at DNA-Peoples Legal Services, Inc. ("DNA"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of seven (7) attorneys, one (1) management analyst and two (2) fiscal analysts. Six (6) of the attorneys were OCE staff members; the remaining attorney was a consultant.

The onsite review was designed and executed to assess the program's compliance with basic client eligibility, intake, and case management, regulatory and statutory requirements and to ensure that DNA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed DNA for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees);² 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of DNA's upper and middle management, staff attorneys and support staff. DNA's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2007 through October 15, 2009. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the onsite review, the OCE team reviewed approximately 583 case files which included targeted files.

¹ In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC's review and enforcement of this regulation was therefore only for the period prior to December 16, 2010.

DNA is an LSC recipient that operates 10 offices throughout Arizona, New Mexico and Utah. The main office is located in Window Rock, Arizona. The executive staff consists of an Executive Director, Director of Litigation, Director of Administration and Fiscal Manager. DNA received a total grant award from LSC in the amount of \$3,273,001 for 2007; \$3,289,125 for 2008, and a basic field grant of \$806,943 and a Native American grant of \$2,812,787 for 2009.

For 2008, DNA reported 3,622 closed cases in its CSR data. DNA's 2008 self-inspection report indicated a 4.4 % error rate with exceptions noted in nine (9) files out of 205 reviewed. The problem area identified was: cases in which income eligibility was not documented. For 2007, DNA reported 3,041 closed cases in its CSR data. DNA's self-inspection report for 2007 indicated a 4.3% error rate with exceptions noted in eight (8) files out of 187 reviewed.

By letter dated October 2 , 2009, OCE requested that DNA provide a list of all cases reported to LSC in its 2007 CSR data submission ("closed 2007 cases"), a list of all cases reported in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases closed between January 1, 2009 and October 15, 2009 ("closed 2009 cases"), and a list of all cases which remained open as of October 15, 2009 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by DNA staff and the other for cases handled through DNA's PAI component. DNA was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11 and 12, and the LSC *Access to Records* (January 5, 2004) protocol. DNA was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the onsite visit. The sample was created proportionately among 2007, 2008, and 2009 closed and 2009 open cases, as well as a proportionate distribution of cases from DNA offices. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and DNA written agreement of October 30, 2009 based on a telephone conversation on October 16, 2009 between the Team Leader and DNA's Executive Director. DNA staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.³ DNA's management and staff cooperated fully in the course of the review process. As discussed more fully below, DNA was

³ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

made aware of any compliance issues during the onsite visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as the Executive Director.

At the conclusion of the visit on December 3, 2009, OCE conducted an exit conference during which DNA was made aware of the areas in which a pattern of non-compliance was found. No distinction between 2007, 2008, and 2009 cases was found. OCE cited instances of non-compliance in the areas of financial eligibility screening, dormant/untimely cases, documentation of legal advice, application of closing codes, and counting as cases work done by non attorney staff. DNA was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments. Afterwards, a Final Report would be issued that would include DNA's comments.

By letter dated April 5, 2010, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the November 30-December 3, 2009 CSR/CMS visit. DNA was asked to review the DR and provide written comments. DNA requested, and OCE granted, an extension to submit its comments. By email dated June 7, 2010, DNA's comments were received. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

II. FINDINGS

Finding 1: DNA's automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately recorded. However, case review revealed numerous instances where the information in the case files did not match the information in the ACMS.

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

In general, DNA's ACMS software generally ensures that relevant screening and case information is accurately recorded. However, selected case files reviewed revealed instances in which the information in DNA's ACMS did not match the information found in the case file. Case file review evidenced that inconsistent information included instances in which the problem, funding and/or closing codes in the file were different than those in the ACMS. For examples, *see* Closed 2009 Case Nos. 09E-3022737, 09E-3023839, 09E-7023210, 09E-7024332, and 09E-70224520. *See* Open Case No. 09E-30227738.

DNA must ensure that the information in its ACMS matches the information in the case files. This requirement is necessary to ensure that the effective management of cases can take place based on accurate information.

In response to the DR, DNA stated that the CSR Handbook requires DNA to have an ACMS which will capture the information on the case and on all LSC regulations as they apply to the case. The comments stated DNA's system does that, and since they have nine (9) different offices, they rely on the ACMS system when reporting cases to LSC. DNA stated staff is trained on entering correct case types, problem codes, funding codes, reason closed codes etc, and are trained to check the files for LSC compliance. Comments further stated that, after a case is closed, a Managing Attorney and the Administrative Director review it via the ACMS, and make corrections to ensure that it is correctly reported to LSC. DNA further stated, during this review, they might change a problem code from 99 Misc. to something more appropriate, or correct a Reason Closed, or change a case type to R (reject) if the case is not reportable to LSC. Finally, DNA stated if the review is by the Managing Attorney, the change will also be made in the physical file, since they will have it there, but if the Administrative Director were required to go back to (or instruct others to go back to) the physical file and make the same changes, this would be a huge waste of staff time, DNA's financial resources, and paper.

However, just as DNA has acknowledged that the CSR Handbook requires DNA to have an ACMS which will capture pertinent case information, LSC deems it appropriate to point out that the purpose of an efficient ACMS is to save program staff time and resources.

Finding 2: DNA's intake procedures generally support the program's compliance requirements. However, improvements to DNA's eligibility policies and forms are required to ensure that its intake procedures fully support the program's compliance-related requirements.

Keams Canyon

The Keams Canyon office is a remote office on the Hopi Reservation with only two (2) employees, a Legal Assistant and a new (at the time of the visit) Managing Attorney.

Intake is open each Monday 8:30 am-11:00 am and 1:00 pm-3:00 pm, though emergencies are handled as necessary. The Keams Canyon office's intake is all walk-in. Though telephonic applications could be taken, the office only rarely has an applicant by telephone due to the scarcity of telephone service on the reservation.

After a brief conversation regarding the applicant's legal problem, the Legal Assistant gives the applicant a disclaimer form and a paper intake form to complete.⁴ It is noted that the Legal Assistant also serves as the receptionist for the two staff composing DNA's Public Defender Unit, who are located in the same trailer. The Legal Assistant then reviews the information with the applicant for completeness and enters it into the ACMS (Kemps) thereby creating an electronic case file. The Legal Assistant prints the Kemps Intake and has the applicant review the information for accuracy and sign the verification and citizenship attestation. The Legal Assistant then creates the case file and inserts the written intake sheet, the signed Kemps Summary sheet, and a blank retainer agreement. She gives the file to the Managing Attorney who reviews the documents, then interviews the applicant regarding their legal problem. Given that he is the only advocate in the office, the Managing Attorney makes acceptance decisions. If he has questions, he calls the Director of Litigation who is his supervisor. Unless the case is outside priorities or prohibited, he provides some type of assistance.

Conflicts are checked when the Legal Assistant enters the information captured on the written intake form into the ACMS. If a possible conflict is identified, she reviews it with the Managing Attorney who makes the final decision and the applicant is provided a handout on conflict of interest. The conflict check will also reveal if the applicant is a former client. If so, and if the prior case is the same problem code in the same calendar year, the case is reopened. The Managing Attorney makes the determination if the applicant is returning with the same problem. If the case is reopened, the original closure date and closing code, and the reopened date are entered into the notes.

The Managing Attorney keeps track of his open cases. The Legal Assistant is able to generate open case lists by office and by case handler. At the time of the onsite visit, there had been no file review of the Managing Attorney's cases since he started in August 2009, though he believed that the Director of Administration reviews the closed files from all offices.

⁴ The Managing Attorney advised that he is aware that other offices input applicant eligibility data directly into the ACMS, but due to connectivity issues with the ACMS, applicants fill out paper intake forms. This office accesses the ACMS by internet via satellite, although the office recently acquired a DSL line, it is not always fully functional.

Tuba City

The Tuba City office staff includes a Legal Assistant, Secretary/Office Manager, a Managing Attorney, a staff attorney and a tribal court advocate. Intake is scheduled on Tuesday from 8:00 am-3:00 pm, though intake was closed in December 2009, except for emergencies.

Intake screening is predominately walk-in. After a brief conversation regarding the applicant's legal problem, the Legal Assistant, whose desk is in the waiting area, asks the applicant to sign-in, and gives the applicant a Disclaimer Form and a paper intake form to complete.⁵ The Legal Assistant and the Secretary/Office Manager alternate interviewing applicants during intake hours. The Legal Assistant then reviews the information with the applicant for completeness and enters it into the ACMS thereby creating an electronic case file. The Legal Assistant prints the Kemps Summary Form and has the applicant review the information for accuracy and sign the verification and citizenship attestation. The Legal Assistant then creates the case file and inserts the paper intake sheet, signed Kemps Summary sheet, and a blank retainer agreement. She gives the file to an advocate who interviews the applicant regarding their legal problem.

During interviews, the Legal Assistant and Office Manager stated that applicants occasionally apply for services by telephone. In these circumstances, the written intake form is completed by either the Legal Assistant or Secretary/Office Manager. This form was modified from the version used in Keams Canyon and Flagstaff for the screener to indicate if intake information and citizenship were separately verified by telephone. Either the Legal Assistant or the Secretary/Office Manager later enters the data into the ACMS thereby creating an electronic case file. An appointment is set for the applicant to come into the office. Intake then proceeds as discussed above for walk-ins, except that the forms are signed when the applicant comes into the office for the appointment.

The office holds a weekly General Case Acceptance meeting with all advocates in attendance. Advocates assigned cases are responsible for contacting the client. The Secretary/Office Manager also attends and takes notes. The staff decides which cases to accept and the level of assistance to provide. The Managing Attorney has the final approval of all case assignments.

Advocates close their cases and complete the 2009 Self-Inspection Case Review Form. Advocates draft a closing letter to the client. A File Destruction Notice is sent to the client along with the closing letter. The advocates select the closing code. The Secretary/Office Manager closes the case on the ACMS within the same week. The Managing Attorney reviews all closed cases.

Flagstaff

The Flagstaff office includes a Receptionist, a Legal Secretary, a Secretary/Office Manager, a Managing Attorney, three (3) staff attorneys, a Pro Bono Coordinator, the Volunteer Lawyers Project Supervisor (also the program's Director of Administration), and two (2) other administrative staff.

⁵ Staff stated that they are aware that other offices enter screening information directly into the ACMS but they have connectivity issues with the ACMS and wish to preserve intake information on the paper form

The Flagstaff office operates a PAI program; cases are intaked through the office's normal intake and identified for referral to a private attorney operated pro se divorce clinic or referral to a private attorney.

Intake is scheduled on Tuesdays, from 9:00 am-11:00 am and 1:00 pm-3:00 pm, though intake was scheduled to close from December 15th until January 5, 2010.

After a brief conversation regarding the applicant's legal problem, the Receptionist asks the applicant to sign-in and gives the applicant a Disclaimer Form and Application for Services. On a first-come first-served basis, the Receptionist and Secretary/Office Manager interview applicants in their office. The screener (either the Receptionist or Secretary/Office Manager) first checks conflicts, and then conducts eligibility screening, entering information directly into the ACMS. This office does not use a paper intake form (except that they have the Tuba City version if the ACMS is down or they are at an outreach location). Eligibility screening is initiated at the eligibility page then proceeds to the intake pages. The screener prints the Kemps Summary sheet and then has the applicant review the information for accuracy and to sign the verification and citizenship attestation. The screener then creates the case file and inserts the written intake sheet, the signed Kemps Summary sheet, and a blank retainer agreement. The file is then given to an advocate who interviews the applicant regarding their legal problem.

Though most intake applicants are walk-ins, the office also has applicants who apply for services via telephone. Screeners proceed as they do with walk-in intake, entering eligibility information directly into the ACMS. Forms are signed if and when the applicant comes to the appointment.

This office has had some non-citizen clients. In the event the applicant is not a citizen, the screener asks the applicant for their documentation and writes down the alien card number if the applicant is a legal permanent resident. If there is any question as to eligibility, screeners consult the Managing Attorney or another attorney in the office.

The office holds a weekly general case acceptance meeting. All case handlers and the Pro Bono Coordinator attend. The Secretary/Office Manager also attends and takes notes. Following the meeting, the Secretary/Office Manager drafts letters reflecting the acceptance decision (accept, reject, advice) and the case handlers review and sign the letters.

When work concludes in a case, case handlers draft closing letters and give them to the Secretary/Office Manager to format and send to the client along with a File Destruction Notice. Case handlers also complete the 2009 Self-Inspection Case Review Form. They select the closing code and give the files to the Secretary/Office Manager to close in the ACMS. After doing so, the files are put in a box and the office's case handlers take turns reviewing the closed files.

Chinle

The initial screening for intake in this office is done either by the Receptionist or the Office Manager. This office sets aside about two (2) days a month on which it conducts intake

interviews. Throughout the month, applicants who are interested in applying for assistance are told when the next intake day will be and that they should come back on that day to review their case with an advocate. Interviews are conducted on a first come, first serve basis. No intake is done during outreach activities or outside of the office.

Applicants sign in and then give a short summary of the type of assistance they are looking for. Initially, all applicants are screened for conflicts before proceeding; the conflict checking is program- wide. After it is clear that no conflict exists, income screening is conducted to determine if the applicant is eligible.

All persons are asked to complete an attestation of citizenship – it is very rare that there is a non-citizen who appears requesting assistance. Even though the case has not come up, the intake staff was well versed in the requirements of documentation and the other intricacies of Part 1626 and Program Letter 06-02.

If it appears appropriate, the applicant may be given a pro se packet to proceed– this is done by a casehandler, not the preliminary intake staff. No legal assistance is provided by anyone other than an attorney or Tribal court advocate and no legal assistance is provided over the telephone. If the case appears to be an emergency and the person has appeared in the office during non-intake days, the intake staff will consult with the Managing Attorney who makes the decision as to whether or not the program can provide assistance at that time. In addition to the intake day, there is also a “Brief Service” day – again about twice a month – in which the program may provide assistance to clients in filling out these packets or providing other brief service.

Crown Point

This office conducts two types of intake—one for brief service cases and one for litigation cases. Brief service intake is held once a month and consists of providing applicants with pro se packets. The packets are for applicants seeking assistance with stipulated divorce, power of attorney and correction of record matters. Litigation intake is held once a month (unless it is an emergency), for applicants who have been served with a summons or complaint. Intake hours are 8:00 am-11:00 am or 8:00 am-12:00 pm.

The majority of intake is with people who walk-in. Those who walk in and request legal advice must complete an “Application for Service”. This application is the paper intake form used by all the other program offices. The office does a conflicts check before accepting the application. If there is no conflict, the applicant completes the application. Information from application is then entered into the ACMS. The case file is created from the Kemps intake sheet, the signed Kemps Summary sheet, and a blank retainer agreement. The case file is then forwarded to an advocate who may either schedule an appointment or interview the applicant immediately.

People calling into the office seeking assistance must identify their legal issue. If the issue is within program priorities, a conflict check is conducted. If there is no conflict, the applicant is screened for financial and citizenship eligibility over the telephone. If the applicant is determined to be eligible for services, the case file is forwarded to an attorney who determines whether the case will be a brief service or litigation case.

Fort Defiance

Intake hours are Monday-Friday 8:00 am-2:00 pm. Intake is limited to 20 applicants per day. Emergency cases are seen anytime. This office does not conduct any outreach.

The majority of applicants are walk-ins. The initial screening in this office is done by the Legal Secretaries. A conflicts check is conducted prior to any eligibility screening. If there is no conflict the Legal Secretary opens a file on the ACMS under the applicant's name. The Legal Secretary asks the applicants questions regarding the applicant's eligibility (income, assets, citizenship, household composition, nature of the legal problem). This information is entered directly into the ACMS. At the conclusion of the eligibility screening, the Legal Secretary prints out the intake documents and after review, the applicant is asked to sign (citizenship, retainer agreement). Applications are then forwarded to advocates.

Group case acceptance meetings are weekly. Applicants are notified by mail or telephone as to whether their case will be accepted or not. Advocates manage their case file by using opening and closing memoranda as well as a compliance check list.

The Legal Secretaries close cases based on the recommendations from the advocates. Closing codes are assigned by the Legal Secretaries. The Managing Attorney and the Director of Administration review closed cases on a monthly basis.

Mexican Hat, Farmington and Ship Rock

These three (3) offices consistently check for conflicts very early in the screening process so as to determine whether it will be appropriate or possible to obtain the applicant's information. For situations in which intake is conducted at different locations other than program offices, the conflicts is still reviewed early in the screening as staff will call into their office to have staff check for conflicts prior to conducting the full interview. This process is consistent and early conflicts screening was very strong.

Intake screeners consistently screen and record for most of the necessary information required by LSC regulation. There is a significantly similar intake screening conducted in these three offices. Intake screeners evidenced and discussed significantly standardized and consistent approaches to intake in all offices, and with a primary reliance on the standardized, automated intake form.

Despite these core strengths, several items for improvement or necessary corrective action were identified in one or more of the three offices:

- The paper intake form provided in the different offices has sections that reflect prior DNA policy and this form should be updated to fully reflect the standard automated intake form. In particular, on page two of the form there is reference to 187.5% level of Federal Poverty Guidelines ("FPG"), which is outdated, and the methodology regarding income exception on this form reflects a prior process. This form should be simplified and updated as needed to make it fully current.

- There is a need for full consistency regarding how to determine the “household” between offices. It is recommended that DNA discuss this with all of its intake workers and then adopt a consistent standard to be applied that includes the best practices currently in use.
- DNA needs to clarify its policy on exclusion of vehicles/automobiles, as it is not consistently clear that any vehicle that is *used for transportation* can be excluded. Further, it appears that a first vehicle may be automatically excluded without a determination that it is used for transportation.
- As discussed further, *infra*, in the section on income eligibility, the over-income procedure used prior to the visit did not comply with regulatory requirements. Staff members were simply using 200% as the cut-off point for eligibility and no consideration of factors was done for those between 125%-200% of FPG. Further, the supporting forms for those over 200% allow for elements that are not for the over-200% level. The forms were likewise non-compliant for the 125%-200% screening process. All related intake forms, and the corresponding computerized intake form must be changed so as to ensure compliance with over-income case acceptance.
- In the three (3) offices visited, three (3) different client grievance notices were provided. Each of the forms provided different (previous) addresses for LSC as a reference for applicants/clients to contact should they desire. For consistency, DNA should adopt one standard grievance statement and it is recommended that if and when references to LSC are provided that the current LSC address is provided.
- Different versions of a “Statement of Facts” form were observed in the offices visited. It is recommended that DNA consider implementation of one standard form.⁶

In addition to standard intake forms, the program offices also use supplemental focused legal topic area interview forms and questionnaires that are used only as a supplement to, and not a replacement for, standard eligibility screening.

As discussed in this report, *infra*, the program incorrectly interpreted LSC requirements regarding persons whose income was between 125%-200% of the FPG and as a result, 100% of these cases were non-compliant. Cases reviewed supported this conclusion.

As the LSC visit was conducted in December, DNA management requested guidance regarding how affected cases should be handled for the 2009 CSR, as well as the self-inspection process.⁷

⁶ This is a recommendation as each of the forms currently in use would each comply with the LSC regulation. However, as other intake and case-related forms must be standardized it is a good practice to have all such forms in a standard format and dated so that staff can easily determine which form is the proper one for current use.

⁷ The timing of the OCE visit, in December, with a full year of CSR numbers almost completed, raised questions regarding how DNA should best handle cases already closed in 2009 that could be negatively affected by the income level error. After the visit, the LSC Office of Information Management provided DNA with a set of instructions to assist in its preparation of the 2009 CSR report. By email from LSC to DNA dated December 11, 2009, the program was given a one-time set of instructions by which it was to review affected cases and make the maximum number of corrections, as possible. In short, this one-time fix allowed DNA to analyze any case that needed an income waiver to determine whether factors exist that would justify such a waiver, and then to document a retroactive waiver. Emphasis was given to the extended service case codes. Also, for any cases which received a retroactive waiver, the case was to be reported to LSC, and without being considered an “error” case.

In response to the DR, DNA stated they revised its paper intake form (“Form 10,” which they discourage the use of, as being extra work for support staff) both while LSC was onsite and again when DNA’s new eligibility policy was enacted. Further, DNA stated they do have only one approved Grievance Notice and only one approved Statement of Facts. Finally, DNA stated they appreciated LSC notifying them that different offices are using different ones and they would ensure all offices are using only the one. A copy of Form 10 was attached to the comments.

Finding 3: During the review period, DNA’s eligibility guidelines incorrectly established a higher maximum income ceiling which allowed DNA to improperly accept a number of clients. As a result, DNA is in non-compliance with the income eligibility requirements of 45 CFR § 1611.4 and § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3 and applicable LSC instructions for clients whose income did not exceed 125% of the Federal Poverty Guidelines (“FPG”). It is noted, however, that since the onsite review, DNA drafted a new eligibility guideline policy and submitted it to LSC for review.⁸

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant’s household and the total income before taxes received by all members of such household in order to determine an applicant’s eligibility to receive legal assistance.⁹ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant’s household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (“FPG”) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient “clients” and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

⁸ The Director of Administration was very responsive to this need for immediate revision and the eligibility guidelines were revised during the review week and shared with the OCE team. Further, DNA submitted the new eligibility policy to OCE for review on February 10, 2010.

⁹ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

DNA's Eligibility Guidelines, as provided by the program in advance of the onsite visit, were adopted by its Board on November 17, 2007. In adopting this policy, the DNA Board incorrectly set the annual income ceiling at 200% of the FPG, instead of the 125% as required by LSC regulations. Further, sampled case files reviewed for applicants whose income exceeded 125% of the FPG did not evidence that the applicant had authorized exceptions pursuant to the DNA's over-income authorized exceptions because of the incorrect policy.¹⁰

DNA maintains the income eligibility documentation required by 45 CFR §§ 1611.4 and 1611.5 and screens for prospective income as required by 45 CFR § 1611.5(a)(4)(i). However, numerous sampled case files reviewed for applicants whose income exceeded 125% of the FPG did not evidence that the applicant had authorized exceptions as required by 45 CFR 1611.5. For examples *see* Closed 2008 Case Nos. 08E-3022046, 08E-3019992, 08E-3022276, 08E-4022147 and 08E-4021471; Closed 2009 Case Nos. 09E-2004665, 09E-7023669, 09E-7023758, 09E-4022793, 09E-2005094, 09E-205035, 09E-2004911 and 09E-2004617; and Open Case Nos. 09E-3025507, 09E-3024136A, 08E-302245, 09E-4023178, and 09E-13023034.

In response to the DR, DNA stated that a revised financial eligibility policy was sent to LSC for review and comment and after receiving in-depth comments from LSC, they again completely revised the eligibility policy. DNA stated the income policy was passed by DNA's Board of Directors on February 20, 2010. DNA further stated that staff reviewed every 2009 closed case and reviewed the financial eligibility. If the client was between 125-200% of the poverty level, they looked to see if the client fell within one of the 11 factors that LSC regulation 45 CFR § 1611.5 (in many cases calling the clients to get more information) and, if so (which was nearly every case), completed an over-income memo. Finally, DNA stated if the client's income was over 200% and could not be an exception under 1611.5(1) or (2), they ensured the case was handled under another funding source with higher income levels and was not reported to LSC.

DNA stated they will ensure that applicants are at or below 125% of the poverty level or, if between 125-200%, that they can consider one of the factors in 45 CFR § 1611.5 and if over 200% they can be an exception under 1611.5(1) or (2); can be handled under another grant, and that an over-income memo is included in each file when required. A copy of the new eligibility policy, the 125-200% income justification, and the over 200% income justification memorandum was attached to the comments.

¹⁰ This issue was brought to the attention of senior management. On the second day of the review, the Director of Administration issued a memorandum to all staff instructing them to use 125% as the income ceiling, stating that applicants with income 125%-200% may only be assisted if an over income memo is completed, and attaching revised over income memos (one for 125%-200%, one for over 200%). OCE conducted training on December 4, 2009, and a program-wide meeting was held the following week to reinforce LSC's requirements; further, the Director of Administration stated she would generate a report to identify non-compliant cases and deselect them from 2009 CSRs.

Finding 4: DNA maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.¹¹ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

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

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

The financial eligibility policy approved by the DNA Board of Directors on November 17, 2007, and provided in advance of the onsite visit, established an asset ceiling of \$10,000 for the first person in the household and \$4,000 for each additional person. Exempt from consideration is the equity in the principal residence; an individual's primary vehicle or any other vehicle required by the household; personal and household effects; all property to which trust restrictions are attached due to Native American status; value of land essential for employment, self-employment or self-sufficiency; equipment and tools necessary for employment, self-employment or self-sufficiency; domestic livestock; equipment necessary for livestock management; personal property related to religious or cultural customs and practices; property needed by an elderly, institutionalized or disabled person; up to \$2,000 in an Individual Indian Money Account; and assets of an alleged perpetrator of domestic violence.

Sampled case files reviewed revealed that DNA maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.¹²

In response to the DR, DNA offered no comments on this Finding.

¹¹ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

¹² The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

Finding 5: DNA is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that seven files lacked a required citizenship attestation.

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.¹³ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

DNA is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that seven (7) files lacked a required citizenship attestation. *See* Closed 2009 Case No. 09E-13023538; Open Case Nos. 09E-6023902, 08E-2004389 and 06E-2003124. Also *see* Closed 2009 Case Nos. 08E-6020074, 08E-6020083 and 08E-6019638. The physical files for these three (3) case files could not be located during the review; consequently the citizenship documentation could not be verified.

In response to the DR, DNA stated they recognize that the LSC regulation requires a client to sign a citizenship verification when staff see the "whites of their eyes" DNA stated that this is DNA's policy, and it is how they train all new staff (support and litigation staff alike). DNA also stated that if an individual is a member of an Indian Tribe, they are by definition a citizen of the United States under the 1924 Indian Citizenship Act. DNA further stated that out of the seven (7) cases cited as lacking the required citizenship attestation, six (6) of those clients had Navajo Nation Census Numbers, and were, by definition, citizens of the U.S. Therefore, although DNA did not get the citizenship attestation as required by 45 CFR § 1626.6, these clients are clearly US citizens.

¹³ *See* Kennedy Amendment at 45 CFR § 1626.4.

DNA stated they will ensure that when they “see the whites of our applicant’s eyes,” that they execute a citizenship attestation, when they do telephone intake that staff will confirm citizenship over the phone, and they will continue to train all of their staff as to this requirement.

Finding 6: DNA is not in compliance with the retainer requirements of 45 CFR § 1611.9.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient’s service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.¹⁴ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

DNA is not in compliance with the requirements of 45 CFR 1611.9. There were numerous case files identified during the reviewed that required a retainer agreement but did not have one. *See* Open Case Nos. 07E-5018237, 08E-6019895, 09E-6023902, 09E-2005132, 09E-2005218, 08E-2004115, 08E-2004398, 09E-2004775, 09E-2004932, 09E-2005012, 06E-2003124 and 09E-2005042. Also *see* Closed 2009 Case Nos. 07E-7017961, 08E-7021137, 05E-13011962, 08E-6022400, 08E-2004330, 08E-2004326 and 09E-2005111 and Closed 2008 Case Nos. 08E-2004385, 08E-2004447, 07E-2003762, 07E-2003763, and 06E-2002878.

In response to the DR, DNA stated they will ensure that clients execute Retainer Agreements when extended legal services are provided to the client and will continue to train all of their staff as to this requirement.

Finding 7: DNA is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a

¹⁴ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient’s risk management.

recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

Case files reviewed indicated that DNA is in compliance with the requirements of 45 CFR Part 1636.

In response to the DR, DNA offered no comments to this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, DNA provided LSC with a list of its priorities. The priorities are stated as “supporting families, preserving the home, maintaining economic stability, safety, stability, and health of citizenship/families, and protection of individuals/families with special vulnerabilities”. DNA is in compliance with 45 CFR Part 1620. None of the sampled files reviewed revealed cases that were outside of DNA’s priorities.

In response to the DR, DNA offered no comments to this Finding.

Finding 9: DNA is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff case files which contained no description of the legal assistance provided.

LSC regulations specifically define “case” as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a “case”, reportable in the CSR data, depends, to some extent on whether the case is within the recipient’s priorities and whether the recipient has provided some level of legal assistance, limited or otherwise.

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such

information shall, at a minimum, describe, *inter alia*, the level of service provided. See CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

Case review evidenced that DNA is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. See Closed 2009 Case Nos. 08E-2004034, 08E-2004562, 09E-7023785, 09E-4023909, 09E-4024995, 09E-502478, 09E-5024797 and 09E-13025234; and Open Case Nos. 09E-2005014 and 06E-2002878. In addition, files reported in the program's 2008 CSR contained either no description or an insufficient description of the legal assistance provided. See Closed 2008 Case Nos. 07E-6017372 and 07E-601830. As documentation of legal assistance is an essential element to qualifying a case as reportable for CSR purposes, DNA erroneously reported these cases in its 2008 CSR.

Additionally, two files reviewed involved legal assistance that was not provided by an attorney or paralegal working under the supervision of an attorney. A person providing assistance in a case need not have the job title "attorney" or "paralegal" but any such individual must be authorized to provide legal assistance in accordance with applicable rules of practice and must keep time records as required by 45 CFR Part 1635. The review discovered two cases where the legal work was performed by a staff person with the job title of librarian and who was not authorized to provide legal assistance. See Open Case Nos. 09E-2004859 and 09E-2004875.

In response to the DR, DNA agreed that four (4) cases cited in the DR (Case Nos. 09E-7023785, 09E-4023909, 09E-4024995, and 07E-6017372) were not in compliance because they did not contain legal advice. DNA further stated that evidence of legal advice was in the ACMS for Case Nos. 09E-5022478 and 09E-13025234.

LSC notes that it was not demonstrated during the on- site review that there was evidence of legal advice in the ACMS for Case Nos. 09E-5022478 and 09E-13025234. LSC further notes that DNA did not submit evidence in its comments to the DR that the ACMS contained evidence of legal advice for these two (2) cases.

DNA also stated staff will ensure that clients are given legal advice and other assistance whenever possible and that such assistance is noted in the ACMS and file upon closure of the case. DNA further stated staff will continue to review files before they are reported to LSC to ensure that legal assistance is evident and will continue to train all staff about this requirement.

DNA stated that the two (2) cases cited in the DR as cases involving the provision of legal assistance by a non- attorney were income tax cases where the assistance was provided by DNA's librarian who is certified under DNA's Volunteer Income Tax Assistance program. DNA stated they liken these cases to SSI/SSDI cases, where the representative does not need to be licensed to practice law to do administrative cases. DNA stated they will continue to review case files on a regular basis to ensure that only individuals authorized to provide the legal services provide those services.

Finding 10: DNA’s application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated that DNA’s application of the CSR case closing categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were numerous instances of case closing code errors. For examples *see* closed 2008 Case Nos. 07E-9018719 (file should have been closed as “B” because there was third party contact) and 08E-5021478 (file should have been closed as “L” because there was a voluntary court dismissal), Closed 2009 Case Nos. 09E-2005054 (file should have been closed as Ib), 08E-6022400 (file should have been closed as “H”), 09E-6025980 (file should have been closed as “B”), 07E-4017394 (file should have been closed as “F”, copy of negotiated settlement in file), and 09E-13024868 (DNA drafted pro se documents, therefore file should have been closed as “B”).

In response to the DR, DNA stated its ACMS and training of staff on case closure categories is consistent with the CSR handbook. DNA further stated the application of the Handbook and training appears to be incorrect in some cases. DNA will continue to review case files on a regular basis to ensure proper closing codes and will continue to train all staff regarding reasons closed.

Finding 11: DNA is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and Handbook (2008 Ed.), § 3.3 as numerous staff cases reviewed were untimely closed or dormant.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).¹⁵ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been

¹⁵ The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

DNA is not in compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) and staff case files were not closed in a timely manner or were found to be dormant.

The following case files, and those similar to them, should not be reported to LSC in DNA's CSR data submission and should be closed administratively. Examples include: Open Case Nos. 08E-9020897 (opened July 2008 with no evidence of legal advice), 06E-9015408 (opened in November 2006, with no work documented in the file, appears to be dormant), 09E-2004919 (opened April 21, 2009 and remains open. Case notes indicate that all activity ceased in April 2009) and 06E-2002878 (opened August 8, 2006, date of last activity is May 30, 2007).

The review found case files with no recent activity for extended periods of time and the work in the file appears to have been completed in prior years. *See* Open Case Nos. 05E-8010360 (opened May 2005), 07E-8018775 (opened December 2007) and 07E-13017065 (last activity May 2007, closed July 2008). Also, there were several files reviewed with notes in the files indicating the last activity occurred in 2008. None of these files contained an entry explaining why the case should remain open. *See* Open Case Nos. 08E-6019895, 08E-6018886 and 08E-6018887.

A number of case files were found to be untimely closed. For examples, *see* Closed 2009 Case Nos. 08E-6019094 and 08E-619100 (opened February 2, 2008, closed October 6, 2009 as brief service case), 08E-6019298 (opened February 26, 2008, closed September 28, 2009 as a brief service case), 08E-6019633 (opened March 27, 2008, closed June 4, 2009 as a brief service case), 08E-6020083 (opened April 24, 2008, closed June 4, 2009 as a brief service case), 07E-8018759 (opened December 11, 2007, closed in 2009 as an advice case), 08E-8021017 (opened July 2, 2008, closed in 2009 as an advice case), 08E-8022384 (opened July 29, 2008, closed in 2009 as a brief services case), and 08E-5018854 (administrative agency decision obtained September 23, 2008 but case closed April 3, 2009).

In response to the DR, DNA stated it recognizes that untimely closed and dormant cases were a problem. DNA stated the problem centered on one particular attorney who no longer works at DNA. DNA stated this attorney was replaced with an excellent attorney who is quite knowledgeable and meticulous about LSC compliance issues. DNA also stated they will address this issue with the other offices/attorneys noted and have begun running the ACMS report "cases with no timeslips for a period of time" on a quarterly basis. DNA further stated they will ensure that cases are timely closed and will continue to train staff on this issue.

Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

Case lists were reviewed in advance and potentially duplicate files were identified for review. No duplicate files were identified among the sampled files.

In response to the DR, DNA offered no comment to this Finding.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

Sampled files reviewed, and interviews with staff indicate, that DNA is not involved in such activity. Discussions with the Executive Director also confirmed that DNA is not involved in these prohibited activities.

In response to the DR, DNA offered no comment to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also confirmed that DNA is not involved in any fee-generating case.

In response to the DR, DNA offered no comment to this Finding.

Finding 15: A review of DNA's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees. Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;

- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

The review of DNA's program integrity documents and its accounting and financial records for the review period did not reveal any transaction(s) that was inconsistent with LSC requirements and restrictions on the use of non-LSC funds and the transfer of LSC funds. The program maintain its independence and program integrity, does not have any relationships with outside organizations that engages in restricted activities and does not use its resources to subsidize another organization.

Discussion with program management revealed that the program failed to notify its non-LSC donors of the application of LSC requirements on its non-LSC funds as required by 45 CFR §1610.5 and Program Letter 96-3. However, while onsite the program developed and will send a donor notification letter to its non-LSC funding sources. Review of the newly created donor notification letter found the letter contained the required language and is in compliance with the notification requirement of this Part and the program letter.

In response to the DR, DNA offered no comment to this Finding.

Finding 16: DNA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, DNA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of PAI cases.

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement.

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. *See* 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

The accounting requirements of 45 CFR Part 1614 require that the recipient utilize a financial management system and procedures that maintain supporting documentation to document PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort and report the support and expenses relating to the PAI effort separately in the recipient's year-end audit.

The Audited Financial Statement ("AFS") for the years ending December 31, 2007 and 2008, reported in the Notes to Financial Statements (pages 12 and 13) respectively, expenditures dedicated to the PAI effort in the amount of \$93,954 which translates to 12.9% and \$91,464 which translates to 12.5%. The basic field grant for both years was \$729,647 and \$733,213 respectively. The AFS for both years did report PAI as separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.3(e)(2).

DNA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files. DNA receives LSC basic field funding for a portion of Coconino County, Arizona (served by the Flagstaff, Arizona office), and San Juan County, New Mexico (served by the Farmington, New Mexico office). Accordingly, the PAI requirement only applies to these funds.

The program's Director of Administration, an attorney, serves as the supervisor of the Flagstaff office's Volunteer Lawyer's Project ("VLP"). A portion of her time, based upon actual time records, is allocated toward the PAI requirement. She is assisted by a Pro Bono Coordinator, whose time is allocated 50% toward PAI. The Pro Bono Coordinator is considered support staff

and her time is not based upon actual time records. Based upon an interview regarding her duties, it appears that the 50-50 split of time between her PAI and non-PAI duties appears to be reasonable.

PAI in Farmington

There was limited PAI activity in the Farmington office. This office's PAI activity consisted of pro bono and contract attorney cases. There was one potentially significant issue noted, in that it is unclear whether the contract attorney who conducts a number of PAI designated cases, qualifies as a private attorney under 45 CFR § 1614.1(d).

The PAI Coordinator for the Farmington Office started out as a casehandler in this office and has transitioned into an increasing level of PAI coordination activity as the office has increased the number of casehandlers. When the PAI Coordinator initially arrived at this office, for a period of several months, she was the only attorney in the office. In April 2008, she became the Director of the Volunteer Lawyers Project ("VLP").¹⁶ Overall, activities were conducted in the past two years to build the VLP, including local recruitment and significant work in 2009 participating on the San Juan County Pro Bono Committee.¹⁷ Oversight activities observed in the files reviewed, as well as demonstrated in the interviews of staff, indicated appropriate levels of oversight for PAI cases in consideration of the level of activity. As part of case management of PAI, a closing letter is used when final action on the case has been taken.

Despite the efforts described above, as of the December 2009 OCE review, the number of participating attorneys in the VLP effort that were involved in LSC-related or reportable activities was limited.¹⁸ It was estimated that approximately five attorneys have taken a case in recent times. Further, a number of the PAI cases were being handled by the same contract attorney, as discussed further below.

45 CFR § 1614.1(d) states that the term private attorney, as used in Part 1614, is "an attorney who is not a staff attorney as defined in §1600.1 of these regulations." 45 CFR §1600.1 states:

¹⁶ It is noted that the position is called "Volunteer Lawyer's Project" and that while the intent of the main PAI program for this office is the referral of pro bono cases, that there have been numerous PAI contract cases in this office as well handled by one attorney who assists the office in an ongoing manner with cases.

¹⁷ The PAI coordinator described how she has been working to rebuild the PAI program for this office, how her current plans are to begin to work at DNA part-time in 2010 and for her position to be then solely focused on PAI related activities.^[16] She has continued to be a program casehandler up through 2009, but was in the process of transitioning out of her staff cases at the end of 2009, and closing pending, open and sometimes any potentially dormant PAI cases.

¹⁸ It is noted that part of the VLP activity conducted by the Farmington office now includes limited "overall" record keeping of all volunteer efforts by members of the local bar (whether done through VLP/DNA or not). This activity is to both allow VLP to be a focus for pro bono coordination, but is also used to assist private attorneys in tracking their overall donated pro bono hours. The pro bono coordinator stated that this has allowed her to build institutional memory about legal community on behalf of DNA. It is also obviously an advantage to VLP to have uninvolved attorneys contact the program to report pro bono hours -- as DNA can now then approach and attempt to involve the attorney in its LSC-eligible PAI efforts.

Staff attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

The review of a small sample of Farmington office PAI cases evidenced that a single contract attorney handled over half of the cases. This attorney was described by the PAI coordinator as helping with the overflow of Spanish-speaking clients and otherwise available to assist in taking cases. This attorney has worked with this office for some time. When the LSC definition of private attorney (45 CFR § 1614.1(d)) was discussed with the PAI coordinator, she candidly stated that she is unsure of this attorney's professional annual income and that the amount paid to them annually would need to be reviewed in order to determine whether this contract attorney (and therefore their cases) qualify as charged to, and designate as, PAI. This issue requires follow up with its comments to the Draft Report and DNA must provide evidence to indicate whether this attorney and their cases can be considered as PAI.

Flagstaff

The Flagstaff office involves private attorneys in the direct delivery of legal assistance to eligible clients in two ways, the direct referral of cases to pro bono attorneys and a compensated contract with an attorney to conduct a pro se divorce clinic once per month. Cases appropriate for referral to private attorneys or the divorce clinic are identified in the office's weekly General Case Acceptance meeting, which the Pro Bono Coordinator attends. Accordingly, these cases have all been intaked in accordance with the procedure for staff cases. It is also noted that in most cases, staff advice is provided during the intake interview and if the client is not placed with a private attorney or does return after it is referred to the PAI component, it can still be closed as Staff Counsel and Advice. The Pro Bono Coordinator is responsible for coding the case as PAI after it is referred to PAI after the case acceptance meeting. She also changes the case handler to the supervisor of the VLP so that they can easily be tracked.

Pro Se Divorce Clinic

DNA contracts with a private attorney to hold a pro se divorce clinic once per month in the Flagstaff office. The attorney is compensated at \$75 per hour.

Once identified as appropriate for the clinic, the client's name is sent to the divorce clinic private attorney for a conflict check. If there is no conflict of interest, the Pro Bono Coordinator sends the client a letter scheduling them for the clinic, a handout on divorce, and a divorce questionnaire. The client is asked to complete the questionnaire and return it prior to the clinic so that staff is aware which forms will be required for each attendee.

The Pro Bono Coordinator attends the clinic and as attendees arrive (if the individual was a telephone intake and had not signed the printed ACMS intake summary page which has the citizenship attestation), has them sign a separate citizenship attestation, a VLP Authorization and Retainer Agreement and any other necessary documents.

During the clinic, the attorney assists the attendees in completing a petition/complaint of divorce and provides one-on-one advice and assistance regarding protective orders, child support worksheets, service of process, or other issues, as appropriate. Documents are notarized, copied and organized for the client to file with the Clerk of the Court. The client also receives a packet regarding how to serve papers on the opposing party, file for a default judgment, and represent themselves in court. After 30 days, the client returns to the office and the Pro Bono Coordinator calculates child support amounts, assists with a default if there is no response from the opposing party, or assists the client in preparation for the Pre-Trial Conference if there is a response. The Pro Bono Coordinator takes the documents to the private attorney for review and revision, if necessary. Once the private attorney approves the documents, the Pro Bono Coordinator calls the client to come in and sign the documents. They are notarized and copied, and the client files them with the Clerk of the Court. The case is then closed with a letter from the private attorney. Clients are advised that they should re-contact the program through normal intake if additional issues arise. Financial information is re-screened. Occasionally a staff attorney can resolve the question during the intake interview. If so, the case is reopened, the advice added, and re-closed. The case remains a PAI case. If further assistance is required, the case is reassigned to PAI following the General Case Acceptance meeting. Interviews and file review reveal that cases staff are well versed as to the proper coding of cases as Staff or PAI, if assistance is provided by both components, as set forth in the CSR Handbook (2008 Ed.), § 10.1.

The Pro Bono Coordinator tracks the file through a chart and if the client does not return she calls the client to determine if there is a problem. If she cannot contact the client, after a given period of time, the file is closed. File review reveals that contacts with clients are notated in detail in the ACMS.

Referrals to Private Attorneys

Once a case is identified as appropriate for referral to a private attorney, the client is sent a letter indicating that DNA will attempt to place the case with a private attorney, and enclosing a VLP Authorization and Retainer Agreement. The authorization is the same one used for divorce clinics. Once the authorization is signed and returned, the Pro Bono Coordinator attempts to locate an attorney willing to accept the case. If an attorney is located, the Pro Bono Coordinator sends a fact memo to the attorney and asks the attorney to advise her of the acceptance decision within ten days.

If there is no conflict of interest with the client, the attorney is sent a letter confirming acceptance and an Initial Disposition Form, which is to be returned after the initial meeting with the client. The attorney is also provided with Case Update forms to advise the program periodically of the status of the case. The client is sent a letter identifying the attorney and instructing the client to contact the attorney's office to make an appointment.

The Pro Bono Coordinator tracks the file. If she does not receive the Initial Disposition Form within a reasonable period of time, she contacts the attorney and/or the client to determine whether the client contacted the attorney. The Initial Disposition Form asks the attorney to provide an estimated completion date after meeting with the client. The Pro Bono Coordinator then flags the file for follow-up if the attorney has not advised her of the status. The Pro Bono

Coordinator also contacts the client periodically throughout representation. File review reveals that contacts with clients are notated in detail in the ACMS.

When the case is completed, the attorney advises the Pro Bono Coordinator as to the work accomplished for the client and the outcome. This is done by telephone, e-mail or on the Case Update form. The Pro Bono Coordinator sends a closing letter, to be signed by the VLP supervisor, and a client satisfaction survey. The Pro Bono Coordinator closes the cases, selects the closing code, and provides the files to the VLP supervisor to review.

Oversight

Thirty Flagstaff PAI cases were reviewed. All files included notations in the ACMS evidencing regular follow-up with both the private attorney and the client. All files reflected evidence supporting the closing code. Extended service files included copies of final documents and limited service cases included notes in the ACMS.

Legal Document Preparer

Two divorce PAI cases were identified in which the pro se paperwork for the client was prepared by a Legal Document Preparer trainee. The individual is a lay advocate from a local domestic violence shelter who is in the process of becoming certified. The VLP supervisor stated that during the time the lay advocate is in training, the lay advocate completes divorce paperwork and reviews it with the VLP supervisor. The VLP supervisor also stated that once the lay advocate completes her training, and becomes certified and licensed, it is the program's intention for her to prepare these documents without oversight by the VLP supervisor. It is DNA's position that assistance provided by such an individual qualifies as PAI because the individual must be licensed.

The State of Arizona allows individuals or businesses to prepare or provide legal documents for individuals who are representing themselves in a legal matter. Such individuals must pass an examination and meet certain educational requirements, such as a high school diploma and a minimum of two years law-related experience under the supervision of an attorney. They must apply to the Supreme Court of Arizona, be fingerprinted, pass a credit check and attend training. Certifications are granted by a board must be renewed. Legal Document Preparers must attend continuing legal education and are subject to disciplinary procedures.¹⁹ However, information on the Supreme Court of the State of Arizona website indicates that Legal Document Preparers are considered non-attorneys and may only provide legal information, not legal advice. Accordingly, these cases are not eligible PAI cases as a Legal Document Preparer is not an attorney.

While only two (2) such cases were identified during case review, the VLP supervisor stated that others exist. These cases cannot be recorded as PAI cases and should be designated as matters given that the Supreme Court of the State of Arizona states that work prepared by Legal Document Preparers is considered legal information, not legal advice.

¹⁹ See Arizona Code of Judicial Administration §§ 7-208 and 7-20.

Corrective Action must be taken to ensure that cases prepared by Legal Document Preparers are not recorded or counted as PAI cases.

In response to the DR, DNA stated its Farmington contract attorney bills the program at a rate of \$85 per hour (and only \$40 per hour for traveling time). DNA stated this represents less than half of the contract attorney's customary hourly billing rate and that the average hourly billing rates in DNA's service area was \$175 per hour. DNA concluded that, therefore, this attorney is a PAI attorney under the definition of 45 CFR § 1614.3(e)(3) which states: Attorneys fees paid may not exceed 50% of the local prevailing market rate for that type of service. A copy of the attorney's contract was attached to the comments.

In response to the DR, DNA stated they will not count cases performed by Legal Document Preparers as PAI cases.

Finding 17: DNA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

LSC regulation 45 CFR § 1627.4(a) requires that:

- a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

The review of accounting records, detailed general ledger documents, and the vendor list, along with discussions with program management, disclosed that DNA is in compliance with 45 CFR § 1627.4(a).

In response to the DR, DNA offered no comment to this Finding.

Finding 18: DNA is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must

satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The review of 15 advocates' timekeeping records for the period November 7, 2007 through March 25, 2009 disclosed that the records are electronically recorded, and contemporaneously kept, recording the time spent on each case, matter or supporting activity, and thereby in compliance with 45 CFR § 1635.3(b)(c).

The review did not identify any part-time staff who work of the recipient or any other organization.

The timesheets of six (6) staff members were reviewed for 10 bi-weekly pay periods (three (3) in 2007, three (3) in 2008 and four (4) in 2009). The timesheets were compared against the time recorded in case files to determine if the time reported on the case appeared reasonable. The results of the review disclosed no exceptions.

In response to the DR, DNA offered no comment to this Finding.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees)

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.²⁰

²⁰ LSC further determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. As well, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).

Review of DNA's accounting records and audited financial statements for 2006 and 2007 and the general ledger trial balance as of September 15, 2008, along with discussion with program management found that the program did not recognize and report the receipt of any attorneys' fees or court-awarded payments. None of the sampled pleadings reviewed contained a prayer for attorney's fees. Discussions with the Executive Director and fiscal review also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also confirmed that DNA is not involved any prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 21: Sampled cases complied with the requirements of 45 CFR Parts 1613 and 1615, (Restrictions on legal assistance with respect to criminal proceedings and actions attacking criminal convictions).

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 22: Sampled cases complied with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR §1617.2(a).

None of the sampled files reviewed involved initiation or participation in a class action lawsuit. Discussions with the Executive Director also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Recipients may not make available any funds , personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.²¹ This restriction has been contained in all subsequent appropriations acts.²² This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that DNA is not involved in this prohibited activity.

In response to the DR, DNA offered no comment to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

²¹ *See* Section 504(a)(18).

²² *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

None of the sampled files reviewed involved such activity. Discussions with the Executive Director also confirmed that DNA is not involved in these prohibited activities.

In response to the DR, DNA offered no comment to this Finding.

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134, Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that DNA was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

In response to the DR, DNA offered no comment to this Finding.

Finding 29: Bank reconciliations for the operating, payroll, litigation, salary advance and client trust accounts were reviewed and are not performed in a timely and accurately manner.

Reviews revealed that bank reconciliations for the operating and payroll accounts were not dated upon approval/certification, and not approved by the Executive Director. The bank reconciliations for the investment account were not reconciled on a timely basis nor were they certified and dated by the Executive Director. The bank reconciliations for the client trust and litigation accounts are not accurately prepared since they do not reconcile back to the general ledger balance for the month.

In response to the DR, DNA offered no comment to this Finding. However, as noted above the DR stated that bank reconciliations for the operating and payroll accounts were not dated upon approval/certification, and not approved by the Executive Director. The DR further stated that the bank reconciliations for the investment account were not reconciled on a timely basis nor were they certified and dated by the Executive Director. Finally, the DR stated that the bank reconciliations for the client trust and litigation accounts are not accurately prepared since they do not reconcile back to the general ledger balance for the month. As this Finding resulted in required corrective actions it must be addressed by DNA.

Finding 30: DNA's Personnel Policies Manual does not have a policy regarding salary advances.

DNA does not have a salary advance policy. The review identified an account named "salary advance" that is used to pay a contractor in advance for providing cleaning services in the Flagstaff office.

In response to the DR, DNA stated it will take the recommendation to include a salary advance policy under advisement. DNA stated that, in consultation with the Board of Directors and with the Finance Manager, DNA will consider the impact of such a policy. DNA further stated with respect to Finding 30, regarding the salary advance for the contractor, that this entry was misapplied as the individual was paid as a contractor and not as an employee. Finally, DNA stated that its Personnel Policies were revised in February 2010.

Finding 31: DNA's Internal Control Worksheet revealed a lack of adequate segregation of duties and/or internal controls.

A review of the Internal Control Worksheet revealed a lack of adequate segregation of duties and/or internal controls in the following areas:

- **Cash Receipts** – One staff person not only endorses checks received but prepares bank deposits.

- **Payroll** – The Litigation Director, not the Executive Director, reviews monthly payroll bank statement reconciliations.
- **Client Trust Accounts** – One staff person has too many functions. This staff person prepares and reviews monthly client trust bank statement reconciliations and reconciles the same balances to the General Ledger.
- **General Journal** – One staff person makes entries to the General Journal and posts to the General Ledger.

In response to the DR, DNA offered no comment to this Finding. However, the DR stated there was a lack of adequate segregation of duties and/or internal controls in a number of areas. As this Finding resulted in required corrective actions it must be addressed by DNA.

Finding 32: DNA implemented a work week policy for non-litigation staff. The policy was in effect from July 7, 2008 through September 25, 2009. A review of the policy revealed that it did not meet the standards governing allowability of costs as required by 45 CFR Part 1630 (Cost Standards and Procedures).

45 CFR § 1630.3(a) states in part that expenditures by a recipient are allowable under the recipient’s grant or contract only if the recipient can demonstrate that the cost is the type generally recognized as ordinary and reasonable for the operation of the recipient.

Additionally, in order to meet the standards of 45 CFR § 1630.3(b)(3) recipients must demonstrate that they acted with prudence under the circumstances considering its responsibilities to its citizens and employees, the public at large, the Corporation and the Federal government.

On June 30, 2008, DNA announced in a program-wide e-mail the testing of a “New Work Week” policy.²³ The policy applied only to non-litigation staff (support staff). The policy allowed non-litigation staff to work a total of 32 hours, Monday-Thursday, 9:00 am-5:00 pm and be compensated 40 hours. The policy defined non-litigation staff as “all staff not directly involved in litigation”. The work week policy did not apply to the litigation staff or “required” staff.²⁴ The new policy allowed the support staff to be compensated for time and a half if they worked more than 32 hours in a week.

The email stated this policy would be tested for a period of three months (July 7, 2008 through September 26, 2008).²⁵ During this test period, Fridays were considered as an “administrative” day and DNA offices were closed to the public. The policy was subsequently amended and offices with two or more support staff work days were staggered to allow for a Monday-

²³ Email from Executive Director to all DNA users, dated June 30, 2008.

²⁴ The policy defined required staff as the Executive Director, Litigation Director, Director of Administration, Fiscal/Accounting Director, Development Director, Information Technology Director, Administrative Assistant and Executive Secretary.

²⁵ The test period was initially extended through January 2009 and finally concluded on September 25, 2009.

Thursday or Tuesday-Friday work week.²⁶ At the end of the test period, the policy was to be evaluated and a recommendation made to the Board of Directors. By e-mail, the Executive Director notified all employees that on September 28, 2009, the standard 40 hour work week for all employees would resume.²⁷

A review of the timesheets/records for six (6) support staff employees affected by the policy change shows these employees working 32 hours but being paid for 40 hours throughout the test period. In total, 22 support staff employees were affected by this policy.

Because these costs were charged to the LSC account, it is necessary that the costs associated with this policy meet the standards governing allowability of costs as outlined in 45 CFR Part 1630. In addition, DNA must demonstrate that the costs for these 22 employees are: (1) necessary and reasonable and (2) reflect the actions that a prudent person would take in the circumstances. In its comments to the Draft Report, DNA must provide such explanations for the work week policy as it relates to the costs of these 22 employees affected by the policy.

In response to the DR, DNA stated that the costs for these 22 employees were necessary and reasonable because the program's support staff was woefully underpaid. DNA stated their salary scales started support staff at less than the federal minimum wage and they revised their salary scales at DNA's February 20, 2010 Board meeting to reflect a starting salary at minimum wage. DNA stated they did not have money in the budget to give support staff raises, so decided to give them time in lieu of an increase. DNA stated this was a benefit offered to the support staff. In at least one instance, a DNA support staff was offered a position at much higher pay by the Navajo courts; she declined to accept because having more time to spend with her family (she's a single mom of 5 children) was more important than more salary. DNA's comments further stated that the costs for these 22 employees were a prudent action in response to the circumstances, because at the time, gas prices were extreme, and some DNA support staff drive in excess of 50 miles one way to work. A copy of newspaper article about the Navajo Nation considering going to a four day work week was attached to comments.

In response to the DR, DNA corrected statements in the DR concerning the new work week policy. DNA stated that if support staff worked more than 32 hours but less than 40 hours in a week, they were paid the additional hours at their regular hourly rate. DNA further stated only hours worked over 8 hours in a day or 40 hours in a week were paid at time-and-a half, in accordance with federal labor standards.

²⁶ Email from Executive Director to all DNA user, dated May 14, 2009.

²⁷ Email from Executive Director to all DNA users, dated August 20, 2009.

IV. RECOMMENDATIONS.²⁸

As a result of this review and consistent with the findings of this report, it is recommended that DNA:

1. Adopt a standard “statement of facts” form for use by all offices. Although the different forms did not present a compliance issue, it is recommended that DNA consider implementation of one standard form;

In response to the DR, DNA provided a copy of its standard Statement of Facts that will be used by all litigators.

2. For any updated forms, DNA should consider adopting a “date identifier” for each form, which indicates the date of the form’s updating. A date on every form will make it easier for DNA staff to replace old versions as forms are updated by central administration;

In response to the DR, DNA stated its paper intake form (“Form 10,”) has a “date identifier” on both pages, and that they will include a date identifier on its other forms.

3. Consider updating its Personnel Policies and Procedures Manual to include a salary advance policy. The Personnel and Procedures Manual was last revised on February 3, 2001; and

In response to the DR, DNA stated it will take the recommendation to include a salary advance policy under advisement. DNA stated that, in consultation with the Board of Directors and with the Finance Manager, DNA will consider the impact of such a policy. DNA further stated that with respect to Finding 30, regarding the salary advance for the contractor, that this entry was misapplied as the individual was paid as a contractor and not as an employee. Finally, DNA stated that its Personnel Policies were revised in February 2010.

4. Consider purchasing bank reconciliation and payroll modules for the new accounting software application (Microsoft Dynamics).

In response to the DR, DNA stated it hired a new auditor, who has recommended different, non-profit-geared, software for its accounting system. DNA stated they are also considering having an outside company do its payroll.

²⁸ Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors. By contrast, the items listed in “Required Corrective Actions” must be addressed by the program, and will be enforced by LSC.

V. REQUIRED CORRECTIVE ACTIONS

As a result of this review, and consistent with the findings of this report, DNA is required to take the following corrective actions:

1. Ensure that each case reported to LSC contains the necessary citizenship/alien eligibility documentation as required by CSR Handbook (2008 Ed.), § 5.5;

In response to the DR, DNA stated they recognize that the LSC regulation requires a client to sign a citizenship verification when staff see the “whites of their eyes” DNA stated that this is DNA’s policy, and it is how they train all new staff (support and litigation staff alike). DNA also stated that if an individual is a member of an Indian Tribe, they are by definition a citizen of the United States under the 1924 Indian Citizenship Act. DNA further stated that out of the seven (7) cases cited as lacking the required citizenship attestation, six (6) of those clients had Navajo Nation Census Numbers, and were, by definition, citizens of the U.S. Therefore, although DNA did not get the citizenship attestation as required by 45 CFR § 1626.6, these clients are clearly US citizens. DNA stated they will ensure that when they “see the whites of our applicant’s eyes,” that they execute a citizenship attestation, when they do telephone intake that staff will confirm citizenship over the phone, and they will continue to train all of their staff as to this requirement.

2. Ensure that each case reported to LSC documents the legal advice or assistance provided to the client as required by CSR Handbook (2008 Ed.), § 5.6;

In response to the DR, DNA agreed that four (4) cases cited in the DR Case Nos. (09E-7023785, 09E-4023909, and 09E-4024995, 07E-6017372) were not in compliance because they did not contain legal advice. DNA further stated that evidence of legal advice was in the ACMS for Case Nos. 09E-5022478 and 09E-13025234.

DNA also stated staff will ensure that clients are given legal advice and other assistance whenever possible and that such assistance is noted in the ACMS and file upon closure of the case. DNA further stated staff will continue to review files before they are reported to LSC to ensure that legal assistance is evident and will continue to train all staff about this requirement.

3. Ensure a retainer agreement is executed with each client who receives extended legal services as required by 45 CFR § 1611.9;

In response to the DR, DNA stated they will ensure that clients execute Retainer Agreements when extended legal services are provided to the client and will continue to train all of their staff as to this requirement.

4. Ensure that cases prepared by Legal Document Preparers are not recorded or counted as PAI cases;

In response to the DR, DNA stated they will not count cases performed by Legal Document Preparers as PAI cases.

5. Ensure that legal work that is counted as a case for CSR purposes is provided by attorneys or paralegals as required by CSR Handbook (2008 Ed.), § 2.5;

In response to the DR, DNA stated that the two cases cited in the DR as cases involving the provision of legal assistance by a non-attorney were income tax cases where the assistance was provided by DNA's librarian who is certified under DNA's Volunteer Income Tax Assistance program. DNA stated they liken these cases to SSI/SSDI cases, where the representative does not need to be licensed to practice law to do these administrative cases. DNA stated they will continue to review case files on a regular basis to ensure that only individuals authorized to provide the legal services provide those services.

6. Ensure staff is trained regarding the timely case closing requirements of CSR Handbook (2008 Ed.), § 3.3;

In response to the DR, DNA stated it recognizes that untimely closed and dormant cases were a problem. DNA stated the problem centered on one particular attorney who no longer works at DNA. DNA stated this attorney was replaced with an excellent attorney who is quite knowledgeable and meticulous about LSC compliance issues. DNA also stated they will address this issue with the other offices/attorneys noted and have begun running the ACMS report "cases with no timeslips for a period of time" on a quarterly basis. DNA further stated they will ensure that cases are timely closed and will continue to train our staff on this issue.

7. Improve the timeliness and accuracy of the bank reconciliations to the general ledger. Timely and accurate reconciliations should occur on a monthly basis and should be conducted by an individual who has no access to cash, check signing authority or cash bookkeeping duties to increase the likelihood that irregular disbursements and recording errors are timely discovered. Furthermore, the reconciliations should be reviewed and approved by a responsible individual, duly documented by signature and date;

In response to the DR, DNA offered no comment to this required corrective action. However, as noted above the DR stated that bank reconciliations for the operating and payroll accounts were not dated upon approval/certification, and not approved by the Executive Director. The DR further stated that the bank reconciliations for the investment account were not reconciled on a timely basis nor were they certified and dated by the Executive Director. Finally, the DR stated that the bank reconciliations for the client trust and litigation accounts are not accurately prepared since they do not reconcile back to the general ledger balance for the month. As this finding resulted in required corrective actions it must be addressed by DNA.

8. Provide an explanation regarding the professional income of the contract attorney in the Farmington office in order to determine whether this contract attorney (and therefore their cases) qualifies as charged to, and designated as, PAI;

In response to the DR, DNA stated its Farmington contract attorney bills the program at a rate of \$85 per hour (and only \$40 per hour for traveling time). DNA stated this represents less than half of the contract attorney's customary hourly billing rate and that the average hourly billing rates

in DNA's service area was \$175 per hour. DNA concluded that, therefore, this attorney is a PAI attorney under the definition of 45 CFR § 1614.3(e)(3) which states: Attorneys fees paid may not exceed 50% of the local prevailing market rate for that type of service. A copy of the attorney's contract was attached to the comments.

9. Provide an explanation for the work week policy in effect from July 7, 2008 through September 25, 2009 as it relates to the standards of allowability of costs pursuant to 45 CFR Part 1630. Specifically, DNA must demonstrate that the costs were: (1) necessary and reasonable and (2) reflect the actions that a prudent person would take in the circumstances as required by 45 CFR § 1630.3(b); and

In response to the DR, DNA stated that the costs for these 22 employees were necessary and reasonable because the program's support staff was woefully underpaid. DNA stated their salary scales started support staff at less than the federal minimum wage and they revised their salary scales at DNA's February 20, 2010 Board meeting to reflect a starting salary at minimum wage. DNA stated they did not have money in the budget to give support staff raises, so decided to give them time in lieu of an increase. DNA stated this was a benefit offered to the support staff. In at least one instance, a DNA support staff was offered a position at much higher pay by the Navajo courts; she declined to accept because having more time to spend with her family (she's a single mom of 5 children) was more important than more salary. DNA's comments further stated that the costs for these 22 employees were prudent action in the circumstances, because at the time, gas prices were extreme, and some DNA support staff drive in excess of 50 miles one way to work. A copy of newspaper article about the Navajo Nation considering going to a four day work week was attached to comments.

10. Ensure the segregation of duties as required by Chapter 3-4 of the Accounting Guide for Legal Services Corporation Recipients. Specifically, accounting duties should be segregated to ensure that no individual simultaneously has both the physical control and the record keeping responsibility for any asset, including, but not limited to, cash, client deposits, supplies and property. Duties must be segregated so that no individual can initiate, execute, and record a transaction without a second independent individual being involved in the process.

In response to the DR, DNA offered no comment to this required corrective action. However, the DR stated there was a lack of adequate segregation of duties and/or internal controls in a number of areas. As this finding resulted in required corrective actions it must be addressed by DNA.

LORA RATH

From: DANILO CARDONA
Sent: Friday, June 11, 2010 1:23 PM
To: LORA RATH
Subject: FW: DNA Reply to CSR CMS Draft
Attachments: LSC Response letter 2010 Findings.doc; LSC Response to Apr 5 2010 Findings.doc; Form 10 Page 1.pdf; Form 10 Page 2.pdf; Overincome Memo Feb 2010.pdf; IncomeAssetPolicyFeb 2010.pdf; rgermer 2009 contract.pdf; 4-day work week article.pdf; SOF Policy.doc

For your records.

Danilo

From: Levon Henry [mailto:lhenry@dnalegalservices.org]
Sent: Monday, June 07, 2010 7:22 PM
To: DANILO CARDONA
Subject: DNA Reply to CSR CMS Draft

Sir,

Attached are a variety of documents relative to our reply to the CSR/CMS draft report. I appreciate the extra time you provided to me in getting this report to you. Should you have any questions or need additional information please let me know.

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

<http://www.dnalegalservices.org>

<http://www.nativelegalnet.org>



DNA-PEOPLE'S LEGAL SERVICES, INC.

June 7, 2010

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928-674-2410 Fax

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928-774-0653
928-774-9452

Crownpoint DNA
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Hopi DNA
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Hopi Canyon, AZ 86034
928-738-2251/5345
928-738-5343 Fax

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435-739-4384 Fax

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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.nativecgl.net.org

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

RE: CSR/CMS Visit, Recipient No. 703068

Dear Mr. Cardona,

Included with this letter is DNA's response to LSC's Draft Report for the on-site CSR/CMS Review. I appreciate the additional time you approved in light of our circumstances recently and for your information our facilities are back in operation but we did suffer damage to one office that should be replaced shortly.

DNA has reviewed the Draft Report and has noted a response to each Finding where appropriate. In addition to the information contained in our response I would also note that orientation is being planned for our new personnel, including our summer interns, this month and a program-wide litigation/staff meeting is set for late July; in each of these sessions we will emphasize the comments from LSC and add the information to our training and orientation sessions.

The LSC review and subsequent training conducted by LSC on compliance issues is helpful and we continue to refer to the training as a guideline for our staff. Should you require additional information please contact me at 928-871-5630 or at lhenry@dnalegalservices.org.

Thank you.

Sincerely,

Levon B. Henry
Executive Director

LSC
America's Partner For
Equal Justice

DNA Response to LSC's April 5, 2010 Draft Findings Report

Finding #1. Regarding ACMS data not matching that in the physical case file. The CSR Handbook requires DNA to have an ACMS which will capture the information on the case and on all LSC regulations as they apply to the case. DNA's system does that, and since we have 9 different offices, we rely on the ACMS system when reporting cases to LSC. Staff are trained on entering correct case types, problem codes, funding codes, reason closed codes etc, and they are trained to check the files for LSC compliance. After a case is closed, a Managing Attorney and the Administrative Director review it via the ACMS, and make corrections TO ENSURE THAT IT IS CORRECTLY REPORTED to LSC. For example, we might change a problem code from 99 Misc. to something more appropriate, or we might correct a Reason closed, or we might change a case type to R(reject) if it's not reportable to LSC; many hundreds of cases are corrected in this way. If the review is by the Managing Attorney, the change will be made in the physical file, since (s)he'll have it there, but if the Administrative Director were required to go back to (or instruct others to go back to) the physical file and make the same changes, this would be a huge waste of staff time, DNA's financial resources, and paper. Again, we rely on the data in DNA's ACMS to do our reporting.

Finding #2. Regarding intake procedures. DNA revised its paper intake form ("Form 10," which we discourage the use of, as being extra work for support staff), both while LSC was here visiting, and again when our new eligibility policy was enacted. DNA does have only one approved Grievance Notice, and only one approved Statement of Facts, and DNA appreciates LSC notifying us that different offices are using different ones; we will ensure all offices are using only the one. COPY Attached.

Finding #3 regarding financial eligibility. First and foremost, DNA-People's Legal Services not only sent a revised financial eligibility policy to LSC for review and comment, but also, after receiving those in-depth comments from LSC, completely revised its eligibility policy (again sending a copy to LSC), and this was passed by DNA's Board of Directors on 2/20/2010. DNA also went through every 2009 closed case and reviewed the financial eligibility. If the client was between 125-200% of the poverty level, we looked to see if the client fell within one of the 11 factors that LSC regulation 45 CFR 1611.5 (in many cases calling the clients to get more information), and if so (which was nearly every case), completed an over-income memo. If the client's income was over 200% and could not be an exception under 1611.5(1) or (2), we ensured the case was handled under another funding source with higher income levels, and those cases were not reported to LSC. COPY Attached - new eligibility policy and Board Resolution.

DNA will ensure that applicants are at or below 125% of the poverty level, or if between 125-200% that we can consider one of the factors in 45 CFR 1611.5, or if over 200% they can be an

exception under 1611.5(1) or (2), or can be handled under another grant, and that an Over-income memo documenting the factor is in each file. COPY Attached – Over-income memo

Finding #5/Corrective Action #1. Regarding citizenship attestations. DNA recognizes that the LSC regulation requires a client to sign a citizenship verification when we see the “whites of their eyes;” this is DNA’s policy, and it is how we train all new staff (support and litigation staff alike). However, we would like to point out, again, that if an individual is a member of an Indian Tribe, they are BY DEFINITION, a citizen of the United States under the 1924 Indian Citizenship Act. Of the 7 cases lacking required citizenship attestation, 6 of those clients had Navajo Nation Census Numbers, and were, by definition, citizens of the U.S. Therefore, although we did not get the citizenship attestation as required by 45 CFR 1626.5, these clients are clearly US citizens.

DNA will ensure that when we “see the whites of our applicant’s eyes,” that they execute a citizenship attestation, and when we do telephone intake, that we confirm citizenship over the phone; we will continue to train all of our staff as to this requirement.

Finding #6/Corrective Action #3. Regarding Retainer Agreements. DNA will ensure that clients execute Retainer Agreements when extended legal services are provided to the client, and we will continue to train all of our staff as to this requirement.

Finding #9/Corrective Action #2. Regarding case files containing no description of legal assistance provided. DNA agrees that 4 closed 2009 cases were not in compliance, in that no evidence that legal advice was provided to the client shows up in 09E-7023785, 09E-4023909 and 09E-4024995, and 07E-6017372. However, 4 of the cases noted were properly rejected for this reason and not reported to LSC (closed 2009 cases 08E-2004034, 08E-2004562, and open 2009 cases 09E-2005014 and 06E-2002878). In two other cases, evidence of advice is in the ACMS (09E-5024797, advice regarding what a Protection Order said about custody, and the client’s custodial rights given on 8/5/09, and 09E-13025234, advice about community property, and the effect of bankruptcy on her divorce given 8/11/09). Two cases cannot be identified, as the report does not note the full case # (09E-502478 and 07E-601830). DNA will ensure that clients are given legal advice and other assistance whenever possible, and that the assistance is noted in the ACMS and file upon closure of the case. We will continue to review files before they are reported to LSC to ensure that legal assistance is evident, and we will continue to train all of our staff about this requirement.

Finding #9/Corrective Action#5. Regarding two files involving legal assistance provided by a non-attorney. These were tax cases where the service was provided by DNA’s librarian, who IS certified under our Volunteer Income Tax Assistance program to prepare tax returns. We liken these cases to SSI/SSDI cases, where the representative does not need to be licensed to practice

law to do these administrative cases. DNA will continue to review case files on a regular basis to ensure that only individuals authorized to provide the legal services provide those services.

Finding #10. DNA's application of the CSR case closure categories is inconsistent with Sections VII and IX of the CSR handbook. DNA's ACMS and training of staff on case closure categories IS consistent with the CSR handbook. The application of the handbook and training appears to be incorrect in some cases. DNA will continue to review case files on a regular basis to ensure proper closing codes, and we will continue to train all of our staff about reasons closed.

Finding #11/Corrective Action #6. Regarding untimely closing of cases. DNA recognizes that this was a problem with one particular attorney (note all of the case numbers that start 08E-6____--these were all his cases). He no longer works at DNA, and was replaced with an excellent attorney who is quite knowledgeable and meticulous about LSC compliance issues. We will address it with the other offices/attorneys noted, and we have begun running the ACMS report "cases with no timeslips for a period of time" on a quarterly basis, to point out to litigators cases which appear to be lying dormant. We will therefore ensure that cases are timely closed, and continue to train our staff on this issue.

Finding #12. Regarding duplicate cases. The Executive Summary states, "Sample cases evidenced non-compliance with the requirements of CSR Handbook..." Section II, Findings, Finding 12, states, "Case lists were reviewed in advance and potentially duplicate files were identified for review. No duplicate files were identified among the sampled files."

Finding #16/Corrective Action #8. Regarding Farmington's PAI Attorney. DNA's Farmington contract attorney bills us at a rate of \$85 per hour (and only \$40 per hour for traveling time). This represents less than half of her customary hourly billing rate. Five years ago, a survey was done for average hourly billing rates in DNA's service area, and the average rate was \$175 per hour. She is therefore a PAI attorney under the definition of 45 CFR 1614.3(e)(3) ("Attorneys fees paid may not exceed 50% of the local prevailing market rate for that type of service.").
COPY Attached -- Attorney contract

Finding #16/Corrective Action #4. Regarding the Legal Document Preparers. DNA will not count the cases they work on as PAI cases.

Finding #32/Corrective Action #9. Regarding revised work week for support staff. At the end of the 3rd paragraph, it states "The new policy allowed the support staff to be compensated for time and a half if they worked more than 32 hours in a week." This is incorrect. Support staff, if they worked more than 32 hours but less than 40 hours, at their supervisor's request, were paid additional hours at their regular hourly rate; only hours over 8 hours in a day or 40 hours in a week were paid at time-and-a-half, in accordance with federal labor standards.

The costs for these 22 employees were necessary and reasonable because our support staff were woefully underpaid; our salary scales started support staff at less the federal minimum wage (not

that we paid anyone that) and we revised our salary scales at DNA's 2/20/2010 Board meeting to reflect a starting salary of minimum wage. We did not have money in the budget to give them raises, but we decided that we could give them time in lieu of an increase. It was a benefit that we offered to the support staff: In at least one instance, a DNA support staff was offered a position at much higher pay by the Navajo courts; she declined to accept because having more time to spend with her family (she's a single mom of 5 children) was more important than more salary. The costs for these 22 employees were prudent action in the circumstances, because at the time, gas prices were extreme, and the support staff drive in excess of 50 miles one way to work. Attached is an article about the Navajo Nation considering going to a 4-day work week to cut the costs of commuting, dated 7/1/2008.

IV Recommendations:

1. DNA's standard "Statement of Facts" is attached; this is the standard that is approved by DNA for use by litigators.
2. Note that DNA's paper intake form ("Form 10," attached) has a "date identifier" on both pages, and we will do so on our other forms.
3. DNA will take the recommendation to include a salary advance policy under advisement. In consultation with the Board of Directors and with the Finance Manager DNA will consider the impacts of such a policy. In Finding 30 regarding salary advance for contractor, that entry was misapplied as the individual is paid as a contractor and not an employee. DNA Personnel Policies were revised in February 2010.
4. DNA hired a new auditor, who has recommended different, non-profit-g geared, software for our Accounting. We are also considering having an outside company do our payroll.



DNA PEOPLE'S LEGAL SERVICES, INC.
APPLICATION FOR SERVICES

In order to determine your eligibility for services, you must provide the following information regarding income, assets, residence and citizenship. By completing this form you are not automatically a client. The information on this form is not confidential unless and until you are found eligible for our services. Then, it will be confidential, except for compliance and statistical purposes

COMPLETE THESE GENERAL QUESTIONS ABOUT YOURSELF. CHECK ALL THOSE THAT BEST DESCRIBE YOU.

NAME: _____ DATE: _____

MAIDEN NAME/OTHER NAMES USED: _____

MAILING ADDRESS: _____ PHYSICAL ADDRESS: _____

CITY/STATE/ZIP CODE

CITY/STATE/ZIP CODE

COUNTY: _____ CHAPTER: _____

TELEPHONE NUMBER: HOME: _____ WORK: _____ MESSAGE: _____

SOCIAL SECURITY NO: _____ DATE OF BIRTH: _____ GENDER: _____

MARITAL STATUS: Single Married Divorced Separated Widowed

SPOUSE/PARTNER'S NAME: _____

RACIAL BACKGROUND: African-American Native American - *TRIBE:* _____
 Hispanic Caucasian *YOUR CENSUS NO.:* _____
 Asian/Pacific Islander Other *SPOUSE'S CENSUS NO.:* _____

PRIMARY LANGUAGE: English Navajo Hopi Spanish Other: _____

LIVING ARRANGEMENTS: Apartment Trailer Rented Home Own Home Shelter
 Rented Room Relatives Homeless Other: _____

HOW DID YOU FIRST HEAR ABOUT LEGAL AID? Radio Brochure/poster Community Presentation
 Domestic Violence Shelter Social Services Court Police Other Legal Aid Program Friend
 Private Attorney Telephone book/ad/newspaper article I'm A Prior Client Other: _____

ARE YOU BEING THREATENED OR HARMED AT HOME? No Yes *IF YES, BY WHOM?* _____

WHY ARE YOU HERE TODAY? _____

WHO IS [ARE] THE OPPOSING (ADVERSE) PARTY[IES] IN YOUR CASE?

NAME: _____ NAME: _____

SSN: _____ CENSUS: _____ SSN: _____ CENSUS: _____

ADDRESS: _____ ADDRESS: _____



PLEASE HAND THE APPLICATION TO THE PERSON ON DUTY

FOR OFFICE USE ONLY

FILE NO: _____ () CASE NO: _____
 TYPE OF CASE: _____ INTERPRETER NEEDED? Yes No
 IS THERE A CONFLICT? Yes No *DETERMINED BY:* _____

Federal law requires DNA to ask you questions about your household and income. Your income/asset information is not confidential unless and until you are found eligible for our services. Then, it will be confidential, except for compliance and statistical purposes.

PLEASE ANSWER THE FOLLOWING QUESTIONS. DO NOT LEAVE ANY BLANK SPACES.

Total number of persons in your household: _____
 Adults: _____ Children: _____
 (An adult is any person 18 years or older and out of high school)

Does anyone in the household receive:

TANF: \$ _____ SSI: \$ _____ AZ ALTCS: _____ GA: \$ _____

Food stamps: \$ _____

NM Medicaid-low-income/elderly/disabled _____

FOR OFFICE USE ONLY

IS APPLICANT EXEMPT FROM ASSET CONSIDERATION
 YES NO

If yes, skip "HOUSEHOLD ASSETS" Section
 If no, proceed with "HOUSEHOLD ASSETS" below

AVAILABLE HOUSEHOLD ASSETS
 (List all assets of everyone in your household)

Item	Value	Owed	Equity
Land you do not live on			
2 nd home			
Equipment or tools			
Vehicles: (year and make)			1 st Exempt
Checking, savings, stocks, bonds, etc.			
Livestock not used as primary source of income			
Household items			
Any other items which could be converted to cash			

GROSS HOUSEHOLD INCOME
 (List income of everyone in your household)

Person	Income Source*	Amount	How Often	Annual Total
Self		\$		
Self		\$		
Spouse/Partner		\$		
Child 1		\$		
Child 2		\$		
Adult 1		\$		
Adult 2		\$		
TOTAL				

* INCOME SOURCES:
 Employment, self-employment, unemployment, Workers Compensation, pension, Social Security, SSI, Veterans Benefits, Child Support, TANF, GA, alimony, child support, disability, etc.

VERIFICATION:
 The above information is a true and accurate statement of my financial situation and the facts concerning my problem.

Applicant signature: _____
 Date: _____

CITIZENSHIP:
 I certify that I am a citizen of the United States.

Applicant signature: _____
 Date: _____
 Witness/interpreter: _____

OR I am not a citizen of the United States.

If not a US Citizen, applicant provided the following alien eligibility documentation before being served:

By (staff): _____

FOR OFFICE USE ONLY

125% Poverty \$ _____
 200% Poverty \$ _____

If considering any of the following, an over income memo must be on file and a copy sent to Central Administration

→ If gross income is over 200%, and applicant's income is primarily committed to medical/nursing home expenses, the Exec Director may deduct those expenses from annual gross income to him/her below 125%.

Medical Debt:	To Whom Paid	Monthly Amount	Annual Total
TOTAL:			

This brings the annual income to: \$ _____
 which is _____ % of the poverty level.

→ If applicant's gross income is over 200%, but seeks to maintain gov't benefits for low-income individuals, the Managing Attorney may approve.

→ If applicant's gross income is 125% - 200%, the Managing Attorney may consider the following, and thereafter help the applicant:

- Applicant wants help to obtain gov't benefits for low-income individuals or families; or
- Applicant seeks to obtain or maintain gov't benefits for persons with disabilities; or
- Applicant should be considered eligible because:
 - Current income prospects, taking into account seasonal variations; or
 - Uncovered medical expenses/insurance premiums; or
 - Fixed debts and obligations; or
 - Employment expenses (child care, transportation (gas or bus fare), uniforms/tools, job training expenses, educational activities to prepare for employment; or
 - Non-medical expenses related to age/disability; or
 - Current taxes; or
 - Other significant factors, particularly: _____

IS APPLICANT ELIGIBLE UNDER LSC? Yes No

If no, is applicant eligible under a non-LSC funding source? If yes, which one? _____
 Because: _____

INTAKER WORKER: _____

MEMORANDUM
OVER 200% INCOME ELIGIBILITY JUSTIFICATION

FILE: _____
Applicant/Client Name DNA File No. Type of Legal Problem

FROM: _____
Managing Attorney/Managing Advocate Eligibility Interviewer

This Applicant's gross income exceeds 200% of the federal poverty level. I, as the Managing Attorney/Advocate of DNA, have determined that DNA can still help this client based upon the following:

_____ The Applicant's case falls under a non-LSC grant with a higher % or asset ceiling:
Grant: _____
Client fits under this grant because: _____

Client's % of poverty: _____ Asset level _____
Poverty % allowed by grant: _____ Asset allowed by grant: _____

_____ The applicant's assets do not exceed DNA's asset ceiling, and (s)he is seeking legal assistance to **maintain** benefits provided by a governmental program for low-income individuals or families (eg Cash/General Assistance, Food Stamps, SSI, medical insurance for low-income).

_____ The applicant's assets do not exceed DNA's asset ceiling, and her/his income is primarily committed to medical or nursing home expenses, and excluding such portion of their income would make them financially eligible for DNA's services (their income would then be below 125% of the poverty level). This exception requires approval by DNA's Executive Director:

APPROVED/DENIED by: _____
(circle one) (Executive Director Signature) Date

APPROVED/DENIED: _____ Date: _____
(circle one) (Managing Attorney/Advocate signature)

MEMORANDUM

125-200% INCOME ELIGIBILITY JUSTIFICATION

FILE: _____
Applicant/Client Name DNA File No. Type of Legal Problem

FROM: _____
Managing Attorney/Advocate Eligibility Interviewer

The Applicant's gross income exceeds 125%, but is less than 200% of the federal poverty level; **her/his household assets do not exceed DNA's asset ceiling.** I, as the Managing Attorney/Advocate of DNA, have determined that DNA can still help this client based upon the following:

_____ The applicant is seeking legal assistance to **obtain** governmental benefits for low-income individuals or families (eg Cash/General Assistance, Food Stamps, EITC); OR

_____ The applicant is seeking legal assistance to **obtain or maintain** governmental benefits for persons with disabilities (eg SSI, SSDI); OR

_____ The applicant should be considered financially eligible based on **one of** the following (these considerations may apply to the applicant and/or members of her/his household):

_____ Current income prospects, taking into account seasonal variations in income; or

_____ Medical expenses not covered by insurance, and medical insurance premiums; or

_____ Fixed debts and obligations; or

_____ Employment expenses such as child care, transportation (eg gas, bus fare), uniforms or tools, job training expenses, or educational activities to prepare for employment; or

_____ Non-medical expenses associated with age or disability; or

_____ Current taxes; or

_____ Other significant factors that affect the applicant's ability to afford legal assistance, particularly: _____ OR

_____ The applicant's case falls under a non-LSC grant with a higher % or asset ceiling:

Grant: _____

Client fits under this grant because: _____

Client's % of poverty: _____ Asset level _____

Poverty % allowed by grant: _____ Asset allowed by grant: _____

APPROVED/DENIED: _____ Date: _____
(circle one) (Managing Attorney/Advocate signature)

Revised: February 2010

FINANCIAL ELIGIBILITY GUIDELINES
DNA-People's Legal Services, Inc.
(As adopted by the Board of Directors 2/20/2010)

A. CONSIDERATIONS IN ESTABLISHING GUIDELINES

Regulations published in 45 CFR 1611 require that all recipients of Legal Services Corporation ("LSC") funds adopt eligibility policies, and review those policies every 3 years. LSC regulations set the financial eligibility ceiling at 125% of the Federal Poverty Guidelines ("FPG") amounts but permit grantees to adopt financial eligibility policies which provide for authorized exceptions to the annual income ceiling. In accordance with such authorized exceptions, certain applicants with annual income in excess of 125% of the FPG amounts may be determined to be financially eligible.

Information was presented to this Board of Directors regarding the economic conditions of the service area, including the relative cost of living, the potential client population, the availability of legal services provided by the private bar, and the priorities in resource allocation established by DNA-People's Legal Services, Inc. ("DNA"). In addition to this information, the Board has given consideration to the legal needs of the elderly, institutionalized, disabled, victims of domestic violence, and generally to clients with the greatest economic and legal needs. Finally, the Board has given particular attention to unique local circumstances and the program's need to maintain a respected position within its service community and an effective relationship with its clients.

The primary source of written data considered by the Board initially was the Navajo Nation Overall Economic Development Plan (1983-84), and more currently the US Census 2000 data for the Navajo Nation, San Juan County NM, Coconino County AZ, the Hopi Tribe, Jicarilla-Apache Tribe, Havasupai Tribe, Hualapai Tribe and Kaibab-Paiute Tribe.

As a result of considering these factors, the Board has made the following findings:

1. Approximately 90% of DNA's service area is encompassed by the Navajo Indian Reservation and areas near such Reservation.
2. The unemployment rate on the Navajo Reservation varies depending on the definition utilized, but ranges from 35% to more than 70% of the Navajo population.
3. The latest available Navajo per capita income figure is \$4,842.
4. The number of persons below the poverty level in San Juan County exceeds the prevailing averages for the State of New Mexico.

5. The number of persons below the poverty level in Coconino County exceeds the prevailing averages for the State of Arizona.

6. Respect for the traditions and customs of the client population, and development of effective relationships with clients, requires that eligibility guidelines give particular consideration to the unique religious and cultural values present in the service area.

7. Livestock are central to the Navajo cultural and essential as a means for satisfying basic needs.

8. The service area is predominantly rural in character, there is limited mass transportation, and many clients require transportation to secure water, fuel and food. The essential need for vehicles is accordingly recognized.

9. Preservation of Native American religion is essential to the culture. The religious practices require use of various items of property.

10. Because of the traditional importance of land, Native American concepts of land ownership, and trust restrictions attached to Native lands, ownership of land or interests in land should not disqualify a Native American applicant for services.

11. The availability of private counsel in DNA's service area is severely limited, and the availability of such counsel at a cost affordable by most persons within such area is even more limited.

12. The resources necessary to maintain subsistence activities or to promote self-sufficiency should be protected.

13. Respect for applicants, the client community, and the service area culture require that eligibility guidelines not be designed to compel an individual or family to dissipate all or substantially all of their assets in order to obtain legal assistance.

14. These eligibility guidelines are consistent with DNA's priorities established pursuant to 45 C.F.R. Part 1620.

B. DEFINITIONS

1. "Income" means actual current annual total cash receipts before taxes of the applicant's household.

2. "Household" means all persons who are resident members and contribute to the support of the applicant's household. If the applicant is a victim of domestic violence, "household" does not include the income or assets of the alleged perpetrator of domestic violence.

3. "Total cash receipts" include, but are not limited to:

- wages and salaries before any deduction
- income from self-employment after deductions for business or farm expenses
- regular payments from governmental programs for low income persons or persons with disabilities
- social security payments
- unemployment and worker's compensation payments
- strike benefits from union funds
- veterans benefits
- training stipends
- alimony
- child support payments
- military family allotments
- public or private employee pension benefits
- regular insurance or annuity payments
- income from dividends, interest, rents, royalties or from estates and trusts, and
- other regular or recurring sources of financial support that are currently and actually available to the applicant.

Total cash receipts do not include:

- The value of food or rent received by the applicant in lieu of wages
- Money withdrawn from a bank
- Tax refunds
- Gifts
- Compensation and/or one-time insurance payments for injuries sustained
- Non-cash benefits (such as Food Stamps)
- Up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or
- Other distributions exempt by statute.

4. "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant. Assets are valued by their fair market value (in other words, how much the assets could be sold for), less the amount the applicant owes on the assets.

5. "Poverty level" refers to the US Dept of Health & Human Services annual poverty guidelines, which are updated from time to time by the OMB. The annual poverty guideline amounts are established by household size.

C. INCOME LIMITS

The maximum annual income of persons receiving legal assistance from DNA shall not exceed 125% of the FPG unless:

1. Another grant with higher limits.

- a. If an applicant's income exceeds 200% of the FPG, and (s)he has a case which is covered by another grant DNA receives with income limits higher than 200% of the FPG, that applicant is not LSC-income-eligible, but may be found income-eligible under that other grant.
- b. If the applicant's income is between 125%-200% of the FPG, and their case falls under another grant with income limits higher than 125% of the FPG, we will still see if the applicant fits into one of the categories in paragraphs 2-4 below, and if so, the applicant may be found to be LSC-income-eligible.
- c. If an applicant's income is between 125-200% of the FPG, and the applicant does not fall into one of the categories in paragraphs 2-4 below, the applicant is not LSC-income-eligible, but may be income-eligible under another grant with higher limits.
- d. In paragraphs i, ii, and iii above, if an applicant is not LSC-income-eligible, no LSC funds may be used to pay for staff time spent on the applicant's case and the case will not be reported to LSC. Litigators shall ensure that their time on a non-LSC-income-eligible case is charged to the other grant, both in Kemp's and on Accounting's payroll sheets.

2. Medical expenses. If a person is within DNA's asset guidelines, and his/her gross income exceeds 200% of the FPG, (s)he may be determined to be financially eligible if his/her gross income is primarily committed to medical or nursing home expenses, and if deducting these medical or nursing home expenses brings the applicant's income below 125% of the FPG. This exception requires prior written approval by the Executive Director.
3. Maintaining benefits provided by a government program for low-income individuals or families. If a person is within DNA's asset guidelines, and his/her gross income exceeds 200% of the FPG, (s)he may be found to be financially eligible if (s)he seeks legal assistance to maintain benefits provided by a governmental program for low-income individuals or families.
4. Other factors. If an applicant is within DNA's asset guidelines, and his/her gross income exceeds 125% of poverty, but does not exceed 200% of poverty, (s)he may be found to be financially eligible if:

- a. The applicant seeks legal assistance to obtain governmental benefits for low-income individuals and families;
- b. The applicant seeks legal assistance to obtain or maintain governmental benefits for persons with disabilities;

Or we consider one or more of the following factors:

- c. Current income prospects, taking into account seasonal variations in income;
- d. Unreimbursed medical expenses and medical insurance premiums;
- e. Fixed debts and obligations;
- f. Expenses such as child/dependent care, transportation (gas or bus fare), clothing and equipment necessary for employment, job training or educational activities in preparation for employment;
- g. Non-medical expenses associated with age or disability;
- h. Current taxes; or
- i. Other significant factors that affect the applicant's ability to afford legal assistance.
- j.

The expenses considered in subsections c-i above do NOT need to be subtracted from income to bring the applicant below 125%; they just need to be considered by the Managing Attorney.

D. DOCUMENTATION.

When an applicant is found to be financially eligible and is provided legal assistance, DNA staff shall document the applicant's income and the basis for the financial eligibility determination in our Kemp's/Prime database. The decision and justification for finding an applicant whose income exceeds 125% of the FPG (pursuant to paragraphs A-C above), to be income-eligible (under an LSC grant or another grant), the factors relied on to make such determination shall be documented in an Overincome Memo by the Managing Attorney/Advocate. The original Overincome Memo is kept in the applicant's file.

E. ASSET GUIDELINES

In cases where an applicant has available assets, which exceed the ceiling set forth below, representation generally will not be provided.

1. Asset Ceiling.

The combined total value of an applicant's available assets shall be \$10,000 for the first person in the household and \$4,000 for each additional person.

2. Waiver of Asset Ceiling

In unusual circumstances, the Executive Director or his/her designee is authorized to waive the asset ceiling for a particular applicant. A decision to grant a waiver shall be in writing, signed by the Executive Director, and shall record the reasons for the waiver; it will be kept in the client's file.

3. Exclusions From The Asset Ceiling

The following assets may not be counted when calculating an applicant's assets:

- a. Equity in principal residence.
- b. Vehicles used for transportation.
- c. Assets used in producing income. Examples of these are livestock, land, equipment and tools, so long as they are used to produce income.
- d. Other assets which are exempt from attachment under State or Federal law. An example of this is property to which trust restrictions are attached by reason of the fact that the property is owned, occupied, possessed or held for the benefit of a Native American.
- e. Assets of an alleged perpetrator of domestic violence, even if they are jointly held with the applicant victim of domestic violence.

4. Presumption of Asset Eligibility.

Because applicants who are currently receiving benefits under the following programs have already passed a more stringent asset test than the one applied for legal services, they shall be presumed to qualify for services under the asset restrictions adopted by DNA:

- a. Navajo Nation TANF or General Assistance
- b. Hopi TANF or General Assistance
- c. Jicarilla-Apache TANF or General Assistance
- d. Arizona TANF
- e. New Mexico TANF or General Assistance
- f. Utah TANF or General Assistance
- g. Food Stamps (now SNAP—Supplemental Nutrition Assistance Program)
- h. New Mexico Medicaid for low-income or elderly/disabled (not Medicaid for pregnancy)
- i. Arizona ALTCS (not AHCCCS)
- j. SSI

F. CHANGE IN FINANCIAL ELIGIBILITY STATUS

1. If, after finding an applicant financially eligible, DNA becomes aware that a client has become financial ineligible through a change in circumstances, DNA shall discontinue representation if:

- a. The change in circumstances is likely to continue, and
- b. The change in circumstances is sufficient to enable the client to afford private legal assistance, and
- c. Discontinuation of representation is not inconsistent with applicable Rules of Professional Responsibility.

2. If, after finding an applicant financially eligible, DNA later determines that the client is ineligible based on later-discovered or disclosed information, DNA shall discontinue representation if the discontinuation is not inconsistent with applicable Rules of Professional Responsibility.

3. If a client becomes financially ineligible under either 1 or 2 above, but the client falls under another grant with higher income limits, DNA may continue representation using only that other grant's funds (and no LSC funds).

G. PROCEDURES FOR DETERMINING ELIGIBILITY

1. DNA shall adopt forms and procedures as are deemed necessary for retaining the information to determine eligibility under these guidelines.
2. DNA will make reasonable inquiry regarding sources of applicants' income, income prospects and assets. If there is substantial reason to doubt the accuracy of information supplied by an applicant, DNA shall take steps to verify the information in a manner compatible with protecting the attorney-client relationship.
3. When another LSC recipient has determined that an applicant is financially eligible for services, DNA may rely on that other legal service program's financial eligibility determination, unless there is a change in financial eligibility status or a substantial reason to doubt the validity of the original determination.
4. DNA shall not disclose the information used to establish an applicant's financial eligibility to anyone not employed by the program without the express written consent of the client, except to our funders.

H. REPRESENTATION OF GROUPS

DNA shall only represent groups:

1. that are primarily composed of financially eligible clients; or

2. whose principal activity is the delivery of services to persons who would be financially eligible for DNA's services, and the legal assistance sought relates to such activity

upon proof that the group lacks reasonable means of obtaining funds for private counsel.

I. RETAINER AGREEMENTS

DNA shall provide staff members with a form Retainer Agreement, which sets forth DNA's relationship with the client, and which is consistent with applicable Rules of Professional Responsibility.

When a DNA litigator provides extended service to a client, the litigator shall execute a written retainer agreement with such client. The Retainer will be executed when representation starts, or as soon thereafter as is practicable. The litigator will write on the form Retainer Agreement the name of the client, the matter in which representation is sought and the nature of the legal services DNA will provide. The agreement shall be retained as part of the client's file.

DNA advocates and attorneys are not required to execute a written retainer agreement when the only service to be provided is advice and counsel, or for brief services. However, with brief services, DNA litigators are strongly encouraged to execute a Retainer Agreement with the client.

CONTRACT

This CONTRACT, effective January 1, 2009, is between DNA-People's Legal Services, Inc., (DNA) and Reagyn A. Gemmer, Attorney at Law PC of Aztec, NM (Contractor), Tax ID# 26-2780068, and is made for the purpose of representing DNA clients while the Farmington DNA office is short-staffed.

1. **SERVICES TO BE PERFORMED:** Contractor agrees to represent DNA clients in their San Juan County court cases. The DNA Farmington office will directly refer general civil law cases to Contractor for her to provide direct representation to DNA clients.

2. **TIME FOR PERFORMANCE:** This contract will end 12/31/2009, or until DNA's funds for this contract are exhausted. These services may be extended by mutual written agreement of the parties. Either party may terminate this contract at any time and for any reason with 15 days' written notice to the other party; in that event, all ethical obligations under New Mexico Rules of Professional Responsibility concerning withdrawal/substitution of legal counsel will be adhered to by the Contractor. To the extent that either party terminates this Contract, the client files will be returned to DNA and DNA will have all responsibility for further representation of the clients.

3. **PAYMENT:** In consideration of Contractor's performance of these services, DNA agrees to pay Contractor at an hourly rate of \$85 per hour, plus necessary and reasonable travel expenses and Contractor's costs to represent clients under this contract, such as copying and postage. Reasonable travel expenses means travel over 10 miles round trip [specifically: hours traveling at \$40 per hour, rental car and gas (preferred) or mileage at \$.51 cents per mile, lodging up to \$75 per night plus tax, and meals up to \$39 per day]. Costs exclude court fees, such as filing fees, subpoena fees, etc.; those will remain the responsibility of the DNA client. Contractor will submit monthly invoices to DNA for all services, expenses and costs.

4. **INDEPENDENT CONTRACTOR:** The parties intend Contractor to be an independent contractor. Contractor shall generally have the right to control and determine the method and means of performing the above services, in keeping with DNA's Retainer Agreements, which have already been signed by the clients. Contractor is covered under DNA's malpractice insurance policy for work performed under this contract. If DNA is dissatisfied with Contractor's performance of the above-described services, DNA retains the right to re-direct Contractor in the performance of the services. The payment of any taxes on this contract are the sole responsibility of the Contractor.

5. **COMMUNICATION:** DNA's Executive Director, Levon Henry, designates, for the purposes of this contract only, Sylvia J. Struss [201 E. Birch Ave., Suite 5, Flagstaff, AZ 86001 (928) 774-0653 x4803], to be Contractor's primary contact. If this proves unsatisfactory to Contractor, the Contractor may contact DNA's Executive Director directly [P.O. Box 306, Window Rock, AZ 86515 (928) 871-4151]. Contractor will be contacted at P.O. Box 1476, Aztec, NM 87410 and by phone at (505) 360-9792.

6. **DISPUTES:** It is DNA's and the Contractor's intents to resolve disputes through effective and regular communication. If a dispute cannot be resolved informally, either party may terminate with 15 days' written notice to the other party; again, Contractor will adhere to all ethical obligations under New Mexico Rules of Professional Responsibility concerning withdrawal/substitution of legal counsel. The parties further agree that New Mexico law will be applied to any dispute, and that an appropriate mediator or court within San Juan County, New Mexico may be used.

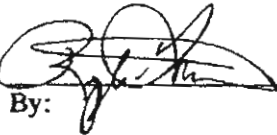
7. **OTHER CLIENTS:** Contractor retains the right to perform services for other clients.


8. **WORK PRODUCT:** For the purposes of this contract, all work product under this contract shall be the property of DNA. Contractor shall give one original of such materials to DNA at the time they are completed, but at least at the end of the contract period.

9. **MODIFICATION:** This contract may be modified upon both parties' signed written agreement.

Reagyn A. Germer, PC

DNA-People's Legal Services, Inc.

By: 


Levon B. Henry, Executive Director

Date: 12/31/08

Date: 12-31-08

7/10/08 Navajo Times

be seen, the money is
riness is all but shut
he Navajo Nation - as
k owner - is where the

we, according to the
r this point in time
ay we can recoup it."

nesday.
nation may be trying
its profit and loss
he loan still has to be

is continuing to make
and has not defaulted
Bates said, adding

the loan, taken out in
September. It was
ven paid off using
n large contracts that
d were just about to be

See LOSS, Page A-3

severe and drops in gas sales are
coming on.

During the first half of the
current fiscal year the fuel excise
tax generated nearly \$3.6 million

from October through December
2007. That decreased to \$3.1
million from January to March
2008.

The excise tax rebounded in

the year's third quarter, but it to
June, when it generated a \$3.4
million.

"I've been kind of bracing myself
to see that (decrease in fuel excise
tax revenues)," said Mary N. 2007, the excise taxes brought in
liquidity, executive director of the \$3.3 million in the first quarter

Navajo Tax Commission. "But (October through December 2006)

4-day tribal workweek a possibility

By Bill Donovan
Special to the Times

gasoline prices are consistently
above \$4 a gallon.

The idea is still in the informal
stage but tribal officials said that

Navajo Nation is considering
going to a four-day work week
to help tribal employees cut the
cost of commuting now that

day work week and New Mexico
is considering doing it as well. "

said Bernadette Bernally, director
of personnel.

Vice President Ben Shelly said he
is monitoring the discussions and
that before the tribe decides to make

a commitment to change its

and just received \$3 million in the
second.

The excise taxes, which
generated \$12.8 million in fiscal
2007, are reserved for the tribal
Roads Fund, which the Navajo

See RELIEF, Page A-3

scheduling of employees, a
feasibility study would probably
be done or some kind of hearing
conducted to look at the
advantages and disadvantages.

He stressed that even if the

See PRICES, Page A-3

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being returned, one barrel of crude oil yields about 45 gallons of various petroleum-based products.

Of that, less than 20 gallons are used to make gasoline. Another nearly 10 gallons are used to make diesel fuel. The remaining is used for several products including jet fuel, liquefied petroleum gases and heating oil.

The company then sells the refined products to outside companies. This may or may not include the Navajo Oil and Gas Co., which owns seven gas stations across the Navajo Nation.

In this branch of the company, Oil and Gas is in the same gas-guzzling vehicle as the rest of the country.

Prices / Shortened week considered

From Page A-1

One tribe allows employees to go to a four-day week, tribal offices would continue to be open five days a week in order to provide services to the people.

One possibility under discussion is to schedule part of the workforce for 10 hours a day, Monday through Thursday, while another portion would work Monday and Tuesday, take off Wednesday, and then work on Thursday and Friday.

Bernally said she would rather see a system in which part of the price employees work Monday through

the cheapest way to truck in the gas to our stations.

Everybody is looking at cost now.

Although the crude from the Navajo oilfields is refined nearby,

Thursday and others work Tuesday through Friday.

The idea is gaining support as gasoline prices increase. Many employees commute 60 miles or more and rising costs have put a strain on everyone's personal budget, tribal officials said.

A four-day week would allow employees to reduce their fuel expenses by up to 20 percent. Bernally said that some tribal programs already have instituted the four-day workweek.

"Most of these are in seasonal programs," she said, mentioning forest workers.

However, that's unlikely now as the price of the fuel needed to transport the product across the state has become prohibitive, he said.

Overall, Klein said, of the money paid by consumers at the pump, only about 1 percent of that goes to the stations operated by Navajo Oil and Gas. Like other gas stations, they make most of their profit from in-store concession sales, she said.

However, the tribe does see a significant cash flow in its fuel excise tax. In recent months, some tribal officials have questioned whether repealing that tax could provide some relief for tribal members who are straining under

The police department has some of its employees working a four-day week in an effort to avoid overtime.

Bernally said any program can put the request to her office. Her staff looks at the request to see how it will affect those who receive services and will make sure their needs continue to be met.

Most tribal employees are expected to favor such a proposal since it would give them three days off a week, as well as cut down on gas usage.

With tribal employees getting 14 days off a year for federal and tribal

the tribe would have to inform the states if it repealed the fuel tax. The states would most likely then reinstate their own fuel taxes, Eisitty said.

In any case, the savings would be minimal. Using her own vehicle, which has a 27-gallon gas tank, as an example, Eisitty pointed out that 18 cents per gallon equals about \$4.85 per tank.

At the price of \$4.12 per gallon offered Wednesday at the Window Rock Chevron station, that's less than \$5 off of a \$111 tab. "There's not a huge savings there," Eisitty said.

As for services to the people, supporters of the four-day workweek point out most tribal members already know that Fridays are slow in most tribal offices, with many employees using annual leave to take the day off and enjoy a three-day weekend.

Bernally said as more programs opt to go to a four-day workweek, tribal leaders may decide to institute the change in all tribal government offices.

delegates range from low to high

has because he remains a tribal

hen employee.

houses provided by the tribe and their basic utility bills are paid for

Unlike the council delegates, the their basic utility bills are paid for

this uses up a lot of my salary."

Being a delegate means being available personally, 24/7, to constituents he added.

do I get any stipend for attending these meetings.

"I wish people would have more understanding about this and have

MEMO TO: All Managing Attorneys, Litigators and Office Managers
FROM: Sylvia J. Struss
RE: Statements of Fact and Semi-annual Case Disclosure Report
DATE: 1/28/09

Since there seems to be a lot of confusion about when Statements of Fact ("SOF") are required, and which cases are to be put on the semi-annual Case Disclosure Report, I'm writing this memo to clarify.

Statement of Fact--When Do We Get It?

45 C.F.R. 1636.2(a) says that when DNA *files a complaint in court, or otherwise initiates or participates in litigation against a defendant*, or before DNA *engages in pre-complaint settlement negotiations* with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, DNA shall do a SOF. DNA's policy dated 6/7/1997 on this issue says "in other words, it applies if you think that you might, or especially if you threaten to, file a lawsuit against the opposing party."

This regulation came after some legal aid programs, who wanted to challenge/change a law, filed petitions on behalf of clients who did not authorize themselves as plaintiffs in the cases. LSC is ensuring that if we file in court, the client authorized it.

If a client starts their case as a petitioner on a *pro se* basis, and then we enter our appearance on behalf of the petitioner, we need to do a SOF; this is because we are "participating in litigation against a defendant."

If we initiate a Petition for *Order to Show Cause* on behalf of a petitioner, where we don't already have an active Entry of Appearance in the case, we need to do a SOF. In other words, if you are representing the client in, say, a divorce, and the Respondent doesn't pay interim child support, and you file a Motion for Order to Show Cause as part of that case, we don't need a SOF. If we initiate a Petition Order to Show Cause in tribal court, it's a new case by definition, since the tribal court gives it a new docket number, and the Entry of Appearance to get the prior order terminates when the tribal court issues a final order in that earlier case, and we need a SOF. In state court, if we didn't represent the client in the prior case, or we had a limited Entry of Appearance, or we withdrew from the prior case, we need a new SOF.

If the client is the *Respondent* in the case, we do not do a SOF.

Statement of Fact--What's in it?

1636.2(a)(1) says the SOF needs to include the ***name of the Petitioner*** (unless it's protected by court order), ***dated signature of the Petitioner, and a brief statement of the facts*** supporting the petition. DNA's policy says the SOF "states the factual basis of his/her claim...[but] should include only enough detail to support the complaint."

1636.3 allows access to this information only by LSC or a federal agency auditing DNA.

LSC has told us that, for LSC inspection purposes, if we failed to get a signed SOF, a ***copy of the verified petition*** will suffice. This is NOT, however, our policy. Our policy is that we get a SOF--the verified petition is only to save ourselves when we screwed up. If we failed to get a SOF and we have the verified petition, we do not chase down the client to sign a SOF.

Attached is DNA's template SOF; this is included in "Sample Client Letters" on a CD, which is given to all new staff during New Staff Orientation.

It is the litigator's responsibility to create a Statement of Facts and get it signed by the client.

Statement of Fact--I got it signed, now what? (Semi-Annual Case Disclosure Report)

Every time a SOF is signed by a client, a copy should be given to the Managing Attorney, and kept in a file labeled "Statement of Facts--current." Every six months (1/1-6/30 and 7/1-12/31), we need to compile this information on the semi-annual Case Disclosure Report, which Rena compiles and submits to LSC.

It is the Office Manager's job, within the first 2 weeks following 6/30 and 12/31, to pull the "Statement of Facts" file from the Managing Attorney's office. Then, ask the Litigators in the office if they're SURE they got a SOF for each case where they represented the petition; if they're not, have them go through their active cases and note the ones that have or need a SOF, and get it done. Once the Office Manager has confirmed with litigators, (s)he transfers the information from the SOF to the Case Disclosure Report. Then, e-mail it to Rena, who compiles all of the offices' reports together into one report, and submits it to LSC.

STATEMENT OF FACTS

_____ - Case No. 04E-_____
(Client's Name)

Note to client: Federal law requires DNA-People's Legal Services to obtain a written Statement of Facts from you before we can file suit or engage in pre-complaint settlement negotiations on your behalf. The Statement of Facts should include no more than those facts that must be alleged to support the complaint. By signing the Statement of Facts, you are also consenting to allow our federal monitors to review your Statement of Facts to ensure that we are complying with federal law.

Client: Name _____

Adverse Party: Name: _____

Court: _____

Case No. (if known): _____

Cause of Action: Petition to _____

Facts: (sample: On 3/22/96, I got a divorce from the Adverse Party in the Chinle Family Court. Among other things, the divorce decree ordered him to pay me \$200 per month in alimony for 3 years. He has not paid me any of this money, and I want DNA to represent me in an Order to Show Cause against him.)

Client Signature

Date