



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Inland Counties Legal Services
Case Service Report/Case Management System Review
December 6-10, 2010

Recipient No. 805230

I. EXECUTIVE SUMMARY

Finding 1: ICLS' automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were several exceptions noted.

Finding 2: ICLS' intake procedures and case management system generally support the program's compliance related requirements, though some improvements are required.

Finding 3: ICLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. ICLS is in substantial compliance with 45 CFR § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 4.3 and § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

Finding 4: ICLS is in substantial compliance with 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. However, two (2) exceptions were noted.

Finding 5: ICLS is in non-compliance with 45 CFR § 1626.6 (Verification of citizenship).

Finding 6: ICLS is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: ICLS 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: ICLS is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), §§ 2.3 and 5.6 (Description of legal assistance provided).

Finding 10: ICLS' application of the CSR case closure categories does not comply with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: ICLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. (Timely Closing of Cases).

Finding 12: Sampled cases evidenced substantial 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: ICLS is in non-compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: ICLS is in compliance with the requirements of 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 16: ICLS 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. ICLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. ICLS is in compliance with 45 CFR § 1614.3(e) regarding supporting expense documentation and cost allocations.

Finding 17: ICLS 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, and is in compliance with 45 CFR § 1627.2(b)(1) which requires LSC prior approval of payments made to attorneys which total in excess of \$25,000 per year.

Finding 18: ICLS 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 and other documentation 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: The fiscal review of ICLS' internal control policies and procedures found the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Chapter 3-Accounting Guide for LSC Recipients).

II. BACKGROUND OF REVIEW

From December 6 through December 10, 2010, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Inland Counties Legal Services, Inc. ("ICLS").¹ The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. A team of five (5) attorneys, one (1) management specialist, and one (1) fiscal analyst conducted the visit. Four (4) attorneys and the fiscal analyst were OCE staff members and one (1) attorney and the management specialist were LSC temporary employees.

ICLS is a non-profit legal services organization providing free legal services to low-income and disadvantaged residents in LSC service area known as CA-12. ICLS is headquartered in Riverside, California and maintains offices in San Bernardino, Rancho Cucamonga, Victorville, and Indio, California. ICLS involves private attorneys in the delivery of legal services through a small *pro bono* component in San Bernardino, and through subgrants to the Inland Empire Latino Lawyer Association ("IELLA") located in the city of Riverside, the Public Law Service Corporation ("PLSC") located in the cities of Riverside and Indio and the Legal Aid Society of San Bernardino ("LASSB") located in the city of San Bernardino.

During 2009, ICLS received LSC basic field and other LSC funding in the amount of \$4,975,700. ICLS also received grant and contract support from various federal, state, local, and private sources. According to LSC's Recipient Information Network, the total non-LSC revenue received in 2009 was \$2,288,640. ICLS received total funding of \$7,264,340. *See* www.rin.lsc.gov.

For 2009, ICLS reported 10,836 closed cases in its CSR data submission report ("CSRs"). ICLS' 2009 self-inspection report noted a 9.1 % self-inspection rate. The majority of the errors were failure to document the legal assistance provided, duplicate reporting of cases, insufficient documentation of citizenship or alien status and the incorrect designation of cases as LSC eligible when a non-advocate provided legal assistance.

In preparation for the visit, on October 12, 2010, OCE requested that ICLS provide certain case lists. Case lists requested included all cases closed during 2008 ("closed 2008 cases"), cases closed during 2009 ("closed 2009 cases"), all cases closed between January 1, 2010, and October 15, 2010 ("closed 2010 cases"), and all cases which remained open as of October 15, 2010 ("open cases"). OCE requested that two sets of lists be compiled - one for cases handled by ICLS staff and the other for cases handled through ICLS' PAI components. OCE requested that each list 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 closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. ICLS was advised that OCE would seek access to case information 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*

¹ The term "ICLS" is used to refer to all ICLS staff program employees and offices, PAI subgrant employees, offices, and any PAI program component of ICLS.

Records protocol (January 5, 2004). OCE instructed ICLS to notify OCE promptly, 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, ICLS provided the materials. OCE then selected a sample of 660 case files to review during the visit. OCE made an effort to create a representative sample of cases that the team would review during the visit. OCE distributed the sample proportionately among open and closed cases and among ICLS' various staff and subgrant office and locations. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, application of the CSR case closing categories, and duplicate reporting.

During the visit, ICLS cooperated fully and provided the requested materials. ICLS afforded access to information in the case files through staff intermediaries. ICLS maintained possession of the files and disclosed financial eligibility information, problem code information, and information concerning the general nature of the legal assistance provided to the client pursuant to the OCE and ICLS agreement of November 9, 2010. Additionally, ICLS displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and Part 1636 statements. OCE also interviewed members of ICLS' upper and middle management, fiscal personnel, staff attorneys, and support staff. OCE assessed ICLS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units and in all three-subgrant offices. On November 22, 2010, OCE and ICLS entered into an agreement affording OCE access to ICLS clinics. OCE team members observed the clinics and interviewed staff members at the Proyecto Ayuda Legal Matters Clinics ("PAL") located in the San Bernardino and Rancho Cucamonga Superior Courts and the Family Law Access Partnership Project Clinic ("FLAPP") located in the Riverside Family Law Court Center. Additionally, OCE team members interviewed staff and observed the Housing Law Service Center Hotline located in the ICLS Riverside branch office. LSC fiscal staff reviewed ICLS' compliance with the LSC grant, including the prohibited political activities, fee-generating cases, the use of non-LSC funds, the PAI component, the payment of membership dues and fees, timekeeping, attorney fees, cost standards and procedures, and other fiscal activities.

OCE visited all currently open offices staffed by ICLS and the offices of ICLS' subgrantees, interviewed staff involved in the intake process and the PAI program, as well as the management staff in the offices. OCE reviewed 660 files; of which 89 files were selected to test for compliance with certain regulatory and reporting requirements. The remaining 571 files that OCE reviewed were randomly selected. OCE reviewed 287 closed 2009 files, 210 closed 2010 files and 163 open files.

During the course of the visit, OCE attempted to advise ICLS of any compliance issues. OCE notified intermediaries, the Finance Director, Director of IT, Assistant Director/Director of Litigation, and Executive Director of any compliance issues identified during the review. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised ICLS of its preliminary findings. OCE advised that the staff was familiar with the LSC regulations, the CSR Handbook, and the frequently asked questions disseminated by LSC. OCE further advised ICLS that while OCE detected limited patterns of non-compliance, there were instances of non-

compliance with certain regulatory and reporting requirements. These included the failure to obtain attestations of citizenship/alien eligibility status, ACMS inconsistencies, lack of documentation of legal advice, lack of documentation of income and asset documentation, and closing code category errors. The sampled cases reflected one fee generating case. The biggest concern from a compliance standpoint was that many of the errors appeared to result from a lack of clear understanding and consistent application concerning “levels of service.” There was an overall “levels of service” misunderstanding that was found throughout the program, clinics, and the PAI component which resulted in the majority of the errors found within the review sample, whether they be the errors found in the sampled areas of documentation of legal advice/legal information, closing codes or PAI. ICLS is required to commit to training and the development of policies and educational materials to resolve these compliance findings.

During the exit conference, OCE instructed ICLS that the findings were merely preliminary, that OCE might well make further and more detailed findings in the Draft Report, and they would have 30 days to submit comments. Afterwards, a Final Report would be issued that would include ICLS’ comments.

By letter dated March 4, 2011, OCE issued a Draft Report (“DR”) detailing its findings, recommendations, and required corrective actions. ICLS was asked to review the DR and provide written comments. On March 24, 2011, ICLS requested an extension of time, until April 25, 2011, to submit its comments. That request was granted on March 25, 2011. On April 26, 2011, OCE received ICLS’ comments that were dated that same day. OCE has carefully considered ICLS’ comments, has incorporated them into this Final Report as appropriate, and has attached them to this Report in their entirety.

III. FINDINGS

Finding 1: ICLS’ automated case management system (“ACMS”) is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were several exceptions noted.

Recipients are required to utilize an 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.

ICLS program offices use Kemps Prime as its ACMS. OCE did not identify any defaults in essential compliance categories. All staff interviewed at ICLS were trained well, recorded their case notes directly into the ACMS, and were capable of generating lists of cases open in their name. The ACMS has the capability to deselect cases from reporting to LSC through the correct use of two(2) fields, “LSC Eligible” and/or “W, X, Y and Z” closure codes. The staff members who OCE interviewed accurately articulated when and how to deselect cases from CSRs.

The subgrant offices of IELLA, LASSB, and Riverside PLSC use the same version of Kemps Prime ACMS but the subgrant databases are not linked to the ICLS databases. The PLSC Indio subgrant office does not have the Kemps Prime database technology. Instead, PLSC Indio hand-generates intakes and closings. The staff of the Riverside PLSC office reviews and enters the intakes into Kemps Prime. As PLSC does not have a central conflict database, all conflicts are checked manually by reviewing the PLSC Indio and PLSC Riverside office conflict files and checking the partial conflict data in the Kemps Prime ACMS. While this system is sufficient to ensure that information is being entered into Kemps Prime, the process appears cumbersome and duplicative. PLSCS should have a fully functioning conflict database. The CSR Handbook requires that case management systems should employ sufficient technological capacity to ensure cost effective and efficient management of data and workflow. One hallmark of sufficient technological capacity is the single entry of data. *See* CSR Handbook (2008 Ed.), § 3.1. It is recommended that ICLS require PLSC to obtain the Kemps Prime case management system and that such system have a complete conflict database.

Sampled cases reflect a user misunderstanding with the ACMS drop-down menu for income. Until early 2010, the LASSB and Indio offices included food stamps in the gross annual income calculation because the ACMS lists food stamps as an income source on the ACMS. Examples include LASSB closed 2009 Case Nos. 09E-30002972, 09E-30002599, 09E-30000375, 09E-30001682, 09E-30002579, 09E-30004272, 09E-30003146, 09E-30001256, 09E-30004454, and 09E-30002291 and Indio office open Case No. 10E-4009077. When senior management identified this practice during case review, they educated staff and corrected these errors. Notwithstanding the current correct practices, OCE recommends that ICLS remove food stamps as an income source in the income drop-down box on the ACMS eligibility screen to prevent reoccurrence of the erroneous practice.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, ICLS' ACMS is sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded. However, a small number of sampled files reviewed revealed instances in which the information in ACMS did not match the information found in the case file. For example, closed 2009 Case Nos. 09E-15000785 and 09E-3004294 lacked consistent closing category information, 09E-3004294 lacked consistent closing date information, 09E-30004511 and 09E-30001943 lacked consistent open date information, 09E-6000763 lacked consistent asset information, and open Case No. 10E-4009187 and closed 2010 Case No. 10E-30001007 lacked consistent problem definition information. Staff in open Case No. 09E-2011692 reopened one case in error and in closed 2009 Case No. 09E-30000910 failed to check the LSC Eligible field which resulted in the exclusion of this eligible case from the CSRs.² Two files, closed 2010 Case Nos. 09E-6001831, and 10E-6008911 were listed as PAI on ACMS when the file reflected that an ICLS staff attorney provided the legal services and the files should have been designated as staff cases pursuant to the CSR Handbook (2008 Ed.), § 10.1 (b)(i). ICLS advises that they will correct the errors found in the identified the open and 2010 cases. As these errors were the result of human error, predominantly found in the 2009 sample and seem to have resolved by 2010, no corrective action is required for these error types.

² This case was not funded by the LSC grant, however, all eligibility criteria was met and, pursuant to the CSR Handbook (2008 Ed.), the case should have been reported in the CSR data submission.

ICLS' comments to the Draft Report ("DR") offered no response to this Finding.

Finding 2: ICLS' intake procedures and case management system generally support the program's compliance related requirements, though some improvements are required.

Intake Process

At the time of the review, the ICLS management team was working on a draft intake manual. In lieu of intake procedures, staff refers to the board adopted program policies for guidance.

ICLS staff conducted intake activities in the offices reviewed. The OCE team reviewed the intake activities at the Riverside Main, ICLS PAI, the Riverside Housing Law Service Center ("HLSC"), the San Bernardino, Victorville, Indio, Rancho Cucamonga and the LASSB, PLSC and IELLA subgrant offices. With the exception of the HLSC hotline, walk-in or in-person appointments are the predominant intake method, though offices will conduct telephonic intake when necessary. The recipient has emergency intake provisions to accommodate applicants with time sensitive cases.

In addition, most offices conduct intake at outreach locations and operate Unlawful Detainer clinics. ICLS' HLSC operates a housing hotline which provides advice and refers individuals needing responses to an Unlawful Detainer action to regularly scheduled clinics in various offices. Lastly, the program operates several programs in courthouses throughout the service area, some which are designed to provide legal assistance for fully screened, LSC-eligible clients, and other which are designed to provide legal information only.

ICLS uses the same intake model, with only minor variations, in each office visited. A description of the model and intake concerns is provided followed by a description of unique intake conducted in each office. It was found that although intake is decentralized, screening of essential compliance elements is consistent and ICLS' intake procedures and case management system generally supports the program's compliance related requirements. However, some improvements are required.

Rancho Cucamonga, Indio, Riverside, San Bernardino, and Victorville Intake Screening

ICLS program offices conduct most intakes by appointment. When an individual telephones the office for services, the receptionist conducts a brief pre-screen for legal problem and income and sets an appointment to return for a full screening. ICLS program offices client appointments with the Attorneys for intake interviews, generally on a rotating basis. Depending upon the issue, ICLS may schedule applicants to a particular day devoted to specific issues, such as in San Bernardino, Victorville, and Riverside. If the applicant walks into the program during office hours, the receptionist conducts the prescreen and asks the attorney or the Managing Attorney if the applicant can be fit in, between other appointments, especially if the applicant has an emergency. Otherwise, the applicant is given an appointment to return or may be referred to another organization. Telephone applications are taken to a varying degree, depending upon the

office, though most offices encourage applicants to set an in-person appointment if possible. The Indio conducts walk-in and telephone intakes on various days throughout the week.

Housing Law Service Center Intake

ICLS program offices use an intake and limited assistance hotline model, referred to as the "Housing Law Services Center," to respond to telephone requests for housing assistance. The HLSC is located in the Riverside office. Staff conduct telephone intake by entering the applicant's information into the Kemps Prime ACMS. HLSC is consistent in its use of the Kemps to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks and case history searches (duplicate checks), verify citizenship and store electronic reporting data. The system directs each caller into a telephone-holding queue. HLSC case handler staff answer calls by order of time called and immediately moves to answer the next call after every intake is completed. Case handlers immediately provide information, referral, advice or brief services to the caller. HLSC provides clients with services that are more extensive, if required. ICLS' practice is to obtain written citizenship attestations and retainer agreements for all extended service cases. When the HLSC refers a case to a local office for additional assistance, the hotline contacts the local office and if the client seeks such additional assistance, the local office properly reopens the hotline case. Additionally, HLSC case handlers staff the Unlawful Detainer Clinics at the Courthouse. Applicants seeking intake throughout the week either in-person or by telephone, or by calling the HLSC, are advised of the days and times of the clinics. Case handlers perform conflict checks on all litigants set for the docket on the day of the clinic. ICLS announces 30 minutes prior to the commencement of the docket that they provide free legal services to eligible applicants. The litigants set for the day's docket may choose to apply for services. ICLS advises this practice is consistent with the state rules of ethical conduct. Applicants complete the written intake application and those who are determined to be LSC-eligible may be assisted with their housing matter.

Clinics and Outreach

ICLS program offices operate regularly scheduled forms clinics and conduct outreach intake in the areas of family, housing, and consumer law. The screening procedures match those described above. ICLS has entered into a fee-for-service contract with San Bernardino County to assist eligible persons obtain Supplemental Security Income ("SSI"). ICLS provides intake outreach to senior citizens (wills and general civil) and to domestic violence and homeless shelters. Additionally, ICLS operates screened and unscreened matters clinics.

LASSB, PLSC, and IELLA (PAI Subgrantees)

ICLS involves attorneys in the delivery of legal services in a variety of ways. ICLS compensates a private attorney who assists clients completing initial paperwork for a divorce and who staffs a family law matters clinic. Additionally, ICLS involves private attorneys in the delivery of legal services to ICLS clients by subgrants to LASSB, IELLA, and PLSC. In 2010, in accordance with 45 CFR § 1627.3, ICLS subgranted LSC funds totaling \$192,000 to LASSB to provide legal clinics and community education events throughout San Bernardino County, funds totaling \$157,000 to PLSC to provide *pro bono* legal services, legal clinics and community education

events throughout Riverside County, and funds totaling \$131,999 to IELLA to provide *pro bono* legal services, legal clinics, and community education events throughout Riverside County.

PAI legal assistance is provided pursuant to a legal clinic model. Clinics are held at the subgrant offices and at various outreach locations throughout the ICLS service area. Applicants are fully screened and, if eligible, are provided legal assistance, which is generally paperwork preparation for *pro se* representation, procedural information, consultation and advice. IELLA and PLSC refer a small number of cases to private attorneys to provide *pro bono* legal representation.

ICLS subgrantees conduct their own intake. The applicants complete a written application. The application and citizenship attestation forms used by IELLA, LASSB and PLSC are slightly modified versions of the ICLS application.

ICLS staff trained IELLA, LASSB, and PLSC screeners to conduct intake and these subgrantee staff members demonstrated a solid understanding of ICLS' eligibility policy and coding requirements. In addition, as *pro bono* organizations, the subgrantees serve undocumented persons with State Bar Funding as allowed by 45 CFR § 1610.7(c). ICLS designates these cases as non-LSC eligible. The staffs of the subgrantees are well versed on the ICLS citizenship/eligible alien status requirements.

If the applicant is eligible for services, they speak with a private attorney or a staff attorney employed by the subgrantee. The applicant is interviewed and the attorney determines the level of service, either "Counsel or Advice" only or legal document preparation. If advice only is provided the attorney records the advice on the attorney notation portion of the written intake application or records the forms to be prepared.

Paralegals prepare the legal documents as directed by the attorney. Either a private attorney or subgrantee attorney reviews the documents prepared by the paralegal. The case is provided to a staff member to close in the ACMS as a "Limited Action or Extensive Services." The client is called to come in and pick-up their documents. Clients meet with a paralegal who reviews all of the documents, indicates where to sign, and advises the client where and how to self-file. The concern is that at times the client does not return to pick-up the paperwork. The CSR Handbook requires cases to be closed at the highest level of assistance provided to the client. *See* CSR Handbook (2008 Ed.), §§ 6.2 and 8.1(b) If the client does not return to pick-up and file the documents, only a "Counsel and Advice" level of service has been provided to the client. ICLS should review the closing procedures of its subgrantees to ensure they receive training concerning the assignment of closure codes reflective of the level of assistance that was provided to the client.

At least one (1) private attorney and a staff member staff the clinics held at other locations throughout the county. Applicants complete the same intake application and an attorney interviews them to determine the level of service to be provided. Attendees are advised that services are contingent upon a conflict check conducted after they return to the office. The same or next day applications are entered into Kemps and a conflict check is conducted as described above. If a conflict is identified, the person is so advised and referred to another provider.

Clients may return to the subgrant offices several times for assistance with the next step of a process, for example divorce cases. In such instances, cases are reopened.

Citizenship/Eligible Alien Screening

IELLA, PLSC, and LASBB use a modified version of the written intake application. The ICLS program office and PLSC office applications include a citizenship attestation that does not comply with the CSR Handbook (2008 Ed.). The ICLS attestation is non-compliant because the form requires the applicant to attest to being a United States citizen, a Legal Permanent Resident or person with other legal status, by checking the appropriate box and providing their signature. While there is a separate signature line for this question, the line is not tied only to the United States citizen attestation as required. Similarly, the PLSC attestation is not compliant because it lacks a date line. The PLSC attestation requires the applicant to answer “yes” or “no” to the question “Are you a United States citizen?” The applicant signs but does not date the signature line. The CSR Handbook requires that the citizen attestation be in the following form “I am a citizen of the United States: Signature of applicant Date: _____.” See CSR Handbook (2008 Ed.), § 5.5.

Further, interviews and case review reveal that ICLS verifies alien eligibility by the use of two (2) forms, which is not necessary. The case handler is required to review an applicant's eligible alien documentation, make a copy for the file, and complete both an Alien Eligibility Form and a Verification of Eligible Alien Status. First, the client attests to their alien eligibility and then the case handler completes the second form verifying that they have reviewed the documentation and the client's eligible alien status. It is unclear why ICLS uses the Alien Eligibility form as 45 CFR Part 1626 does not contemplate that an applicant can attest to his alien status and such attestation fails to satisfy LSC regulations. The Verification of Eligible Alien Status Form is compliant and is the form required by the program's policy. See Restrictions on Legal Assistance to Undocumented Persons, adopted by the Board of Directors on February 20, 2007. Further, it is noted that the policy requires the use of a U.S. Citizenship Determination to attest to citizenship. This form contains a compliant attestation and is completed by clients whose cases were accepted for extended representation. Accordingly, though the attestation on the intake form was non-compliant, many clients also sign the compliant attestation and non-citizens are separately screened. These additional steps mitigate much of the non-compliance resulting from the defective attestations noted above. Lastly, ICLS has a Verification of Emergency Provision of Service form for emergency circumstances in which required documentation cannot be provided before limited assistance is required.

By the end of the OCE review, senior management had revised the citizenship form so that it is consistent with the provisions of CSR Handbook (2008 Ed.), § 5.5. ICLS should review the applications in use by its subgrantees to ensure that they are compliant with LSC regulations and ICLS board approved policies.

Domestic Violence Victim Alien Eligibility

During intake interviews, a few staff did not demonstrate an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments. One (1) intake screener reported that she does not inquire about the presence of domestic violence during citizenship or alien eligibility determinations. Another intake screener stated that a domestic violence victim was required to demonstrate eligible alien status. IELLA uses the “VAWA Eligibility Exception Form” to demonstrate eligibility for services program wide. The implementation of LSC regulations should be consistent throughout the program. As such, ICLS should provide staff training on the program’s policies regarding 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments.

Conflicts and Duplicates

ICLS has implemented procedures to reduce the potential of duplicate cases. During the conflict check performed during intake, staff determines whether an applicant is a current or prior client of the program. If a case is identified for the applicant that is either open, or a closed case with the same problem code and closed during the same calendar year, the receptionist contacts the case handler of record to obtain guidance as to whether the case should be reopened or if a new case should be created. All receptionists and management staff interviewed have been trained when to reopen a case verses when to open a new case if the same client returns in the same calendar year with the same problem. Applications for individuals who are ineligible due to a conflict of interest are closed as rejects.

Grievance

In addition to the application, applicants are also given an informational sheet regarding the grievance procedures.

Income Screening

As permitted by regulation, the ICLS board-adopted financial eligibility policy includes a Government Benefits Exemption to the asset and income screening requirements. The policy states that an applicant is eligible for LSC-funded legal assistance if the applicant's income is solely derived from Government Programs for low-income Individuals and Families.³ Nevertheless, the exemption is not used by any staff interviewed.

ICLS could improve the clarity of its documentation concerning household income in temporary living arrangements. Several cases documented a household of one, zero income, and case notes reflecting that financial assistance was provided by family members. It could not readily be determined if the applicant was living with family and receiving assistance or if the applicant was living alone and receiving assistance. The board-adopted policy does not consider a household to exist when an individual is living in the home on a temporary basis. It is recommended that under such circumstances intake screeners question applicants to determine if

³ Attachment A to the policy identifies the government programs which meet this standard: Temporary Assistance to Needy Families, County General Relief, Medi-Cal without Share of Cost, Supplemental Security Income and Cash Aid Program for immigrants.

a living arrangement is temporary. If not, the income and assets of other members of the household may be countable.

If an applicant's income exceeds 200% of the Federal Poverty Guidelines (“FPG”), the applicant is advised they are over-income and provided a referral list.⁴ ICLS enters applicant and eligibility information onto the eligibility screen and codes as a reject. Some interviewees were not aware of the two (2) exceptions to LSC's funding ceiling of 200% of FPG and reported that if an applicant’s income was over 200% of the FPG there were no expenses considered. The implementation of LSC regulations should be consistent throughout the program. As such, ICLS should provide staff training on the program’s policies 45 CFR § 1611.5 (exceptions to annual income ceiling).

If an applicant's income is between 125-200% of the FPG, the intake screener enters basic applicant and financial information into the eligibility screen of the ACMS as an open case. ICLS places the application, documents brought by the applicant, and other forms that may be required in a file, along with a Memorandum to advocate if it is necessary to flag an issue for the attorney's review, such as a potential conflict or financial eligibility. One (1) subgrantee does not consider the payment of rent as an authorized expense for those applicants whose incomes are between 125-200% of the FPG, but, most staff interviewed were familiar with the over income expense considerations. Staff understands the policy and has been trained on use of the Application to Represent Client Whose Income Exceeds 125% of Federal Poverty Level and applicants funded with LSC funds with income between 125%-200% of the FPG must complete this form.⁵ The form includes all regulatory factors, which are also included in the program's financial eligibility policy, and is set-up to require a spend-down. However, the policy and Managing Attorneys stated that it is not necessary to spend-down an applicant's income below 125% of the FPG. Managing Attorneys must approve representation if the gross annual income is 125%-187.5% of FPG. The Executive Director must approve representation if gross annual income is between 187.5%-200% of FPG. By the end of the OCE visit, senior management modified their “125 form” to clarify that the consideration of an over income applicant’s expenses is a factor analysis and does not require a spend-down. Notwithstanding this modification, this process is used infrequently because ICLS and the subgrantees receive numerous other sources of funds with varying eligibility requirements; accordingly, if an individual has income over 125%, the case is funded with an alternate source and it is coded as non-LSC eligible. This is consistent with ICLS priorities.

If an applicant reports zero income, receptionists ask additional questions regarding how they support themselves and record the responses. The board adopted financial eligibility policy

⁴ All offices receive funding from Title III of the Older Americans Act which has no eligibility guidelines, though program policy states that the grant is targeted to seniors who are in the greatest economic or social need. Accordingly, offices generally do not provide services to seniors over 200% of the FPG and only advice to seniors with income between 125%-200%.

⁵ It is noted that staff do not complete the "125 form" for cases funded by Title III, funding demonstrating income between 125%-200% and, accordingly, these cases are excluded from CSRs. While ICLS is not required to determine whether these cases are LSC-reportable, it is likely that the majority of the seniors would meet at least one (1) exception on the form and could be reported to LSC. It is recommended that ICLS consider screening senior citizens for over-income factors and, if eligible, report the cases in CSRs.

includes the regulatory language requiring staff to screen for prospective income in addition to current income and assets. Interviews reveal that not all staff inquires into the income prospects of applicants and many staff only inquire about prospective income if the applicant states they have no current income. ICLS must screen for prospective income in accordance with LSC Advisory Opinion #AO-2009-1006 and 45 CFR § 1611.7(a)(1). As such, ICLS should provide staff training on the program's policies and 45 CFR § 1611.7. The ICLS intake application does not contain a question concerning the income prospects of applicants. By the end of the OCE visit, ICLS senior management revised the intake application to include a query into the applicant's income prospects.

Asset Screening

ICLS' maximum asset ceiling is \$20,000 combined liquid and non-liquid assets. *See* ICLS Board resolution #10-60, 2010 Asset Guidelines, 2009 Asset Ceilings (Clarification), adopted November 30, 2010. Information regarding exempt assets such as the principle home, vehicles used for transportation and work related equipment is not requested or recorded in the ACMS, unless needed for legal representation. Accordingly, exempt assets are correctly not included in the total asset calculation. However, the ACMS does not include the full array of assets exempt under state or federal law and none of the staff interviewed could articulate the assets excluded from attachment under state and federal law. Interviews revealed that most staff does not adequately screen these asset categories, as some staff does not ask certain questions at all while others ask about assets but are not aware of specific exemption limit amounts. This lack of knowledge resulted in intake screeners including wholly or partially exempt assets, such as boats, jewelry and IRAs, during the financial eligibility process. IELLA's intake application incorrectly lists boats, jewelry and IRAs as wholly non-exempt. The intake applications for ICLS staff, PLSC, and LASSB request information about exempt and non-exempt assets. The lack of knowledge concerning the types of assets exempt under state and federal law raises the question as to whether ICLS is screening applicants consistent with their asset policy.

The only variation in policy identified is that while LASSB applies ICLS' \$20,000 asset ceiling and exemptions, it allows only a maximum of \$5,000 in liquid assets and \$10,000 in non-liquid assets. The intake application separates liquid and non-liquid asset recordation into two (2) columns. Absent a distinction in the board-approved policy, the subgrantee must apply the same asset policy.

LSC requires programs to screen each applicant in accordance with its board-approved policy and if the policy includes the above-referenced asset categories, they must be the subject of inquiry and consideration in determining whether an applicant is eligible for assistance with LSC funds. Consistent asset screening under ICLS' current asset policy is an issue for both staff and subgrantee offices. LSC recommends that the ICLS address this issue either by requiring intake screeners to adhere to the current asset policy or to simplify its asset policy to focus questioning on those categories of assets that are most likely to screen out households whose financial status circumstances would allow them to hire a private attorney. LSC regulations do not require recipients to exempt all assets exempt from attachment under federal and state law but does require them to screen consistently according to board-approved asset policies. The implementation of LSC regulations should be consistent throughout the program. As such, ICLS

should review the applications in use by the subgrantees to ensure that they are compliant with LSC regulations and ICLS board approved policies.

Retainer Agreements

ICLS uses a standard retainer agreement. ICLS program offices use Brief Service Retainer Agreements for Unlawful Detainer and Divorce clinics program-wide. Specific clinics use other versions of agreements. The program has drafted a retainer agreement that includes language allowing the program to request and receive attorneys' fee.

Case Acceptance and Case Closing

Case Acceptance Meetings are held daily or weekly depending upon the office and cases requiring immediate attention can be taken directly to the Managing Attorney. At the meetings, case handlers discuss cases and legal issues involved. The Managing Attorney determines the level of service to be provided. Case handlers are responsible for advising clients of the outcome, which usually occurs either the same day or the next day.

Case handlers upon completion of work, whether with advice during the first meeting or after extended representation, update case notes, select the closure code, enter closing information into the ACMS, and print the updated Kemps intake summary. If extended representation was provided, case handlers are required to complete the case closing information on the second page of the Opening/Closing Memorandum that is reviewed by the Managing Attorneys, who make changes if appropriate. Managing Attorneys review all cases to ensure that compliance related information is consistent with LSC requirements.

Oversight

Managing Attorneys interviewed periodically generate open case reports by advocate. They also periodically generate closed case lists for the office. Each office is required to submit a monthly report to the Administrative Office which includes copies of any Applications to Represent Client Whose Income Exceeds 125% of Federal Poverty Level and Verification of Eligible Alien Status. The Administrative Office generates reports that are crosschecked with the written documents.

Group Eligibility

The Riverside and San Bernardino offices report that they have determined group eligibility for non-LSC reported cases. These offices described a similar screening process. A full intake and citizenship screening is conducted for every group member. A separate case is opened for each group member; however, only one group member's case is closed with a case closure code. The remaining group members are closed with a "Y" non-LSC reported closure code. ICLS is reminded that for any LSC-reported cases, there must be consideration of the socio-economic characteristics of the group as required by 45 CFR §1611.6 and ICLS must collect sufficient documentation that the requirements of 45 CFR § 1611.6 have been satisfied.

CSR Training and Handbook

The staff members who were interviewed report having a CSR Handbook or having access to a CSR Handbook. Staff report having attended training on the CSR Handbook (2008 Ed.) closure codes, either by LSC Staff at a training in Los Angeles, or by staff who attended such training.

Conclusion

ICLS intake procedures are remarkably uniform given the number of staff and non-ICLS staff involved. As described above, ICLS' policies and procedures generally support compliance requirements though the improvements discussed herein are required.

ICLS' comments to the DR offered no response to this Finding.

Finding 3: ICLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. ICLS is in substantial compliance with 45 CFR § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 4.3 and § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁶ *See* 45 CFR § 1611.3(c)(1), 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, and 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

⁶ 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.

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.

The Board of Directors adopted ICLS' Program Client Eligibility Policy on August 25, 2010, on March 1, 2009, and on March 1 2008. The policy sets forth eligibility requirements for each of its funding sources.⁷ ICLS' income guidelines for LSC funded comply with 45 CFR Part 1611.

Sampled cases reflected that ICLS maintains the documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG. However, improvement is necessary as to ICLS' compliance with accurately applying and documenting consideration of the over-income exceptions allowed by 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4) as there were a few sampled files from the LSC CSR data submission case list that contained documentation that clients' incomes exceeded 125% of FPG. These files all lacked evidence of any considered exceptions that would authorize acceptance of the case. Examples include open Case Nos. 10E-8004056, 10E-4007282, and 10E-1005525. Additionally, ICLS reported to LSC in the CSR data submission two (2) sampled files in error, closed 2009 Case Nos. 08E-2005622 and 08E-2004371, as the household income documented in these files exceeded 200% of FPG. ICLS is admonished that 45 CFR Part 1611 is a substantive regulatory requirement and that it may only report in the CSR data submission or provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance in accordance with 45 CFR Part 1611.

ICLS may be experiencing these errors because its adoption of separate financial eligibility policies for LSC and non-LSC funding sources. ICLS specifically did not adopt the authorized exceptions contained in CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4) for non-LSC funding sources.⁸ Thus, ICLS does not attempt to qualify as LSC-Eligible applicants whose incomes are between 125%-187.5 and 200% of FPG if there is another available funding source. Case handlers do not complete the Application to Represent Client Whose Income Exceeds 125% of Federal Poverty Level and do not report these cases to LSC. Because ICLS does not consider over income factors in these cases, where appropriate, there is the likelihood that some cases will be reported in error. If ICLS modified its policies to consider the over-income factors for all client's with incomes between 125-200% of FPG consistent with 45 CFR Part 1611, then ICLS

⁷ The funding sources are as follows: LSC, State Bar of California Legal Services Trust Fund Program (Interest On Lawyers Trust Accounts), Equal Access Grant and Equal Access Partnership Grant, Older Americans Acts Title III-B (Riverside County Office on Aging), San Bernardino County Department of Aging and Adult Services, San Bernardino County Social Security Legal Advocacy Project and U.S. Department of Housing and Urban Development.

⁸ ICLS does not require persons 60+ and those individuals experiencing homelessness to meet any income eligibility criteria to be eligible for legal services and ICLS obtains income and asset information as it may be needed to handle these individuals' cases and to assess the appropriate level of services. *See* Inland County Legal Services Program Client Eligibility Policy, Parts V-older Americans Act Eligibility and V- HUD Eligibility Criteria (New Section) (Revised and adopted on February 28, 2006. Effective April 1, 2006). ICLS requires individuals funded by Interest on Lawyers Trust Accounts and Equal Access to be at or below 125% of the FPG to qualify for legal services.

may reduce its rates of error because all cases will contain a consideration of the over-income factors.

Moreover, it is likely many of these clients would become LSC-eligible if the over-income form was completed and therefore ICLS could report these cases to LSC in the CSR data submission. Examples of cases that may be LSC eligible if the over-income factors were considered include open Case Nos. 10E-2002882, 10E-4009253, 10E-1005433, closed 2010 Case Nos. 10E-7007566 and 10E-7006309, closed 2009 Case Nos. 09E-30001583, 09E-2004035, 09E-2006211, 09E-2002412, 09E-30003495, 09E-3008861, 09E-8009243, 08E-8012688, and 09E-8008150. As stated in Finding #2, it is recommended that ICLS consider screening Title III and HUD funded cases for over-income factors and, if eligible, report these cases in the CSRs. However, it is important to note that the CSR Handbook (2008 Ed.) does not require recipients to document client financial eligibility for any cases that are wholly funded by non-LSC sources, unless such cases are reported to LSC and this is a recommendation only. *See* CSR Handbook (2008 Ed.), § 4.3.

ICLS' comments to the DR offered no response to this Finding.

Finding 4: ICLS is in substantial compliance with 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.⁹ *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.

⁹ 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.

Sampled case files reviewed reflect that ICLS is in substantial compliance as it maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by revised 45 CFR § 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.) § 5.4. However, two (2) exceptions were noted, closed 2009 Case Nos.08E-8007557 and 09E-8002035. These non-LSC funded cases lacked documentation that assets were screened or ICLS did not obtain a waiver when the client's assets exceeded the \$20,000 maximum asset ceiling. These files and others similar to them were reported in error. As these cases were found in the case sample of one (1) office, greater oversight of the asset screening process may be all that is required for this particular office.

ICLS' comments to the DR offered no response to this Finding.

Finding 5: ICLS is in non-compliance with 45 CFR § 1626.6 (Verification of citizenship).

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.¹⁰ 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.

ICLS is in non-compliance with 45 CFR § 1626.6. Four (4) files lacked the documentation necessary to evidence citizenship or eligible alien status. Examples include open Case No. 08E-6002313, which lacked a written citizenship attestation despite the file reflecting that ICLS had

¹⁰ *See* Kennedy Amendment at 45 CFR § 1626.4.

in-person contact with the client and closed 2010 Case No. 2000873, which lacked documentation of citizenship or eligible alien status. Further examples are closed 2010 Case Nos. 10E-6008742 and 10E-6005101, in which attestations that were signed but the check box on the attestation was not completed so there was no way to discern whether the client was attesting that he/she was a United States citizen or whether he was attesting to his eligible alien status. The above-identified case files, and those similar to them, are not CSR reportable. ICLS is admonished that Part 1626 is regarded as a substantive regulatory requirement, and continued non-compliance could result in the imposition of sanctions.

There were two (2) other patterns of error identified. First, there were timelines errors, either because the written citizenship attestation was obtained after program staff first had in-person contact with the client or because the citizenship or alien eligibility documentation was not dated and timeliness could not be discerned. These citizenship attestations were not as stated in the CSR Handbook (2008 Ed.), § 5.5 which requires a date. Examples include open Case Nos. 09E-15000303, 10E-4009187, closed 2009 Case Nos. 09E-2000158, 09E-8007655, 09E-2009516, 09E-3004605 and 09E-8001485, and 09E-6005688. Secondly, sampled files of ICLS program offices contained executed citizenship attestations that did not comply with the format requirements established by the CSR Handbook (2008 Ed.). Examples include open Case Nos. 08E-8008574 and 10E-4009077. As stated in Finding #2, ICLS amended their non-compliant citizenship attestation form to bring it into compliance with CSR Handbook (2008 Ed), § 5.5 and instructed staff to immediately begin using the compliant form. Accordingly, this issue appears to have resolved itself and thus no further corrective action is required.

In its comments to the DR, ICLS noted that this issue was brought to ICLS' attention during the visit and was immediately brought to the attention of all program managing attorneys. Additionally, the comments indicated that the ICLS Application for Services was revised with a separate signature line which ties only to the U.S. Citizenship attestation with a date required next to the signature.

Finding 6: ICLS is in substantial 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). No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR Part 1614. *See* 45 CFR § 1611.9(b).

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.¹¹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

ICLS is in substantial compliance with the requirements of 45 CFR § 1611.9. All cases that required a retainer had one. However, closed 2009 Case No. 09E-8001485 failed to describe the scope of the legal services to be provided. Additionally, closed 2009 Case No. 09E-8001485 and open Case No. 10E-3008077 lacked the dates of execution, making it difficult to discern whether the retainer was executed when representation was commenced or as soon thereafter as possible pursuant to 45 CFR § 1611.9.

In its comments to the DR, ICLS noted that it would conduct a review of the retainer agreement requirements in one of the series of training sessions that would be scheduled within the next two (2) months.

Finding 7: ICLS 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). This part applies to cases for which private attorneys are compensated by the recipient as well as cases initiated by the recipient's staff. *See* 45 CFR § 1636.4.

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

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1636. *See* ICLS Program Policy- 45 CFR 1636, adopted February 25, 1997. OCE has reviewed the policy and has determined that it is consistent with Part 1636.

Case files reviewed indicated that ICLS is in compliance with the requirements of 45 CFR Part 1636. No exceptions were noted. No corrective action is needed nor are any recommendations made.

ICLS' comments to the DR offered no response to this Finding.

¹¹ 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.

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.

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1620.6(c). These priorities, broadly stated, are delivery of legal services, advice and referral, maintaining, enhancing and protecting economic security, preservation of housing and housing related needs and safety, stability and well-being of individuals and families. *See* ICLS 2010 Program Priorities, adopted November 8, 2009.

ICLS is in compliance with 45 CFR Part 1620. All sampled files reviewed were within ICLS' priorities

ICLS' comments to the DR offered no response to this Finding.

Finding 9: ICLS is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 2.3 and 5.6 (Description of 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.

ICLS is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. Several sampled files failed to contain a description of the legal assistance provided either because the client withdrew from representation before legal assistance could be rendered or because the PAI files contained no information concerning the status of the case or the legal work performed. Examples include open Case Nos. 08E-80085538, and 10E3005635, closed

2009 Case Nos. 09E-30003145, 09E-8010274, 08E-8008723, 08E-8005775, 09E-30002586, 09E-4010192, 09E-30004510, 09E-30000441, 09E-30002121, 09E-30004454 and closed 2010 Case No. 09E-20001075.¹² ICLS advised during case review, that it identified this issue in 2009 and changes were made to comply. Accordingly, corrective action has already been taken; however, further improvement is required because of the presence of this error type in the open and 2010 sampled cases.

Secondly, while a few sampled files contained documentation about the legal activities, these activities did not rise to the level of legal assistance because either they were referrals or were legal information services. For example, a few sample files contained documentation that ICLS referred clients to a Bar Association, another legal services provider or another ICLS office. In others sampled files, ICLS instructed the client “to speak to the attorney,” “to attend a consumer clinic” and provided with a blank bankruptcy questionnaire or documented only that “general topics” discussed. These examples include closed 2009 Case Nos. 09E-30000375, 09E-30002407, 09E-30004511 and 10E-6008202, 10E-6006628 and closed 2010 Case No. 10E-6006152. In each of these cases, the files were closed as legal assistance provided using closing code “A, Counsel and Advice” in error. The CSR Handbook notes that recipients may not report the referral of an applicant for legal services as a case when the referral is the only form of assistance that the applicant receives from the program, although it may be included in the Other Services Report. However, the referral to another office within the recipient’s program may not be included in the Other Services Report or reported in the CSR data submission as a case. *See* CSR Handbook (2008 Ed.), Chapter VII. These files, and others similar to them, are not CSR-reportable.

Thirdly, observations made during the review of the various clinics reflect concern that providing legal advice rather legal information services are being provided at the Self-Help clinics.¹³ OCE observed the operations and activities of ICLS staff at the Family Law Access Partnership Project (“FLAPP”) and Self Help Center Attorney Project (“SHCAP”) in Riverside, and Proyecto Ayuda Legal (“PAL”) in San Bernardino and Rancho Cucamonga. As ICLS advised OCE that its staff only provided legal information at the clinics,¹⁴ open access to the clinics, upon consent of the customer,¹⁵ was allowed pursuant to the November 22, 2010 access agreement between LSC and ICLS.

¹² Several of these above-enumerated files were cases handled by a PAI subgrantee during 2009. These cases, which were reported with little to no information on the status of the case or the legal work performed, do not comply with 45 CFR Part 1614.

¹³ The Self-Help Centers were formed pursuant to partnerships with the Riverside, San Bernardino and Rancho Cucamonga Superior Courts. Self-Help Centers were developed by the State of California to facilitate timely and cost-effective processing of cases involving self-represented litigants and improve the delivery of justice to the public. *See* Rule 10.960 of California Rules of the Court. In 2008 the Administrative Office of the Courts, in collaboration with judges, court executive officers, attorneys, and other parties with a demonstrated interest in services to self-represented litigants developed Guidelines for the Operation of Self-Help Center in California Trial Court.

¹⁴ The terms of the contract state that staff of the Self-Help Center shall not provide legal advice or provide legal representation to individuals using the center’s services.

¹⁵ Term used by ICLS for individuals who are provided assistance at the Self-Help Center.

ICLS follows the *Guidelines for the Operation of Self-Help Centers in California Trial Courts*. See *Guidelines for the Operation of Self-Help Centers in California Trial Courts*, Administrative Office of the Courts, issued February 29, 2008. These guidelines require that self-help centers provide notice to individuals that the services that are provided do not produce an attorney-client relationship. The Self-Help Centers located in Riverside, San Bernardino, and Rancho Cucamonga use an intake form that requires customers sign a statement of understanding. This statement informs the customers that the center will provide legal information; that center will not be providing legal advice; that the center is available to assist both parties; and that the center is not representing them and that meeting between self-help staff and the individual is not private. Furthermore, FLAPP and PAL complete a Consumer Data Sheet and require that the customers are eligible for legal services under LSC requirements and ICLS' eligibility policies. There is no such requirement for SHCAP. The basic core services offered at the Self-Help Centers is assistance with pleadings; document review; explanation of court documents; assistance with understanding service requirements and methods; preparation for hearings; completion of orders after hearings and judgments; and drafting stipulations.

According to the attorneys interviewed at the Self-Help Centers, all the information provided is instructional in nature and Self-Help Center staff gives no advice. At the Self-Help Centers, customers are assisted in completing court forms; analyzing facts; and interpreting regulations. The services are provided by an attorney who meets with the customers privately in a cubicle at the county courthouse. Observation and interviews revealed that staff is providing *pro se* assistance to individuals who are seeking direct services. ICLS considers these interactions with customers as matters and not cases.

Clear delineation between "cases" and "other services" is essential. In California, the determination of what constitutes legal advice as defined by the LSC CSR Handbook definition, the state of California and relevant ABA guidelines. See *ABA Standards for the Provision of Civil Legal Aid*, August 2006. LSC regulations and applicable letters of instruction require that services determined to be legal advice should only be provided to fully screened and eligible clients. Several observations by an OCE team member evidenced that, in some instances, ICLS staff appeared to have applied law to facts, or had taken an action for a customer, or made other statements that rendered the interaction identical to services provided by other ICLS offices and which were considered by those offices to be cases.

For example, on December 6, 2010, the attorney for the FLAPP was observed assisting a customer in modifying her custody order. Based on the information that was revealed by the customer, there would be opposition to the modification by the opposing party. The attorney met with the customer privately in a cubicle for approximately 45 minutes. The attorney would ask pointed questions to the customer that reflected the attorney's internal legal analysis of the customer's facts as they applied to the standards for obtaining custody and proceeded to complete the *pro se* documents on the customer's behalf in a manner that reflected strategic decision-making. As the questions continued and more information was revealed, the attorney realized that the customer needed service that is more extensive than he could provide at the Self-Help Center and referred her to ICLS' Riverside office. ICLS reports that they do not consider self-help *pro se* document preparation as legal advice unless the customer is advised of her legal options. However, this interpretation may be too narrow as the provision of legal

advice occurs whenever the attorney applies their legal judgment to the client's particular set of facts as occurred in this observed case. *See* ABA Standards for the Provision of Civil Legal Aid, August 2006 and CSR Handbook (2008 Ed.).¹⁶ Moreover, the preparation of simple *pro se* family law pleadings and *pro se* guardianships are routinely treated as cases when such work is performed by subgrantee offices and ICLS staff in the program offices. *See* open Case No. 10E-30003529, and closed 2009 Case No. 09E-30002972 and closed 2010 Case No. 10E-15000128.

Secondly, on December 9, 2010, the attorney of the SHCAP was observed assisting two (2) individuals for about 45 minutes each. The first individual had already filed a lawsuit and was inquiring about the next hearing that was scheduled in his case. After reviewing the customer's court filings the attorney explained that sometimes a better option is for individuals to seek the maximum allowable damages in small claims court rather than filing a lawsuit in Superior Court if your damages only exceed the small claims maximum by a minimal amount because the process is quicker and less formal. The customer explained that the damages he was seeking far exceeded the maximum allowed by small claims court and that his case is really not about obtaining damages. He indicated that he was facing foreclosure and he was trying to regain title of the property from the opposing party who occupied the property. The attorney reviewed the documents filed by the customer and explained to him that the documents he filed would not accomplish his goal of regaining title. She further explained other options that may be available to achieve his goal and suggested he seek a private attorney to assist him. In this instance, the attorney provided advice specific to the customer's unique circumstance and the information involved a legal analysis that was tailored to the customer's factual situation. The second individual was seeking assistance on behalf of her mother. The customer's father had recently passed away. He was the only individual named on the mortgage of the home, which was still occupied by his wife, the customer's mother. The mortgagee refused to release any information to the mother about the loan and was now threatening foreclosure. The attorney advised the customer that according to California law a mortgagee could not foreclose on a house of a deceased mortgagor if his surviving spouse is still occupying the mortgaged property. The attorney also provided the customer with a form letter to be sent to the bank requesting that information about the loan be released to the surviving spouse. She informed the customer that the letter rarely works but is still worth sending to the bank. The attorney also informed the

¹⁶ The ABA Standards for the Provision of Civil Legal Aid, § 3.6, provides a discussion concerning the difference between legal information and legal advice that is helpful. The ABA Standards note that "*Legal information* is aimed at helping the recipients of the information understand their rights and responsibilities and the appropriate procedures for redressing those rights and fulfilling those responsibilities. It is general in nature and not tailored to the unique facts of the individual's situation, although when legal information is offered to individuals, the provider may have enough knowledge about the person's situation to choose generally, what information is appropriate. Legal information is neutral and does not recommend a strategic course based on the judgment of the individual offering the information. Thus, the person offering the information might tell the recipient of options that are available in response to the legal problem, but would not suggest what option to take. Similarly, legal information might inform an individual of forms that are appropriate to use and the general information about what to include in a statement of facts or a request for relief. It should not suggest the specific facts to put on the forms. A provider could, for example, explain the different grounds for divorce and let the litigant choose the applicable one. *Legal advice* in contrast is specific to the unique circumstances of the inquirer. It is strategic in that it offers an approach that is tailored to the fact situation of the asker and goes beyond mere general advice appropriate for all persons who confront the same issue. The giving of legal advice is legal representation and creates an attorney-client relationship." *See* ABA Standards for the Provision of Civil Legal Aid, § 3.6. *See also*, Standard 3.4-1 (on Representation Limited to Legal Advice).

client of the legal options available to her mother, provided her with the necessary forms, and recommended that the customer's mother obtain an attorney if she can afford one. According to the customer, her mother's income is approximately \$120,000 a year and this should not be a problem. Sampled cases reflected that when ICLS or subgrant staff advised a client concerning his or her legal options, that such activity is designated as a case and closed with the "A, Counsel or Advice" closing code.

Whether a legal activity may be described as a "case" or a "matter" is not determined by the title given to the service delivery method used by a recipient but by the nature of the services provided. *See* ABA Standards for the Provision of Civil Legal Aid, August 2006. Based on the observations and interviews conducted regarding self-help efforts, and applying the state's general definition of "legal advice," ICLS appears to be providing legal advice to some clinic customers when such work is compared to the services provided in a CSR case. Comparing the types of statements made, or actions done by clinic staff (versus staff in other ICLS offices in which clients are screened and cases reported) indicate that in some instances the actions taken, or statements made are so similar to or are identical to LSC reported "cases." The same language and/or actions cannot be both a screened case in one unit and an unscreened matter for another unit.

The effects of a lack of clarity discussed in this section could be very broad. If the assistance in the clinics is considered "legal information," then all similar services in the hotline and elsewhere in ICLS for screened clients that provide the same level of "legal information" must be excluded and not reported to LSC as cases.¹⁷ In the alternative, if a certain level of assistance is deemed "legal advice," then all individuals receiving services must be screened for eligibility, even if served by the clinics. When certain statements and actions do amount to the provision of legal assistance, they can no longer be done for any clinic customer who has not been screened, and in particular, for whom proper compliance with 45 CFR Part 1626 has been established.¹⁸ ICLS may not provide or report the same level of assistance as a case for an eligible client and as a matter for an ineligible client, a requirement set forth in the CSR Handbook (2008Ed.), § 2.3 at fn. 11.

¹⁷ The confusion is that and depending on how "legal advice" is clarified, there are a potentially significant number of "A, Advice and Counsel" and "B, Brief Service" cases that could be affected, and that could be determined to have been mistakenly reported as CSR cases. There could also be some "L," Extended Services" cases reported that equaled work provided by the clinics. In the alternative, if certain services are legal advice, then there is the provision of legal advice through clinics without any screening of clients. Such assistance may violate the eligibility requirements of 45 CFR Part 1611, but *will consistently violate* the screening and documentation requirements of 45 CFR Part 1626. It is important to note that ICLS routinely screens for citizenship in its clinics, however, it is unclear whether ICLS maintains the written documentation of this screening as required by 45 CFR Part 1626.

¹⁸ 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.

The discussion of what constitutes the provision of “legal information” and what is “legal advice” is a very current and active issue in the United States legal community, and it is noted that sometimes the distinctions between services that amount to legal advice and those that do not are not precisely clear.¹⁹ Despite this, clear delineations and standards need to be established that provide the necessary separation between cases and “other services” at ICLS

ICLS management clearly wishes to provide relevant and helpful information through its clinics, but does not wish to provide legal services through those efforts. On the other hand, LSC must ensure that congressional restrictions are enforced, and must ensure accurate CSR reporting. ICLS should develop additional guidance for its staff to define clearly what level of services may be reported as a CSR and what level of services should not be reported as a CSR, and may then be freely provided to unscreened customers of the clinics. This may be best accomplished by the development of specialized training materials for ICLS staff. The materials will need to provide sufficient detail so that staff know exactly how to ensure that legal advice has, or has not, been provided.²⁰ LSC must also ensure consistent and fair application of such standards and of the cases reported in the CSR.²¹ With this starting document, all services that have similarities can then be given clear defining differences as to what makes them either a case or the provision of legal information only. After the creation of such a guide, then training of the involved ICLS staff can be based on this document and can help lead to clarity through the clear delineation of common services familiar to all relevant staff.

Accordingly, ICLS is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), §§ 2.3 and 5.6. ICLS must ensure that all cases reported to LSC in the CSR data submission contain a description of the legal advice provided by the program and that all cases in which legal assistance is provided are screened for eligibility and reported in the CSR data submission. Corrective action must include the development of a written program policy and training materials that guide staff in compliance with the requirements of 45 CFR §§ 1620.2(a) and (b) and the CSR Handbook (2008 Ed.).

¹⁹ For example, the line between legal advice and legal information can be very close and delicate. For example, telling someone the actual number of days left for him or her to appeal (i.e. doing the math calculation) would for LSC CSR purposes be legal advice. In contrast, just telling someone the overall number of days in an appeal period without any specific math calculation would be legal information only

²⁰ All instances of services that seem similar between the clinic and the LSC-funded program components will need to be discussed and two examples provided in a written training document – one that makes it legal advice and one that makes it legal information. An effective plan for moving forward is for ICLS to begin the creation of a detailed training document to be used for staff training. This manual should provide numerous common actual examples of the types of very simple cases handled at the “A, Counsel or Advice” or “B, Limited Services” level and likewise actual examples of all main types of common services provided by the clinics. Also as discussed in this report, some legal services closed as an “L, Extensive Services” will also need to be included and distinguished. The various legal and non-legal services identified must then be compared and precise guidelines established for staff regarding what keeps that service at the “information” level only versus what amounts to “advice” level for that service. This is particularly critical where there are parallels or similarities in the services rendered.

²¹ LSC’s Office of Legal Affairs’ (“OLA”) advice was previously sought regarding whether there were any differences between the general LSC definitions of what constitutes legal advice and the definitions of legal advice applicable in California. OLA advised that there were no differences in the two (2) standards. As such, the development of the training guide by ICLS, with input from LSC (so that LSC can ensure that the guide meets LSC criteria), should be a relatively straightforward process.

In its comments to the first half of Finding 9 in the DR, ICLS agreed that in “*some instances* as noted in some Findings, ICLS as well as PA1 staff have not always documented in the ACMS sufficient evidence of the legal advice given and that those cases should not have been in the CSR report.” ICLS will strive through staff training to correct deficiencies so that the case file has documentation sufficient to evidence compliance.

In its comments to the first half of Finding 9 in DR, ICLS further noted that it had taken corrective action in response to the first half of Finding 9. ICLS excluded Case No. 083-8008538 from the 2010 LSC CSR data submission. ICLS further noted that it de-selected Case No. 103-3005635 to exclude it from the 2011 LSC CSR data submission. Finally, in its comments to the DR, ICLS noted that its review of the cited files in the DR indicates that this problem is focused primarily in one (1) branch office and one (1) LSC subgrantee, all program advocates and PAI subgrantees will be trained.

In its comments to the second half of Finding 9 in the DR, ICLS noted that the DR reflects a concern that legal advice rather than legal information services are being provided at the Self-Help Clinics and described the observations of an OCE monitor. While ICLS disagreed with LSC characterization that “legal advice” may have provided during the three (3) observations described above in the DR, which an ICLS managing attorney also observed, ICLS in its comments to the DR, agreed that clarity is needed for a common understanding of the terms “legal advice” as distinguished from “legal information” so that there is consistency among all program offices and PA1 subgrantees.

In its comments to the second half of Finding 9 in the DR, ICLS noted that the issue of general legal information versus specific legal advice has been brought to the attention of ICLS attorneys as well as the Court's Managing Attorney of the Self Help Centers. The Court has a strong interest in ensuring that ICLS provide clinic services similar to those provided by the Court because court consumers do not distinguish between Court and ICLS services despite the disclaimers and signage. To that end, ICLS has begun a process of redesigning the FLAP Service Delivery Model in consultation with the Managing Attorney of the Riverside Superior Court's Self Help Centers. ICLS is considering providing two different clinics to court consumers: a) an “initial pleadings” clinic in the morning and b) a “motions” clinic in the afternoon, with each session preceded by a 15 to 20 minute presentation by the FLAP attorney to describe the type of service available, e.g. general legal information and not specific legal advice.

ICLS further noted in its comments to the second half of Finding 9 in the DR, that it is mindful of the Congressional restrictions and will endeavor to comply fully so that ICLS can continue providing legal information with Self-Represented Litigants at the Court. ICLS does not prepare any documents unless the Court customer is otherwise eligible for legal services, that is, ICLS screens for client eligibility, income and asset eligibility, as well as for documentation of United States citizenship and eligible alien status. To the extent possible, self-represented litigants will be requested to complete their own forms and to return to have them reviewed by the FLAP attorney. However, LSC must recognize that the Inland Counties area in southern California has a very diverse population, of which many have significant access barriers and will need to have

core document preparation services provided to them after an Interview and Assessment as contemplated by the promulgation of the *Guidelines*.

ICLS noted in its comments to the second half of Finding 9 in the DR that it is discontinuing outreach services at three Court locations to increase the direct delivery of legal services to the poor. Services will be discontinued at the Riverside and Southwest Superior Court Self Help Centers and the Blythe Court in Riverside County as well as at the Victorville Court in San Bernardino County as of June 30, 2011. All other court outreach sites will remain in full operation with staff trained to deliver legal informational services.

ICLS further noted in its comments to the second half of Finding 9 in the DR, that it would undertake corrective action to develop written policies to guide the program and subgrant staff in delineating what constitutes "legal advice" which can only be provided to screened eligible clients as distinguished from "legal information" that can be provided to any clinic customer or otherwise unscreened person. ICLS will work with LSC to develop the training document, and will seek input and review from other resources as well to ensure that the training document states, as much as practicable, appropriate parameters in a subject area that has historically had, as described in the report, lines that are "close and delicate."

OCE welcomes the opportunity to work with ICLS to develop the training document prepared by ICLS. OCE recognizes the diverse population of the low-income community which ICLS serves and that this population requires core document preparation services provided to them after an Interview and Assessment as contemplated by the promulgation of the *Guidelines*. OCE does not limit this important work, OCE merely requires that if this work entails legal assistance as defined by LSC statutes, regulations and applicable letters of instruction, then ICLS must satisfy the requirements of LSC statutes, regulations and applicable letters of instruction. Further, ICLS must be mindful that its courthouse clinics must be in compliance with 45 CFR Part 1610 and that it must ensure that courthouse consumers distinguish between Court and ICLS services.

Finding 10: ICLS' application of the CSR case closure categories does not comply 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.

Sampled files reflect that ICLS' application of the CSR case closure categories is generally consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). However, there were patterns of closure category errors. Further improvement is required.

The CSR Handbook requires that cases be closed in the category that best reflects the level of service provided and if a descriptive closure category is applicable, then the "K, Other," code

should not be used. *See* CSR Handbook (2008 Ed.), § 8.1 fn. 41 Two (2) cases were identified in which the program employed the “K, Other” closing code for cases in which another closing code category more specifically described the nature of the legal services performed, specifically, “IB, Contested Court Decision,” because a contested court order was obtained for the client or the file should have been deselected as the client withdrew before legal assistance could be rendered. Examples include closed 2009 Case No 08E-15000999 and closed 2010 Case No. 10E-6004704. These cases indicate that ICLS should question its use of the “K” closing categories, as LSC did not anticipate that this closing category would be used frequently, as most common services provided to clients should fit more accurately within another closing code category. ICLS was advised of this pattern of error and immediately took action to implement the correct use of this closure code category.

Several sampled files contained closure codes that inaccurately described the highest level of service provided to the client. For example, sampled cases were closed “A, Counsel and Advice” when the file reflected that pleadings or correspondence was prepared for the client and the more appropriate closing code would have been “B, Limited Action.” These closure code error types were found in closed 2009 Case Nos. 09E-15000393 and 09E-15000459, closed 2010 Case No. 08E-8006496, and open Case Nos. 10E-30003529. The CSR Handbook requires that when the program takes limited action(s) on behalf of an eligible client, such as, communications by letter or the preparation of legal documents, the case should be closed with the “B, Limited Action” closing code. *See* CSR Handbook (2008 Ed.), § 8.2 Limited Service Case Categories. These cases and others similar to them should be closed using the closing code that reflects the highest level of service provided to the client.

Finally, ICLS lacks a consistent application of the Limited Action and Extensive Services closing categories throughout the program. This may be because there is no program wide consensus as to the level of service necessary to support the closing categories leading individual staff members to apply different standards. For example, closed 2009 Case No. 09E-6000649 was closed “L, Extensive Services” when the only legal assistance was the standard completion of paperwork for *pro se* representation and closed 2010 Case No. 09E-20001183 was closed “L, Extensive Services”²² when the only assistance provided was a phone call by the case handler on behalf of the client. In contrast, closed 2009 Case No. 09E-30002972 and closed 2010 Case No. 10E-15000128, problem codes “44, Guardianship,” were closed “B, Limited Action” when these cases involved the preparation of over 40 forms.²³

Comparing the types of work performed, actions taken by ICLS staff indicate that in some instances the actions taken, or statements made in cases closed with limited action codes are similar to or more extensive than the cases closed with extensive service closing codes. The

²²As noted in the CSR Handbook (2008 Ed.), fn. 54, “Extensive Services” should be reserved for cases in which the assistance provided clearly exceeds the amount of work that would be performed for a case appropriately closed as “limited action.” Factors that favor selection of CSR Case Closure Category “Extensive Service” include a high level of factual complexity, a highly sophisticated legal analysis, significant legal research, and drafting non-routine original pleadings or legal documents. The mere passage of time between when a case is opened and when it is closed is not a controlling fact rather, the level of legal assistance that is the controlling factor. *See* LSC’s *CSR Frequently Asked Questions* (September 2010), page 29.

²³ Although only two Guardianship cases are cited in this report, during case review the intermediary reported that many more such cases exist, as approximately 25% of that office’s caseload is comprised of guardianship cases.

same actions cannot be both a limited action case in one office and an extensive services case in another office. If the assistance in a Guardianship case is considered “Limited Action,” then similar documentation preparation services in the program should be considered “Limited Action.” In the alternative, if a certain level of assistance is deemed “Extensive Services,” then other individuals receiving this level of services should be deemed to have received “Extensive Services.” ICLS may not provide or report the same level of assistance as a limited action and extensive service, a requirement set forth in the CSR Handbook (2008 Ed.), Chapter VIII.

ICLS must take corrective action to ensure proper assignment of case closure categories throughout the program. Corrective action must include mandatory closure code training for all staff and the implementation of oversight to ensure the effectiveness of the training consistent with CSR Handbook (2008 Ed.), Chapter VIII.

In its comments to the DR, ICLS noted that it would provide staff with additional training on CSR Handbook definitions of case closure codes. In its comments to the DR, ICLS noted that training materials will include LSC's Most Frequently Asked Questions as well as examples of the types of cases that can be closed at each level as well as providing “categories of cases” that generally will have a specific case closure level, e.g. Bankruptcy clinic cases where the participants hear general information in a public setting but are not specifically advised as to their own case facts although there may be some communication back and forth with the attorney by participants.

In its comments to the DR, ICLS further disagreed that Case No. 103-6004704 should have received a different closure code. ICLS explained that the file was deselected because the client withdrew before legal assistance began and that that this file was opened on May 17, 2010 to provide assistance on an SSI case. When the client failed to return with documents, the file was de-selected and closed as a “W” on May 26, 2010. LSC has reviewed the file.²⁴ The information provided by ICLS in its case list submission reflects this case was closed using a closing code of “K-Other” on the ACMS print outs and not “W.”²⁵ The use of the “K-Other” closing code in this instance is in error as no legal assistance was provided to the client. As, ICLS in its comments to the DR, notes it has de-selected this file, ICLS has indicated corrective action in this instance has been implemented.

²⁴ It is believed the case number cited by ICLS, 103-6004704 contains a typographical error, in that the “3” should be an “E.” It is further believed the case ICLS is referring to is 10E--6004704, as OCE could not locate Case No. 103-6004704 or sampled cases that began with a 103.

²⁵ On October 10, 2010, LSC requested ICLS provide it with “a list of all cases closed between January 1 and October 15, 2010.” ICLS compiled two (2) lists; the first for LSC-funded and the second for non-LSC funded indicating whether each case would be included or excluded for CSR reporting.” ICLS provided LSC with case lists, the ones for LSC CSR reportable cases, were designated as “LSC Cases” and were provided by year and by office. Case No.10E-60004704 was contained on the “San Bernardino 2010 Closed LSC Cases” which is the designation for cases eligible to be reported in the CSR data submission. This case was described by ICLS on this case list as being opened on May 17, 2010, closed on May 26, 2010, with a problem code of “75-Social Security” and closed using closing code “K-Other.” Case review of this sampled case reflected that the ICLS client failed to produce the required documents, so legal assistance could not be provided to the client. As no legal assistance was provided to the client, the use of the “K-Other” closing code was in error.

Finding 11: ICLS is in substantial compliance regarding the requirements of **CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. (Timely Closing of Cases).**

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 referral 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).²⁶ 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 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).

ICLS is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a). While most of the files that were reviewed during the visit were timely closed, there were several exceptions in both PAI and staff case files. Examples of dormant cases include open Case Nos. 08E-15000234 and 06E-15000928 and untimely closed cases include closed 2009 Case Nos. 07E-2011434, 08E-7002160 and 08E-7002112, 08E-3007629 and closed 2010 Case No. 08E-4012005. In each of these identified cases, there was no legal activity indicated in the file after 2008. The files did not contain a memo or other entry stating why the files should have been held open in 2009 or in some instances in 2010. Accordingly, the open files should be excluded from the LSC CSR data submission and the closed 2009 files were reported to LSC in the CSR data submission in error.

Many of these cases were dormant because ICLS lost contact with the client or was waiting for the client to return documents or advise of a hearing date. When the client did not return the file languished. While ICLS has oversight practices in place, it should develop additional methods to prevent dormant and untimely closed files. ICLS staff may want to adopt the oversight methods, such as closing and then re-opening files when the client returns with documentation and/or completes counseling. Additionally, ICLS may choose to run case lists indicating files that have not had time entered for three (3) months, conduct semi-annual compliance reviews, and provide targeted training for those individuals who may require additional assistance. ICLS should ensure that all cases are timely closed.

²⁶ 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).

In its comments to the DR, ICLS noted that it will implement additional oversight methods for supervisors as well as advocates to regularly review open files to prevent untimely closing. Targeted training would be provided to individuals who may need help in this area.

Finding 12: Sampled cases evidenced substantial 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 more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and CSR Handbook (2008 Ed.), § 6.2.

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.

The CSR Handbook contains a “one civil action number” test that applies to related legal problems and a recipient’s attempts to resolve those problems simultaneously through a single legal process. The test is intended a clear rule of decisions, which, in the vast majority of cases, will easily determine the issue of how many cases to report. Essentially, the test is if, as here, the legal problems are resolved under one civil action number, only one case may be reported. *See* CSR Handbook (2008 Ed.), § 6.4(b); *see also* LSC *CSR Frequently Asked Questions* (September 2010), pp 20- 25.

One set of duplicate files, open Case Nos. 10E-3009435 and 10E-3009434, was identified during the visit. Although the files were opened under the names of different parties—a husband and wife, they both involved the same legal problem. ICLS advises that its policy is to remove duplicate cases from the CSR data submission at the end of every calendar year and in all likelihood, this case would be located and de-selected during this annual process. This appears likely, as there were no other duplicates identified. Accordingly, ICLS is advised to identify one of the two files for exclusion from future CSR data submissions to LSC.

In its comments to the DR, ICLS noted that it had taken Corrective Action in response to Finding 12 and excluded duplicate Case No. 10E-3009435 from the 2010 CSR data submission Report.

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.

OCE's review of ICLS' vendor list of individuals and entities that received a payment from ICLS over the review period revealed that no prohibited payments or contributions were made. Further, discussions with program management confirmed this and indicated that ICLS is not involved in any prohibited political activities.

Sampled files reviewed, and interviews with staff indicate, that ICLS is in compliance with 45 CFR Part 1608 (Prohibited political activities).

ICLS' comments to the DR offered no response to this Finding.

Finding 14: ICLS is in non-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).

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1609. *See* ICLS Program Policy- 45 CFR 1609, adopted February 25, 1997. OCE has reviewed the policy and has determined that it is consistent with Part 1609.

Review of sampled cases reflects that ICLS provided legal assistance with respect to a fee-generating case in closed 2009 Case No. 03E-6100392, and did not have the specific recordkeeping and forms required for this case. This other housing case, problem code “69” was opened 5/13/03 and closed 12/31/09 with an “Ib, Contested Court Decision” closure code and was co-counseled with the Western Center on Law & Poverty (“WCLP”) and private attorneys. ICLS funded this case primarily with IOLTA funding and this case was reported to LSC in 2009 CSR data submission.²⁷

The San Bernardino office Managing Attorney, who was the ICLS case handler, reported that the case involved the City of Fontana’s (“City”) attempted diversion of as much as \$53 million of Housing and Urban Development CDBG funds intended for the development of low-income housing to other non-low income housing uses. The City sought to ratify a consent decree that would enable them to issue bonds for low-income housing that should have been satisfied from CDBG funds. WCLP, two (2) private attorneys, and ICLS were involved in litigation to prevent the ratification of this agreement and require the redevelopment agency to use the HUD funds for their intended purpose, that is, the creation of low-income housing for City of Fontana residents. According to the Managing Attorney, WCLP received \$1.7 million in attorneys' fees.²⁸ ICLS could not locate a co-counseling agreement although the policy requires such an agreement. ICLS could find no notes to reflect that the program met one of the exceptions allowing acceptance of a fee generating cases, though ICLS believes the issue was discussed at the time.²⁹ The Executive Director notes that she approved the acceptance of this fee generating case pursuant to 45 CFR § 1609.3(b)(iii). However, ICLS did not provide evidence that the Executive Director signed a waiver or that private attorneys were not willing to accept this type of case although the policy requires these determinations and at least two(2) private attorneys were representing this client with ICLS.³⁰

45 CFR § 1609.3 provides the necessary steps to be taken by the recipient which would permit the program to provide representation in fee-generating cases. 45 CFR § 1609.4 requires that recipients maintain records sufficient to document their compliance with this part. The staff interviews and case review indicate that these steps were not taken. ICLS must stop accepting fee-generating cases unless the proper and necessary steps are taken under the regulation and ICLS policies.

In its comments to the DR, ICLS noted that it would take all necessary steps to ensure that all fee-generating cases comply with the 1609 regulation. In its comments to the DR, ICLS further noted that it is developing a training session on 1609 to provide program attorneys with further guidance on making case referrals, acting in emergency circumstances, and identifying the types of cases that are futile to refer after consultation with the private bar.

²⁷ ACMS records reveal that 25.5 case handler hours were charged to the LSC grant.

²⁸ It is important to note that a prayer for fee request was appropriately worded to exclude ICLS from the request, award or collection of any fees in connection with their participation in the lawsuit.

²⁹ The current “Intake Manual provides that “if a fee-generating case is accepted, the file notes should describe the reasons, cite the applicable exception, and (if applicable) state the names of the private attorneys or referral service which declined to take the case.” However, it is not known whether this policy was in effect during the time the case was accepted by ICLS.

³⁰ The required approval for a fee generating case was found in open Case No. 09E-7011589.

Also in its comments to the DR, ICLS noted that its position as explained during the visit was that this case was considered at the time of acceptance of the case to fall within an exception to the fee-generating case referral requirements or, in the alternative, ICLS did not consider the case to be fee generating and requiring referral to the private bar. If it was required to be referred to the private bar, ICLS was not able to do so because it was an emergency. ICLS in its comments alternatively explains, that the case was approved because of the minimal role ICLS assumed in the litigation and the recovery of damages was not the principal object of the client's case and substantial statutory attorney's were not likely available. Moreover, ICLS notes in its comments to the DR, it could not refer to private attorneys because a private attorney as well as a private law firm together with ICLS were representing the client in the litigation.

LSC has considered ICLS' comments to the DR and does not find them persuasive. Although the Executive Director remembers considering the various requirement of 45 CFR Part 1609, there was no documentation contained in the file presented to OCE that reflected the various considerations the Executive Director remembers having undertaken. The Executive Director indicated she does not remember preparing a Memorandum or other written documentation. Whether ICLS approved the acceptance of closed 2010 Case No. 033-6100392 based on the above considerations was not the subject of the Finding. LSC cannot determine the considerations of ICLS because the file did not contain documentation supporting the basis for the acceptance of this case as required by 45 CFR § 1609.4. The record keeping requirements of 45 CFR Part 1609 is mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997) Accordingly, ICLS accepted closed 2010 Case No. 033-6100392 in error as there was insufficient record keeping to demonstrate compliance with this section.

Finding 15: ICLS is in compliance with the requirements of 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 accounting records and detailed general ledger from January 1, 2008 through July 15, 2010, indicates that in addition to LSC funding, ICLS receives funding from various private, Federal, and State funding sources. ICLS failed to provide all donors who contributed \$250 or more to ICLS with written notification of the prohibitions and conditions that apply to the funds for fiscal year 2010. ICLS' management was unaware that written notification was required to be sent to all donors who contributed \$250 or more. They assumed 45 CFR § 1610.5 only applied to Foundation grants. 45 CFR § 1610.5 provides that no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

Based on a limited review of accounting records and documentation for the period January 1, 2008 through December 10, 2010, it appears that ICLS received funding from LSC and non-LSC sources. ICLS provided written notification for fiscal years '08 through '10 to all funders who contributed \$250 or more of the prohibitions and conditions that apply to the funds.

While on-site, OCE reviewed the program's 2009 integrity certification and the Executive Director's memorandum to the board of directors, selected non-LSC grant agreements, audited financial statements for 2008 and 2009, and the general ledger trial balance as of November 30, 2010, and determined that program complies with the accounting and fiscal requirements of 45 CFR Part 1610. In addition, discussions with program management confirmed that the program is not involved in any restricted activities and its use of non-LSC funds, transfer of LSC funds, and its program integrity were not inconsistent with this regulation.

OCE cautions ICLS that it must be vigilant in its maintenance of a physical separation between ICLS and its PAI subgrantee PLSC.³¹ PLSC leases space from ICLS in the ICLS Indio office. They both share the entrance and waiting area and ICLS lists PLSC on its marquee. PLSC in Indio is staffed with part-time paralegal and private attorneys who volunteer their time on an irregular basis. The ICLS receptionist greets PLSC clients and announces the client to the PLSC staff office. At times the receptionist or Managing Attorney may briefly interact with PLSC clients and PLSC staff, for example if a client is waiting and PLSC volunteer attorneys is on the phone. Staff interviewed report that time greeting clients and advising PLSC is charged to PAI. ICLS is cautioned that time greeting and advising PLSC restricted clients may not be charged to PAI.

ICLS' comments to the DR offered no response to this Finding.

Finding 16: ICLS 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. ICLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. ICLS is in compliance with 45 CFR § 1614.3(e) regarding supporting expense documentation and cost allocations.

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

³¹ PLSC assists undocumented persons; however, this is permissible pursuant to the exception granted by 45 CFR § 1610.7(c).

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.

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR § 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR § 1614.4(a) and (b). ICLS has in place a 2010 PAI plan that satisfies the requirements of 45 CFR Part 1614.

Since 1982, ICLS' PAI program has consisted of three subgrants to non-profit agencies in Riverside and San Bernardino counties, LASSB, PLSC and IELLA. Recently, ICLS began using a volunteer attorney to conduct weekly divorce clinics in the ICLS San Bernardino office and matters clinics at the San Bernardino courthouse.

The subgrantees are staff model legal service providers. As part of the service delivery structure, the staff attorneys may provide advice, consultation and document review. LASSB and PLSC involve private attorneys to consult with the client, provide direction to the staff of the subgrant office to prepare *pro se* pleadings and then review the documents and consult with client. These cases are generally closed with "B, Limited Action" closing codes. The IELLA subgrantee operates a slightly different legal model. The private attorneys consult with the client, provide direction to the staff of the subgrant office to prepare *pro se* pleadings, but then may not review the documents or consult with the client. In some instances, the staff of the subgrant office will perform these tasks for the client. These cases are generally closed with "B, Limited Action" closing codes. IELLA reports that when their staff review pleadings and consult with the client, only legal information is being provided. Pursuant to LSC Office of Legal Affairs Advisory Opinion #AO-2009-1004, dated June 19, 2009, recipients are generally prohibited from counting as PAI cases in which an attorney employed at a staff-model provider provided the direct legal assistance. Further, CSR Handbook (2008 Ed.), § 10.1(b)(iv) provides that "in cases in which both program staff and a private attorney provide legal assistance, but have not co-counseled the case, the program should close the case as a staff or a PAI case depending on whether the staff or private attorney provided the highest level of legal assistance. For example, if a private attorney gave some advice and counsel and staff obtained a court order, the case should be closed as a staff case." There is some concern that in cases where the private attorney does not review the documents or meet with the clients after the documents are prepared, that the highest level of legal assistance may have been provided by the subgrant office and the case should have been closed as a staff case.

Given the nature of the legal clinic model, cases are not held open and therefore oversight concerns were not identified. The subgrantees submit monthly reports to ICLS. ICLS tracks the numbers of cases closed against the subgrant requirements.

It is rare for cases to be referred to private attorneys outside the legal clinic model and, accordingly, these cases are closely monitored. With limited exceptions, oversight of these PAI cases meets LSC requirements. Given the small number of these referred cases, the cases are tracked manually. Generally, written records in the form of a list of each case open and a calendar of scheduled follow-up dates is maintained. PLSC requests the attorney provide quarterly updates on the "Case Status Update" form. IELLA requests that they be apprised of the status after every legal activity or at the end of the case by email. PLSC follows up every 30 days and IELLA follows-up every 14 days. If the attorney does not respond, PLSC and IELLA will telephone and email and IELLA will send a post card. At the end of every calendar year, the case is tracked on the court's electronic docket service and the court docket is printed showing the disposition of the case. When the case is completed, the subgrantee reviews the file to ensure that notes supporting closure and the level of service are included in the file. The Managing Attorney or Executive Director assigns the closing code and the case is entered into KEMPS.

The review of sampled cases reflect periodic contact with the private attorneys or checks of the electronic court docket system to obtain case status. The majority of the files document at least quarterly status checks. However, file review of the PLSC Indio offices reflected some dormancy. The PLSC Program Director oversights the Riverside PLSC *pro bono* cases and supervises the staff that performs the oversight of the Indio PLSC *pro bono* cases. As the Indio files are few in number, it is recommended that the Project Director assume responsibility for oversight and follow-up of these case files or provide targeted supervision and training of the Indio PLSC staff to ensure effective oversight and follow-up of PAI cases.

OCE's review of ICLS' PAI cost allocation policy statements with worksheets and its audited financial statements for the review period determined that the program complies with accounting requirements of this Part. The review noted no exceptions or inconsistencies in this area.

For the review period, ICLS' PAI 12½% expenditure requirements were \$558,981, \$507,927 and \$505,437 for 2009, 2008 and 2007, respectively. ICLS has met its PAI requirement for these years. Its audited financial statements disclosed PAI expenditures of \$568,809 (12.72%), \$519,077(12.77%) and \$540,264 (13.36%), respectively.

Review of ICLS' PAI accounting records reveal that casehandlers' PAI time is supported with approved time records and its PAI cost allocation methodology is documented and based on reasonable operating data. The program provided copies of casehandlers' PAI time records, sample private attorney contracts, indirect cost allocation worksheets and its subgrantees' monthly expenditures reports and supporting documentation.

ICLS' comments to the DR offered no response to this Finding.

Finding 17: ICLS 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, and is in compliance with 45 CFR § 1627.2(b)(1) which requires LSC prior approval of payments made to attorneys which total in excess of \$25,000 per year.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.³² Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000. or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 *Federal Register* 28485 (June 2, 1983) and 48 *Federal Register* 54207 (November 30, 1983).

All subgrants must be in writing and must be approved by LSC. In requesting approval, recipients are required to disclose the terms and conditions of the subgrant and the amount of funds to be transferred. Additionally, LSC approval is required for a substantial change in the work program of a subgrant, or an increase or decrease in funding of more than 10%. Minor changes of work program, or changes in funding less than 10% do not require LSC approval, but LSC must be notified in writing. *See* 45 CFR § 1627.3(a)(1) and (b)(3).

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient's fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC's financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. *See* 45 CFR § 1627.3(b)(1), (b)(2), (c), and (e).

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, except that payment of membership fees or dues mandated by a governmental organization to engage in a profession is permitted. *See* 45 CFR § 1627.4. Nor may recipients make contributions or gifts of LSC funds. *See* 45 CFR § 1627.5. Recipients must have written policies and procedures to guide staff in complying with 45 CFR Part 1627 and shall maintain records sufficient to document the recipient's compliance with 45 CFR Part 1627. *See* 45 CFR § 1627.8.

The fiscal review of ICLS' accounting records, related operating policies and procedures, and the audited financial statements for ICLS and its three (3) subgrantees for the review period along

³² Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000. is included.

with discussions with program management disclosed compliance with the financial reporting requirements of 45 CFR § 1627.3. The review noted no exceptions or inconsistencies in this area.

The fiscal review of ICLS' accounting records for selected general ledger expenses accounts that track and account for litigation expenses which include fees and dues payments for the review period along with discussions with program management found compliance with 45 CFR § 1627.4(a).

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response to this Finding.

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

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 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 work 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. *See* 45 CFR § 1635.3.

The fiscal review of ICLS' timekeeping policies and procedures and a sample of completed time records for case handlers along with discussion with the Executive Director and the Administrator disclosed that time records are kept electronically and contemporaneously and time spent on cases, matters or supporting activities complies with 45 CFR §§ 1635.3(b) and (c).

The fiscal review noted no exceptions or inconsistencies in ICLS' timekeeping policies and procedures and time records. Further review of selected timekeeping entries appeared to be reasonable in content and time.

Interviews with the Executive Director revealed that as of December 10, 2010, there were two (2) part-time case handlers employed by ICLS. ICLS does not maintain 1635 certifications for these employees as they do not work part-time for any organization that engages in restricted activities or any other organization other than ICLS. ICLS ensures LSC compliance with 45 CFR Part 1635 by having in place internal policies and procedures contained in the staff orientation manuals, that are signed and acknowledged by the employee, which ensures staff compliance with LSC regulations.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response 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 collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.³³ However, with the enactment of LSC's fiscal year 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 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. Enforcement action will not be taken 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. *See* LSC Program Letter 10-1 (February 18, 2010).³⁴

ICLS adopted a written policy to guide its staff in complying with 45 CFR Part 1642. *See* ICLS Program Policy on Attorneys' Fees (1642). The policy is consistent with the pre-December 2009 restriction on attorneys' fees. Consistent with LSC Program Letter 10-1 (February 18, 2010), ICLS has repealed this program policy on October 19, 2010, effective April 26, 2010.

The fiscal review of ICLS' accounting records and audited financial statements for the review period along with discussion with program management determined that the program has not

³³ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

³⁴ Recipients are reminded that the regulatory provisions regarding fee-generating cases, 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.

recognized and reported the receipt of any attorneys' fees or court-awarded payments for cases during the review period.

The sampled files reviewed did not contain a prayer for attorneys' fees, as such ICLS is in compliance with the requirements of 45 CFR Part 1642.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response to this Finding.

Finding 20: Sampled cases and other documentation 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.

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1612. OCE has reviewed the policy and has determined that it is consistent with Part 1612.

ICLS maintains a file that documents, identifies, and tracks the various employees who have participated in legislative and rulemaking activities. It also maintains separate accounting records documenting the expenditures of non-LSC funds relating to these activities. Neither the files nor the financial records that were reviewed during the visit indicate any activity inconsistent with Part 1612.

ICLS is in compliance with 45 CFR Part 1612.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response to this Finding.

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).

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 files that were reviewed during the visit involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

ICLS is in compliance with 45 CFR Parts 1613 and 1615.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response to this Finding.

Finding 22: Sampled cases evidenced compliance 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). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).³⁵

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1617. *See* ICLS Program Policy-45 CFR Part 1617, adopted February 25, 1997. OCE has reviewed the policy and has determined that it is consistent with Part 1617.

None of the sampled files reviewed involved initiation or participation in a class action.

ICLS is in compliance with 45 CFR Part 1617.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response 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.

³⁵ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1632. *See* ICLS Program Policy-45 CFR Part 1632, adopted February 25, 1997. OCE has reviewed the policy and has determined that it is consistent with Part 1632.

None of the sampled files reviewed revealed participation in litigation related to redistricting.

ICLS is in compliance with 45 CFR Part 1632.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response 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.

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1633. *See* ICLS Program Policy-45 CFR Part 1633, adopted February 25, 1997 and revised policy adopted on May 15, 2007. OCE has reviewed the policy and has determined that it is consistent with Part 1633.

None of the sampled files reviewed involved defense of any such eviction proceeding.

ICLS is in compliance with 45 CFR Part 1633.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response 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.

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1637. *See* ICLS Program Policy- 45 CFR Part 1637, adopted August 12, 1997. OCE has reviewed the policy and has determined that it is consistent with Part 1637.

None of the sampled files reviewed involved participation in litigation, or administrative proceedings, on behalf of an incarcerated person.

ICLS is in compliance with 45 CFR Part 1637.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response 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.³⁶ This restriction has been contained in all subsequent appropriations acts.³⁷ 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."

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1638. *See* ICLS Program Policy- 45 CFR Part 1638, adopted August 12, 1997. OCE has reviewed the policy and has determined that it is consistent with Part 1638.

None of the sampled files indicated program involvement in such activity.³⁸

ICLS is in compliance with 45 CFR Part 1638.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response to this Finding.

³⁶ *See* Section 504(a)(18).

³⁷ *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).

³⁸ Initially it was believed that closed 2009 Case No. 03E-6100392 might have violated 45 CFR Part 1638, Restriction on solicitation. This is because the intermediary revealed that he approached the client to participate in a lawsuit against the City of Fontana. However, the ACMS records revealed that the intermediary's request to the client to participate in this lawsuit occurred during his representation of this client on another matter. As such, the intermediary had a pre-existing attorney-client relationship with the client and therefore there is no violation of 45 CFR Part 1638.

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.

ICLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1643. *See* ICLS Program Policy- 45 CFR Part 1643, adopted December 12, 1998. OCE has reviewed the policy and has determined that it is consistent with Part 1643.

None of the sampled files indicated program involvement in such activity.

ICLS is in compliance with 45 CFR Part 1643.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response 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 prohibitions.

ICLS' comments to the DR offered no response to this Finding.

Finding 29: The fiscal review of ICLS' internal control policies and procedures found the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Chapter 3-Accounting Guide for LSC Recipients) and LSC Program Letter 10-2.

The LSC Accounting Guide for LSC Recipients (the "Accounting Guide") sets forth financial accounting and reporting standards for LSC recipients, and describes the accounting policies, records, and internal control procedures to be maintained by recipients to ensure the integrity of accounting, reporting and financial systems. The LSC Audit Guide for Recipients and Auditors (the "Audit Guide") provides a uniform approach for audits of LSC recipients and describes recipients' responsibilities with respect to the audit.

LSC requires its recipients, under the direction of its board of directors, to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as the process put in place by the recipient's board of directors, management, and other personnel which is designed to provide reasonable assurance of achieving objectives of safeguarding of assets against unauthorized use or disposition, reliability of financial information and reporting; and compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Edition).

The fiscal review of ICLS' draft accounting policies and procedures manual, accounting records and discussions with program management found that the program has established an adequate internal control structure which includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written accounting manual, which was being revised and updated. Further, the auditor's reports for ICLS concerning internal controls for the review period did not identify any deficiencies in the internal controls that could be considered material weaknesses.

While on-site, ICLS provided its internal control policy statement that indicates accounting duties and responsibilities of its accounting staff and completed LSC's internal control worksheet that also identifies the duties and responsibilities of accounting staff. Review of these documents indicate adequate segregation of duties in that a transaction cannot be completed without someone else's knowledge and/or approval. Further, a sample of vendor files containing supporting payment documentation, e.g., invoices and program documentation approving the disbursement, were examined. The review found that the program's internal control and accounting procedures as outlined its accounting manual appear to be adhere to and followed by

the program in that there was evidence of managerial review and approval along with proper internal controls.

No corrective action is needed and no recommendations are being made.

ICLS' comments to the DR offered no response to this Finding.

IV. RECOMMENDATIONS³⁹

Consistent with the findings of this report, it is recommended that ICLS:

1. Consider screening senior citizens for over-income factors and, if eligible, report those cases in CSR data submission;

In its comments to the DR, ICLS noted that it would not be feasible to consider screening senior citizens for over income factors given that services are provided during outreach as well as on the phone where supervisors are not readily available to approve an exception. With such a high number of potentially eligible clients, ICLS' policy is to use exceptions where the applicant's circumstances and the legal case amount to "unusual circumstances" and not as a call for blanket exceptions.

2. Provide training to staff on program policies regarding 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments and 45 CFR § 1611.5 (exceptions to annual income ceiling);

In its comments to the DR, ICLS noted that it accepted this recommendation.

3. Provide guidance to staff concerning the proper documentation of household income in temporary living arrangements;

In its comments to the DR, ICLS noted that it accepted this recommendation.

4. Develop a policy setting forth a time-period for file closure in for all cases with no client activity. Institute periodic compliance reviews for all advocates to prevent dormancy and untimely closed files. As part of this review, management may choose to periodically run case lists indicating files that have not had time entered for three (3) months, conduct semi-annual compliance reviews, and provide targeted training for those individuals who may require additional assistance;

In its comments to the DR, ICLS noted that it accepted this recommendation.

5. Require the PLSC Indio office to implement the Kemps Prime case management system and require that the PLSC case management system contain a complete conflicts database; and

In its comments to the DR, ICLS noted that it accepted this recommendation.

³⁹ 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.

6. Consider having the PLSC Project Director assume responsibility for oversight and follow-up of *pro bono* case files of the Indio office or provide targeted supervision and training of the Indio cases to ensure effective oversight and follow-up of PAI cases in that office.

In its comments to the DR, ICLS noted that it accepted this recommendation.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, ICLS is required to take the following corrective actions:

1. Ensure that dormant and untimely case files are not reported to LSC in its CSR data submission;

In its comments to the DR, ICLS noted that that it would implement additional oversight methods for supervisors and advocates who would regularly review open files to prevent untimely closing ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

2. Ensure that all case files contain citizenship attestations, where appropriate, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.) and that all written citizenship attestations used by ICLS are in the form as stated in the CSR Handbook (2008 Ed.) and all alien eligibility verifications are in compliance with 45 CFR Part 1626;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

3. Ensure that all staff are trained on the proper use of the closing code categories to comply with CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1; in addition, ICLS is required to review the closing procedures of its subgrantees to ensure the subgrantees assign a closure code reflective of the level of assistance that was provided to the client;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions.

ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

4. Review the maximum annual ceiling exempt and non-exempt asset policy and adopt a policy and develop intake forms that reflect the screening practices of ICLS or ensure that all staff consistently adheres to the asset policy adopted by the board and ensure that all ICLS staff are fully trained concerning this policy;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

5. Ensure that all cases reported to LSC in the CSR data submission are in compliance with 45 CFR Part 1611;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

6. Remove food stamps as an income source in the income drop-down box on the ACMS eligibility screen;

In its comments to the DR, ICLS noted that Corrective Action 6 has been implemented.

7. Ensure that staff screen for income prospects pursuant to 45 CFR § 1611.7(a)(1); and that this screening is documented in all Kemps Prime, outreach and in-person intake forms in use by ICLS;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training

sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

8. Ensure that LASSB adheres to the asset policy adopted by the board and that it eliminates the distinction in its eligibility determination practice between “liquid” and “non-liquid” assets;

In its comments to the DR, ICLS offered no response to this Corrective Action. ICLS must take corrective action to ensure that LASSB adheres to the asset policy adopted by the ICLS board.

9. Review all subgrant written intake applications to ensure that they are consistent with ICLS’ written applications and compliant with LSC regulations and ICLS board-approved policies;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

10. Pursuant to 45 CFR § 1611.9, ensure that, as necessary, all files contain retainers that are executed and dated and describe the scope and subject matter of the legal services to be provided;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

11. As discussed in detail in this report, *supra*, ICLS shall develop written policies to guide its program and subgrant staff in delineating what constitutes “legal advice” and can therefore only be provided to screened eligible clients from what is only “legal information” that can be provided to any customer of the clinics or otherwise to unscreened persons. As part of this, ICLS should prepare, in coordination with LSC,

a detailed “training document” that will provide clear guidance for staff regarding how certain services (that are close or similar between clinics and other LSC service units) will be distinguished between legal advice and legal information. Staff training will then be necessary to ensure implementation of the correct separation of legal advice and legal information;

In its comments to the DR, ICLS noted that it had taken corrective action by excluding Case No. 083-8008538 from its 2010 LSC CSR data submission. ICLS further noted that it de-selected Case No. 103-3005635 from its CSR reportable data base so that it would be excluded from the 2011 LSC CSR data submission.

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

In its comments to the DR, CLS further noted that it has begun a process of redesigning the FLAP Service Delivery Model in consultation with the Managing Attorney of the Riverside Superior Court's Self Help Centers. ICLS is considering providing an initial pleadings and a motions clinic with each session proceeded by a 15 to 20 minute presentation by the FLAP attorney to describe that the clinics were presenting general legal information and not specific legal advice. ICLS further noted in its comments the DR, that it would endeavor to comply fully with the corrective actions to continue to provide legal information with self-represented litigants at the Court. ICLS noted that it would continue to prepare documents only when the Court customer was otherwise eligible for legal services, that is, after ICLS screened for income and asset eligibility, as well as for documentation of United States citizenship and eligible alien status. To the extent possible, self-represented litigants would be requested to complete their own forms and to have them reviewed by the FLAP attorney. In its comments to the DR, ICLS further noted that was discontinuing outreach services at three (3) Court locations to increase the direct delivery of legal services to the poor. ICLS would be discontinuing services at the Riverside, Southwest Superior Court Self-Help Centers and the Blythe Court in Riverside County, and the Victorville Court in San Bernardino County as of June 30, 2011. ICLS notes that all other court outreach sites would remain in full operation with staff trained to deliver legal informational services.

ICLS finally noted, in its comments to the DR, that it would undertake corrective action to develop written policies to guide the program and subgrant staff in delineating what constitutes "legal advice" which can only be provided to screened eligible clients as distinguished from "legal information" that can be provided to any

clinic customer or otherwise unscreened person. ICLS would work with LSC to develop a training document, would seek input and review from other resources and would work to ensure that the training document provides, as much as practicable, appropriate parameters in a subject area that has historically had, as described in the report, lines that are "close and delicate."

12. Ensure that all cases reported to LSC in the CSR data submission contain a description of the legal advice provided by the program;

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

13. Ensure that only one (1) of the open Case Nos. 10E-3009435 and 10E-3009434 is reported in the LSC CSR data submission;

In its comments to the DR, ICLS noted that Corrective Action 13 has been implemented.

14. Ensure that ICLS policies and LSC regulations will be followed for all fee generating cases accepted by ICLS; and

In its comments to the DR, ICLS noted that it has amended its citizenship attestations to bring them into compliance. ICLS further noted that it was in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. ICLS would mandate training sessions for PA1 subgrantees in areas where non-compliance was found. ICLS would prioritize and exert its best good faith efforts to implement the corrective actions. ICLS was planning to have a series of staff training sessions on LSC compliance, targeting the regulations with which LSC identified ICLS as being non-compliant as well as those where further improvement was noted as being needed.

15. Ensure that ICLS' group eligibility policy and eligibility determinations for all LSC funded and reported cases is consistent with 45 CFR § 1611.6.

In its comments to the DR offered no response to this corrective action. ICLS must take corrective action to ensure compliance that ICLS' group eligibility policy and eligibility determinations for all LSC funded and reported cases is with 45 CFR § 1611.6.



Inland Counties Legal Services

Executive Office

1040 Iowa Avenue, Suite 101 / Riverside, CA 92507-2106

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(951) 320-7500 - Seniors
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April 26, 2011

Mr. Danilo Cardona, Director
Office of Compliance & Enforcement
Legal Services Corporation
3333 "K" Street, 3rd Floor
Washington, D.C. 2007

Re: Comments on Draft Report
LSC CSR/CMS Visit: December 6-10, 2010

Recipient No. 805230

Dear Mr. Cardona:

Thank you for the time and opportunity to carefully review the draft report of the visit conducted by the LSC Office of Compliance and Enforcement December 6-10, 2010.

ICLS's comments address (1) Non-compliance Findings Nos. 5, 9, 10 and 14 and (b) Substantial Compliance Findings Nos. 6, 11 and 12, where exceptions were noted. Findings where LSC found ICLS to be in compliance have no comment.

Non-Compliance Findings

ICLS is in the process of planning mandated structured training sessions for all ICLS advocates and support staff in all areas where non-compliance was found. Training sessions will also be mandated for PAI Subgrantees in areas of non-compliance.



Inland Counties Legal Services pursues justice and equality for low income people through counsel, advice, advocacy and community education, treating all with dignity and respect.

Mr. Danilo Cardona, Director
LSC Office of Compliance & Enforcement
Recipient No. 805230
Comments on Draft OCE Report

1. Finding #5: ICLS is in non-compliance with 45 CFR §1626.6 (Verification of Citizenship)

The issue raised in the draft report which was brought to my attention during the visit was immediately brought to the attention of all program managing attorneys and the ICLS Application for Services was revised with a separate signature line which ties only to the U.S. Citizenship attestation with a date required next to the signature.

2. Finding #9: ICLS is in non-compliance with CSR Handbook (2001 Ed.), §5.1 and CSR Handbook (2008 Ed.), §2.3 and 5.6 (Description of legal assistance provided).

With reference to the open files noted in the report which at the time of the LSC visit were determined to be non-compliant:

- a) **08E-8008538**: This file was closed on 12/14/2010 as a de-selected file and was not included in the 2010 CSR closed case report.
- b) **10E-3005635**: This file was closed on 4/25/2011 as a de-selected file and will be excluded from the 2011 CSR closed case report.

Although a review of the cited files in the CMS indicates that this problem is focused primarily in one branch office and one LSC Subgrantee, all program advocates and PAI Subgrantees will be trained.

Legal Advice/Legal Information Conundrum

The draft report reflects a concern that legal advice rather than legal information services are being provided at the Self-Help Clinics and described the observations of an OCE monitor. As noted in the report, "ICLS follows the *Guidelines for the Operation of Self-Help Centers in California Trial Courts*" issued February 29, 2008. The OCE report asserts that in "some instances" ICLS staff appeared to have applied law to facts, or had taken an action for a customer, or made other statements that rendered the interaction identical to services provided by other ICLS offices and which were considered by those offices to be cases." With regard to the three observations described, which an ICLS managing attorney also observed:

ICLS agrees that clarity is needed for a common understanding of the terms "legal advice" as distinguished from "legal information" so that there is consistency among all program offices and PAI Subgrantees. ICLS will undertake corrective action to develop written policies to guide the program and subgrant staff in delineating what constitutes "legal advice" which can only be provided to screened eligible clients as distinguished from "legal information" that can be provided to any clinic customer or otherwise unscreened person. ICLS will work with LSC to develop the training document, and will seek input and review from other resources as well to ensure that the training document states, as much as practicable, appropriate parameters in a

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subject area that has historically had, as described in the report, lines that are “close and delicate”.

With regard to the observations noted in the report, ICLS offers these comments:

a) In the first example of an observation of an ICLS attorney at the Family Law Access Partnership Project (FLAP) at the Riverside Superior Court, the monitor noted that the attorney met with the customer privately in a cubicle for 45 minutes. In the context of the report, the statement infers that Self-Help information services should somehow be speeded up and dispensed in much less time although the services are being delivered to individual people with varying educational, intellectual and emotional coping skills and who may have had no prior need of or experience with the judicial system. The statement in context also infers that the confidential setting somehow contributes to the notion that more than legal information is being delivered. Equally reasonable inferences can be made that the Court recognizes the dignity of the individual person seeking to proceed self-represented and has provided ICLS with professional office space out of courtesy and respect for Self-Represented Litigants, and that by providing that type of setting, Self-Represented Litigants, embroiled in personal disputes, will conduct themselves appropriately at the Court.

The report notes that the customer sought a modification of a custody order and “revealed” that the matter would be contested.

The report does not state how long the self-represented litigant took in telling his/her “story” to the ICLS attorney. Custody disputes are perhaps one of the most emotionally wrought legal actions that are fought in court. What is at stake is who will have primary custody and who will be the weekend/holiday time parent. People involved in custody disputes often take a lot of time to tell the attorney their story and they include details that are important for them to relate but which may be marginal to the core action. In this instance, we do not know what the parent said to the attorney or how long he/she took to say it. That information may have been obtained, but is not in the report.

The *Guidelines* list “basic core services” as most frequently including “Interview and Assessment” activities. An “Interview” by definition requires that questions be asked of the customer, a common practice for the California Family Law Facilitators who provide legal information to court consumers. An “Assessment” by its definition is an “appraisal”, “evaluation”, “measurement”, “review” and/or “judgment”. The *Guidelines* include “Assistance with pleadings and fee waiver applications” as part of the “basic core services” to be offered at a Self-Help Center. In order to determine which pleadings would be appropriate for a customer seeking legal assistance on a custody matter, certain questions must be asked. Was the judgment that the customer is seeking to modify made in a dissolution or in a paternity case? The customer may not know if they do not bring legal documents to the legal interviewer. The report did not state whether the customer presented any legal documents to the FLAP attorney. If no documents were presented, then the Interviewer had to ask more questions.

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The ICLS attorney assigned to FLAP is a skilled and very experienced family law practitioner who focuses and listens intently when others speak. It is his style to allow others to speak without interruption and to reflect upon what is said before speaking quietly and intently. A good communicator will listen and confirm the information given to the customer to be sure the customer understands what has been conveyed. "Assistance with understanding" court processes is a core activity at a Self-Help Center.

The report states that the attorneys asked "pointed questions that reflected the attorney's internal legal analysis of the customer's facts as they applied to the standards for obtaining custody and proceeded to complete the *pro se* documents on the customer's behalf in a manner that reflected strategic decision making". As those questions are not in the report, we do not know what those questions were to be able to accept the report's speculation of what was going on in the mind of the FLAP attorney interviewer. The monitor was in a position to ask the FLAP attorney after the customer why he was asking those questions, however, the report is silent and it would appear that no such discussion occurred.

To some extent, the provision of legal information and assistance with completion of pleadings requires obtaining rudimentary facts to provide the right information and to assist with the completion of correct Judicial Council forms. As the report states, the end result of the questions asked by the ICLS attorney resulted in the attorney declining to complete the forms and instead referred the customer to an ICLS branch office for case legal services.

The managing attorney who observed the same interaction disagreed with the conclusion that legal advice was given. The manager has been a practicing California attorney for more than six years; prior to his legal career, he worked in the banking industry for more than 25 years and had significant supervisory responsibilities over customer interactions.

b) LSC observed an experienced attorney's interactions with two customers at the Riverside Superior Court Self-Help Center Access Project (SHCAP). The report again noted that the attorney met with each self-represented litigant for 45 minutes.

1. The report noted that the attorney reviewed the "customer's court filings", an activity included in the *Guidelines* as it is part and parcel of the "Assessment" as well as the "Document review" core services. The report noted that the attorney provided the customer with information; that an *option* is to seek maximum allowable damages in the Small Claims Court rather than filing a lawsuit in Superior Court and provided *procedural information*: "the process is quicker and less formal".

The report notes that the customer then related that he sought to regain title to the property occupied by the opposing party. The report noted that the attorney "reviewed the documents filed by the customer" which is a core service at a Self-Help Center. The report also states that the attorney stated that "the documents he filed would not accomplish the goal of regaining title", explained other options and suggested that the customer seek help from a private attorney. According to the *Guidelines*, providing "Procedural information, including but not limited to the

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explanation and clarification of court orders and *the process by which to obtain, enforce, and modify orders*” is basic core service at a Self Help Center. Here, the attorney provided information to the customer that the process he was engaged in would not result in obtaining the order he sought, e.g. regaining title. The attorney then referred the customer to a private attorney.

The report does not identify specific facts other than the customer wanted a court order to regain title to real property. There may have been other specific facts, but the report is silent and we cannot assume or speculate what those facts may have been.

2. In the second observation, the customer was provided information on California law which prohibits a mortgagee from foreclosing on the house of a deceased mortgagor if the surviving spouse still occupies the mortgaged property, provided the customer with a form letter to send the bank and provided information on other legal options, or procedures that are available. Here, the information was provided to the daughter of the surviving spouse and not to the surviving spouse directly. It was general legal information about California law. The report does not state that the attorney asked any questions of the customer who was inquiring on someone else’s behalf, or that the attorney provided any information on the time frame or statute of limitations that may apply. The report indicates that the attorney provided an array of options and did not recommend a specific one; in fact, the attorney told the customer to tell her mother to hire a private attorney. The activity engaged in by the attorney was an “Interview and Assessment”, a basic core service identified in the *Guidelines*.

The report further states that “sampled cases” reflected that when ICLS or subgrant staff advised a client concerning his or her legal options that such activity is designated as a case and closed with an “A”, Counsel and Advice closing code. The report does not identify any specific ICLS or PAI cases by file numbers, in stark contrast to the information provided in the report’s other Findings.

The report states: “Several observations by an OCE team member evidenced that, in some instances, ICLS staff appeared to have applied law to facts, or had taken an action for a customer, or made other statements that *rendered the interaction identical to services provided by other ICLS offices and which were considered by those offices to be cases.*” The report’s conclusion that the *advocate interactions with clients were virtually identical to advocate interactions with customers is puzzling* because there were no observations of client interviews conducted at offices according to managing attorneys present during the visit. The conclusion therefore must be based on the case file reviews conducted with advocates although no specific cases are cited in this part of the report which extensively identifies cases in other parts of the report.

ICLS agrees that in *some instances*, as noted in some Findings, ICLS as well as PAI staff have not always documented in the ACMS sufficient evidence of the legal advice given and that those cases should not have been in the CSR report. ICLS will strive through staff training to correct deficiencies so that the case file has documentation sufficient to evidence compliance.

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The issue of general legal information versus specific legal advice has been brought to the attention of ICLS attorneys as well as the Court's Managing Attorney of the Self Help Centers. The Court has a strong interest in ensuring that ICLS provide clinic services similar to those provided by the Court because court consumers do not distinguish between Court and ICLS services despite the disclaimers and signage. To that end, we have begun a process of redesigning the FLAP Service Delivery Model in consultation with the Managing Attorney of the Riverside Superior Court's Self Help Centers. We are considering providing two different clinics to court consumers: a) an "initial pleadings" clinic in the morning and b) a "motions" clinic in the afternoon, with each session preceded by a 15 to 20 minute presentation by the FLAP attorney to describe the type of service available, e.g. general legal information and not specific legal advice.

ICLS is mindful of the Congressional restrictions and will endeavor to fully comply so that we can continue providing legal information to Self-Represented Litigants at the Court. We do not prepare any documents unless the Court customer is otherwise eligible for legal services, that is, ICLS screens for client eligibility, income and asset eligibility, as well as for citizenship/eligible alien status.

To the extent possible, self-represented litigants will be requested to complete their own forms and to return to have them reviewed by the FLAP attorney. However, LSC must recognize that the Inland Counties area in southern California has a very diverse population, of which many have significant access barriers and will need to have core document preparation services provided to them after an Interview and Assessment as contemplated by the promulgation of the *Guidelines*.

ICLS is discontinuing outreach services at three Court locations to increase the direct delivery of legal services to the poor. Services will be discontinued at the Riverside and Southwest Superior Court Self Help Centers and the Blythe Court in Riverside County as well as at the Victorville Court in San Bernardino County as of June 30, 2011. All other court outreach sites will remain in full operation with staff trained to deliver legal informational services.

3. Finding #10: ICLS's application of the CSR case closure categories does not comply with Section VII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

ICLS will provide staff with additional training on CSR Handbook definitions of case closure codes. LSC notes that sampled files indicated that case closure categories were "generally consistent" with the CSR Handbook.

ICLS offers these comments on one of the cases cited:

- a) **10E-6004704:** The draft report states this case should have received a different closure code and the file deselected because the client withdrew before legal assistance began.

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This file was opened on 5/17/10 to provide assistance on an SSI case. When the client failed to return with documents, the file was de-selected and closed as a "W" on 5/26/2010.

Training materials will include LSC's Most Frequently Asked Questions as well as examples of the types of cases that can be closed at each level as well as providing "categories of cases" that generally will have a specific case closure level, e.g. Bankruptcy clinic cases where the participants hear general information in a public setting but are not specifically advised as to their own case facts although there may be some communication back and forth with the attorney by participants.

4. Finding #14: ICLS is in non-compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

First, ICLS will take all necessary steps to ensure that all fee-generating cases comply with the 1609 regulation. We are currently working on developing a training session on 1609 to provide program attorneys with further guidance on making case referrals, acting in emergency circumstances, and identifying the types of cases that are futile to refer after consultation with the private bar.

In December 2010, LSC reviewed several years of client files and identified *one* case, opened in 2003 and closed after more than six years in 2009.

03E-6100392: LSC appears to have concluded that the case was fee-generating because ultimately after years of protracted litigation by lead counsel Western Center on Law and Poverty, substantial attorneys' fees were awarded. Western Center on Law Poverty is a premier nationally known public interest law firm with legal expertise and experience in handling complex litigation. This was a case of first impression in a very difficult and challenging area of law which ultimately was favorably decided by an Appellate Court and unsuccessfully appealed by the other side to the California Supreme Court.

ICLS's position explained during the visit was that this case was considered at the time of acceptance of the case to fall within an exception to the fee-generating case referral requirement or, in the alternative, ICLS did not consider the case to be fee generating and requiring referral to the private bar. In fact, as a result of ICLS's action, our client ended up being represented by a private attorney as well as a private law firm.

ICLS accepted a case on May 7, 2003 to represent a low income client on SSI who resided in Fontana and had rented a house for many years from her sister who had just sold the home. Client received a Notice to Vacate the premises in a lawsuit which did not name her. At the time of the initial client meeting, client had a lock-out date in two days (May 8, 2003). Her three children were living with her. It was too late to file a motion to set aside the judgment so the manager did a Post Judgment Claim of Possession and Fee Waiver. The client needed time to move and find a place to live. She told ICLS that she had seen a local attorney who told her he

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could not help with the eviction. *Client already had a turn down by a private attorney to help her with defending an eviction case.* Aware of the legal issue involving the diversion of taxpayer dollars by the City of Fontana which had been intended for affordable housing and WCLP's interest, our client was given WCLP's phone number the next day. On May 13, 2003, ICLS represented the client in eviction court and the client was given a week to move out. This file was closed on May 14, 2003.

The client and ICLS executed a second Retainer Agreement on May 13, 2003. ICLS agreed to represent the client *as a defendant* in the action filed by the City of Fontana on February 13, 2003, which sought to validate an agreement entered into November 5, 2002 with the state Department of Housing and Community Development which would have allowed the city to issue bonds for low-income housing when the funding should have come from federal CDBG funds. The client was represented in the action not only by ICLS but also by WCLP, a Los Angeles private attorney, a San Diego private law corporation as well as an Oakland based non-profit (non-LSC) public interest law firm.

As stated in the report, as Executive Director, I approved the acceptance of this case by the San Bernardino managing attorney after discussions which delineated a limited role for ICLS which provided case support by engaging in tasks such as obtaining court records, maintaining communications with our client who was named the lead defendant in the action by Western Center on Law and Poverty which prosecuted the case as the lead attorney which involved other private counsel as well as other public interest law firm counsel. The client's other attorneys all resided out of the local area.

As stated in the LSC draft report, I approved the acceptance of this case. If the case was fee generating, this was permitted pursuant to 45 CFR 1609.3(b) because:

“(III) RECOVERY OF DAMAGES IS NOT THE PRINCIPAL OBJECT OF THE RECIPIENT’S CLIENT’S CASE AND SUBSTANTIAL STATUTORY ATTORNEYS’ FEES ARE NOT LIKELY TO BE AVAILABLE.”

ICLS acted properly in providing our existing client with the WCLP contact information. Once our client contacted WCLP, there was apparently assistance by WCLP in securing private counsel to represent the client's interest in defending the validation action.

Under 45 CFR 1609.3 (3), a recipient is permitted to accept a fee-generating case when “(i) Documented attempts to refer similar cases in the past generally have been futile;” and “(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time;...” Under the circumstances, complying with the first requirement was impossible as ICLS did not have any similar past cases and there was an emergency situation. The Validation Complaint had been filed three months earlier, and the time was running; without assistance, the client, an interested person living in Fontana in need of low income housing, would likely have lost the opportunity to contest the validation decree.

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Once the client had private counsel representing her interests, referral to other private counsel would have been against her best interest. To require the client to get turndowns when she already had a private attorney, a private law firm, a public interest law firm as well as WCLP as her attorneys did not occur to ICLS that it was required. Referral is required when the representation "reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party." The case was dramatically unlike the typical fee generating case where there is insurance on the other side or the opposing party is likely to settle the case for nuisance value. Here, the City was being challenged for actions believed to have diverted as much as \$53 million for the development of low income housing.

During the visit, LSC informed ICLS that we should have done a referral outside the local service area if we did not know of any attorneys in the area. Here, the client had been unable to secure private counsel to help her in a routine eviction case which involved boiler plate uncomplicated motion work.

ICLS undertook the case on behalf of our client because the remedy sought was injunctive relief, a court order to compel the City to comply with its legal obligation to earmark 20% of its housing funds for affordable housing. Our client had to relocate to the City of San Bernardino after she lost her housing in the City of Fontana because of the lack of affordable housing. Finally, ICLS had only a minimal role in the case with a total expenditure of 84.3 hours of work which 19.8 LSC hours over a period of 6 ½ years.

In conclusion, due to the complex and difficult nature of the legal work demanded in this novel case, I did not view it as "reasonably likely" that there would be an award of attorneys' fees. It should be noted that the Answer filed specifically excluded ICLS from the attorneys' fees prayer.

5. Finding No. 6: Substantial Compliance - Retainer Agreements. ICLS will a review of the Retainer Agreement requirement in one of the series of training sessions which will be scheduled within the next two months.

6. Finding No. 11: Substantial Compliance - Timely Closing of Cases. ICLS will implement additional oversight methods for supervisors as well as advocates to regularly review open files to prevent untimely closing. Targeted training will be provided to individuals who may need help in this area.

7. Finding No. 12: Substantial Compliance – Duplicate Cases. File No. 10E-3009435 was excluded from the 2010 CSR Report.

8. Recommendations: ICLS accepts Recommendations Nos. 2, 3, 4, 5 and 6.

With regard to **Recommendation No. 1** to consider screening senior citizens for over-income factors so that eligible cases can be included in the CSR data submission, please be

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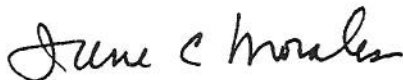
advised that as you know, seniors whose cases are accepted and funded under Title III-B (Older Americans Act) are not subject to an income or asset eligibility test. Services are provided to seniors in the greatest social or economic need. The non-LSC grants already require advocates to collect additional socio-economic data and require a fairly high number of new seniors to be served in each grant cycle. More screening to qualify under an Exceeds 125% exception would be burdensome and reduce the limited resources available to provide direct services. Additionally, services are provided on outreach as well as on the phone where supervisors are not readily available to approve an exception. With such a high number of potentially eligible clients, ICLS's policy is to use Exceptions where the client's circumstances and the legal case amount to "unusual circumstances" and not as a call for blanket exceptions.

9. Required Corrective Actions

ICLS will prioritize and exert our best good faith efforts to implement the corrective actions. Please be advised that Nos. 6 and 13 have been implemented. We are planning on having a series of staff training sessions on LSC compliance, targeting the regulations which LSC has identified as non-compliant as well as those where further improvement is needed.

Thank you very much for the opportunity to carefully read the draft report, to reflect upon the findings and to submit comments. We are always striving to improve to be in compliance with the funding restrictions so that others less fortunate may have the benefit of free legal services to improve the quality of their lives.

Very truly yours,



Irene C. Morales
Executive Director