



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

**Micronesian Legal Services Corporation**  
March 13 - 27, 2009  
Case Service Report/Case Management System Review

Recipient No. 952000

## **I. EXECUTIVE SUMMARY**

**Finding 1:** MLSC's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

**Finding 2:** MLSC's intake procedures and case management system support the program's compliance related requirements.

**Finding 3:** MLSC 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.

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

**Finding 5:** MLSC is in compliance with the retainer requirements of 45 CFR § 1611.9 but improvement is warranted.

**Finding 6:** MLSC is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

**Finding 7:** Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

**Finding 8:** MLSC is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). However, there were four staff case files which contained no description of the legal assistance provided.

**Finding 9:** MLSC's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.

**Finding 10:** MLSC is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. There were numerous staff case files which were dormant and numerous staff case files which were untimely closed.

**Finding 11:** Sample 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 12:** Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

**Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

**Finding 14: A review of MLSC' accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

**Finding 15: MLSC has been granted a complete waiver of the Private Attorney Involvement ("PAI") requirement pursuant to 45 CFR § 1614.6(b).**

**Finding 16: MLSC is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.**

**Finding 17: MLSC is not in compliance with 45 CFR Part 1635 (Timekeeping requirement).**

**Finding 18: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

**Finding 19: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

**Finding 20: 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 21: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

**Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

**Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

**Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

**Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

**Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

**Finding 27: 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 28: Bank reconciliations for January and February 2009 were reviewed and were found to be performed in a timely and accurate manner.**

**Finding 29: MLSC does not have an Accounting Manual. In addition, MLSC's Personnel Manual needs updating.**

**Finding 30: MLSC has adequate segregation of duties, adequate internal controls, and adequate controls with the payroll system.**

**Finding 31: MLSC is not in compliance with 45 CFR Part 1629 (Bonding of recipients).**

**Finding 32: MLSC salary advance policy requires an extraordinary circumstance to grant a salary advance, and salary advances are granted when vacation is requested.**

**Finding 34: While LSC regulations do not require MLSC to apply the standard citizenship and alien eligibility tests in the service area, the program is obtaining citizenship attestations and reviewing for alien eligibility status.**

## II. BACKGROUND OF REVIEW

On March 13 through 27, 2009, 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 Micronesian Legal Services Corporation ("MLSC"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of three attorneys and one fiscal analyst. All team members were OCE staff members.

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

The OCE team interviewed members of MLSC's upper and middle management, staff attorneys, and support staff. In addition, OCE interviewed Chief Justice Miguel S. Demapan, Supreme Court for the Commonwealth of the Northern Mariana Island ("CNMI"), Presiding Judge Robert C. Naraja, Superior Court, CMNI; Associate Judge Kenneth L. Govendo, Superior Court, CNMI; and Associate Justice Nelson Joseph of the Pohnpei State Supreme Court. MLSC's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2006 through January 31, 2009. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. Case files were also pulled on-site. In the course of the on-site review, the OCE team reviewed 619 case files which included 166 targeted files.

MLSC is a non-profit corporation established in 1970 to provide low-income persons in Micronesia with free legal assistance in civil matters. MLSC is governed by a nine member Board of Directors and has offices in the Republic of Palau, the Federated States of Micronesia,

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

the Republic of the Marshall Islands, and the U.S. Commonwealth of the Northern Mariana Islands.

Prior to the creation of MLSC, few Micronesians found the system of justice open to them. It was the goal of MLSC to help assure that the newly-adopted Constitutions of Micronesia, which establish judicial systems based on principles of equality and fairness for all, have real meaning for all, rich and poor alike. MLSC strives to make equal access to quality civil legal assistance a reality for low-income islanders throughout Micronesia who have no where else to turn.

A person seeking MLSC assistance must be financially eligible (low or no income) and the problem to be addressed must fall within set priorities of MLSC. 45 CFR Part 1626 is not applicable to the Federated States of Micronesia.

In its 2006 submission to LSC, MLSC reported 6,591 closed cases and in 2007 MLSC reported 6,976 closed cases. MLSC's 2006 self-inspection certification revealed a 0.8% error rate in CSR reporting. Cases were identified in which citizenship/alien eligibility was not documented and cases in which asset information was not recorded.

MLSC's 2007 self-inspection certification revealed a 0.1% error rate in reporting. A case was identified which was reported more than once in 2007.

By letter dated January 15, 2009, OCE requested that MLSC provide a list of all cases reported to LSC in its 2006 CSR data submission ("closed 2006 cases"), a list of all cases reported in its 2007 CSR data submission ("closed 2007 cases"), a list of all cases closed between January 1, 2008 and December 31, 2008 ("closed 2008 cases"), a list all cases closed between January 1, 2009 and January 31, 2009 ("closed 2009 cases), and a list of all cases which remained open as of January 31, 2009 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that one set of lists be compiled; for cases handled by MLSC staff. MLSC was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 9 and 10, and the LSC *Access to Records* (January 5, 2004) protocol. MLSC was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure. All documents requested for review were received in a timely manner.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2006, 2007, 2008, and 2009 closed and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and MLSC agreement of February 25, 2009, MLSC staff maintained

possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.<sup>2</sup> MLSC's management and staff cooperated fully in the course of the review process. As discussed more fully below, MLSC was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review including the Executive Director.

After the conclusion of the visit on March 27, 2009, OCE conducted a telephonic exit conference on April 2, 2009 during which MLSC was made aware of the areas in which non-compliance was found. OCE cited instances of non-compliance in the areas of documentation of legal advice, dormant cases, and some retainers missing executions and scope of representation not provided in others. In addition, MLSC was advised that its Accounting Manual needed updating. MLSC was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

MLSC was provided a Draft Report ("DR") and given an opportunity to comment. After a request for an extension of time was granted to submit the comments, MLSC's comments were received on November 17, 2009. Another extension of time was granted to supplement the comments to the DR and the supplemental comments were received on December 4, 2009. The comments have been incorporated into this Final Report, where appropriate, one finding was revised and the comments are affixed as an attachment to this Final Report.

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<sup>2</sup> In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

### III. FINDINGS

**Finding 1: MLSC’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, MLSC’s ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, *see* open Case No. 07E-2000102 (Mariana) (ACMS indicates that the case was open, but the case file indicates that the case was closed on September 28, 2007). *See also*, closed 2009 Case No. 12382 (Majuro) which was actually closed on August 26, 2006 and open Case No. TK20771 (Majuro) which was closed on December 19, 2007.

No comments were provided to this finding.

**Finding 2: MLSC’s intake procedures and case management system support the program’s compliance related requirements.**

MLSC’s intake procedures fully support the program’s compliance-related requirements. The following represents a description of MLSC’s intake procedures, including the screening procedures of all Islands visited.

#### **Yap Office, Paulu Office, and Chuuk Office Intake Process**

Yap is a very remote island (and state) in the Federated States of Micronesia (“FSM”) – it has a deserved reputation for maintaining its traditional ways. This influences the MLSC priorities for the Yap office – for example, the program does not handle cases when both parties are Yapese and are not represented by counsel. In addition, the State of Yap is more isolated from the other states of the FSM in terms of technology.<sup>3</sup> While the Yap office has internet access and is in contact with FSM, the access is limited to the equivalent of dial-up access. Accordingly, as explained in other parts of this report, Yap has maintained its case management records primarily in a written log maintained in the office. The purpose of this is not a reluctance to use

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<sup>3</sup> Although this should not be over-generalized; for example, the Yap office has a two-way radio that is used to contact outer-island clients and is sometimes used for new intakes.

technology by the staff in the Yap office; rather it is a result of the limitation of availability of technology.

The primary intake staff member, the Directing Attorney, and a counselor<sup>4</sup> were interviewed regarding the intake process. The Yap office will conduct intake whenever the office is open – normal office hours were from 8:00 a.m. to 5:00 p.m. All applicants for legal assistance walk in – while the program will interview clients and applicants over the phone, the normal practice is to appear in person for intake.<sup>5</sup> The intake staff person uses the MLSC intake sheet to question each applicant. The intake process appeared to be in full compliance with the applicable regulations. As far as case work, many of the cases reviewed were for name changes, corrections or clarifications to birth certificates, or affidavits certifying that the client's passport was lost or destroyed.<sup>6</sup>

One of the program priorities is tort cases – this is a very unique situation. The Directing Attorney explained that there is only one private attorney practicing on the island – a state senator who does not typically take these cases. Accordingly, the program will take these cases basically to ensure the clients can obtain insurance benefits.

Intake in Palau takes place on an as needed basis during office hours which are from 8:00 a.m. to 5:00 p.m., except during lunch (noon to 1 p.m.), Monday through Friday. Each staff member will conduct intake interviews from the opening of the file and the obtaining of routine information all the way through the completion of the interview by discussing the applicant's case.

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<sup>4</sup> As a point of clarification, while the term counselor is somewhat analogous to the term "paralegal," the two are not interchangeable. As explained by the program in its grant application:

It should be emphasized that "legal counselors" or trial assistants are not at all the same as paralegals in the U.S. Although they may not have attended law school, MLSC counselors are trained legal assistants, who have a wealth of legal experience. In Micronesia, they can do everything a lawyer does. Each of our counselors is directly supervised by an experienced attorney. Each of MLSC's eight directing attorneys has at least twenty years of legal experience. This training and supervision is what sets MLSC trial assistants apart from other non-MLSC counselors. They handle cases from initial interview, through negotiation or trial, and on to appeal if necessary. The high regard in which trial counselors are held across Micronesia can be seen, for example, in the FSM where all sixteen of the state court judges and the Chief Justice of the FSM Supreme Court are all former trial counselors. None of them are graduates of U.S. law schools. Micronesians do not believe that it is absolutely necessary to graduate from law school to be a good lawyer or a qualified judge. Knowledge of the law, legal experience, and comprehension of and respect for local customs and traditions are highly valued. In both the FSM and the Marshalls it is still possible to study for, take and pass the local bar exam and become a lawyer, without graduating from law school.

<sup>5</sup> Personal meetings are the norm for Yapese culture and telephone use is unusual. Additionally, many people don't have telephones and service to the outer islands is spotty. The program does have a CB radio it can use to speak with persons on the outer islands. Of course, since the CB radio is not confidential, there are limits to the use of this tool.

<sup>6</sup> Except for local boats and aircraft within the state of Yap, the only transport is with either Guam or Palau, both of which are foreign territory to Yap citizens.

All applicants for legal assistance walk in – while the program will interview clients and applicants over the phone, the normal practice is to appear in person for intake. The intake staff person uses the MLSC intake sheet to question each applicant. The intake process appeared to be in full compliance with the applicable regulations.

The Palau office does conflicts checking, but it appears tenuous – MLSC does not have program-wide conflicts checking capability. In fact, it was explained that the administration in Saipan does not have access to the Palau databasc – each ACMS is still separate and unique to the office. The saving grace is the fact that there is not much migration between the countries and the MLSC service areas are restricted to their jurisdictions. Nevertheless, because MLSC recently upgraded its ACMS to Prime, it has not transferred over all the old files from the prior ACMS – old files can not be imported from the old ACMS to Prime – they must be manually encoded. As a result, the program relies on the very experienced counselors' memories for conflict checking.

As with the Yap office, the Palau office will occasionally participate in tort cases. The Directing Attorney explained that it does follow the requirements for fee generating cases – rejection by two private attorneys as required by 45 CFR § 1609.3(a)(1).

The intake process for the Chuuk office is very similar to that of the other MLSC offices. All applicants for new cases are handled first by intake interviews. These intake interviews cover personal information necessary to determine the eligibility of the applicants for legal services pursuant to LSC and MLSC regulations and office policies. Additionally, this process includes interviews for determination whether the cases fall under the office's case priorities or exclusion guidelines. After eligibility determinations are made, these cases will be reviewed individually in a staff meeting to decide whether the cases be accepted or not, or be referred to the private Bar. When the cases have merit, MLSC will then determine whether such cases fall under any of the case priorities or exclusions guidelines. The review process is done by the entire staff in a staff meeting. Such meeting is called, "Intake Meeting." Once the case review process is completed, the accepted cases are assigned to the legal staff by the Directing Attorney.

As with the other offices, intake is available during open office hours and the staff does conflicts checking, although given the limits of technology, in the past this has been primarily against its own internal records.

### **Marianas Office, Pohnpei Office, and Majuro Office Intake Process**

The Marianas office utilizes Kemps (Prime) as its ACMS. The Pohnpei and Majuro offices utilize a generic ACMS developed by their information technology staff person. There are no defaults in any of the ACMS. The systems are not linked together.

The offices conduct intake essentially in the same manner. All applicants for intake are walk-ins. A new case is opened at the initial intake interview and all information from the applicant is entered directly into the ACMS. The applicant is screened for financial eligibility, priorities, and citizenship/alien eligibility. A conflicts check is conducted at the initial stage of the intake process. These offices do not accept any over income/asset applicants.

All offices conduct case acceptance meetings and all staff are required to attend. The Directing Attorney in each office decides which cases to accept and applicants are informed to call the office to ascertain the status of case acceptance or rejection. Applicants are also notified by telephone and/or letter if their case is rejected.

Opening and closing memorandums are utilized to open and close case files. In the Marianas office, a compliance checklist is completed. The case handler assigns the closing codes to the completed case. The Directing Attorneys conduct periodic review of cases to assess timeliness, dormancy, duplicate reporting, and closing codes.

No comments were provided to this finding.

**Finding 3: MLSC 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.**

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.<sup>7</sup> *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 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.

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<sup>7</sup> 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.

All sampled cases evidenced that MLSC is in compliance with 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, in some instances MLSC did not record the number of persons in the household. *See* closed 2007 Case Nos. 12042 (Yap), 12043 (Yap), 14952 (Yap), 14479 (Majuro/Ebeye), and open Case No. 13580 (Majuro/Ebeye). MLSC must take steps to ensure that household size is properly documented when determining financial eligibility.

Finally, closed 2008 Case No. 14952 (Majuro) was lacking income determination information. This case file, and others like this one, can not be included in CSR data.

Comments to the DR stated that the Yap closed 2007 Case No. 14952, cited as lacking any record of the number of persons in the household, was in error, because the office does not have such a case number.

OCE stands corrected. That case originated out of the Majuro office and not the Yap office.

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

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>8</sup> *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

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

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

The policy approved by the MLSC Board of Directors in May 2008 establishes the asset ceiling on a graduated scale based on the size of the household and cannot exceed \$8,000 for a

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<sup>8</sup> 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.

household of one person. For each additional person, the ceiling increases by \$3,000. The following items are excluded from consideration as assets: the applicant's or household's principal residence; vehicles used by the applicant or household members for transportation; assets used in producing income, and other assets which are exempt from attachment under law.

Sampled case files reviewed revealed that MLSC maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.<sup>9</sup>

No comments were provided to this finding.

**Finding 5: MLSC is in compliance with the retainer requirements of 45 CFR § 1611.9 but improvement is warranted.**

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.<sup>10</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

MLSC is in substantial compliance with the requirements of 45 CFR § 1611.9. However, MLSC is reminded that the scope of the representation must be identified in each retainer. This protects the program and the client. *See* closed 2007 Case No. MS 10968 (Marianas) lacking the scope of representation to be provided; closed 2008 Case No. 08E-2000943 (Marianas) lacking the scope of representation to be provided; open Case No. 08E-2000881 (Marianas) lacking the scope of representation to be provided; and open Case No. 09E-2001277 (Marianas) lacking the scope of representation to be provided. *See also*, open Case No. 08E-2001219 (Marianas Office) lacking an executed retainer; open Case No. 08-279 (Kosrae) lacking an executed retainer; closed 2007 Case No. MS 11782 (Marianas) lacking an executed retainer; and closed 2008 Case No. 13080 (Yap) lacking an executed retainer.

While many cases had properly executed retainer agreements, there was a problem with many older cases which were missing retainers in the Palau office.<sup>11</sup> The Directing Attorney explained

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<sup>9</sup> The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

<sup>10</sup> 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.

<sup>11</sup> While this problem seemed to more prevalent in the past, it surfaced in more recent cases as well. For example, a large number of files reviewed on the 2009 closed list were for a group of fishermen and sailors from Indonesia who

that there was institutional reluctance to have applicants execute a retainer in advance of case acceptance (in which the retainers would only become effective if there was a countersignature from the program). The older staff thought that if applicants signed a retainer agreement, they would see this as case acceptance. Because of transportation problems (especially if the client were coming in by a monthly boat from one of the outer islands), there was a reluctance to have the client come back in to sign a retainer agreement. In addition, there is no direct mail delivery in the Republic of Palau. There is one Post Office located in Koror and everyone is required to come in to pick up their mail.<sup>12</sup> In instances where there are open files and the staff realizes that there is no executed retainer agreement, it is contacting the client to obtain a retainer agreement.

No comments were provided to this finding.

**Finding 6: MLSC is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).**

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

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

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

No comments were provided to this finding.

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were stranded in Palau when their company filed for bankruptcy. The program represented each person individually and did separate intake screening and checks for eligible alien status [passports and work permits were documented]. The attorney for the program worked with officials in the Indonesian Embassy and negotiated a settlement with one of the partners of the shipping company which provided all her clients with back wages and transportation costs. These cases were all closed with a closing code of “negotiated settlement without litigation”, which was appropriate, but there was no retainer agreement, which was the deficiency. This also accounts for the large number of “negotiated settlement without litigation” closures in the CMS for cases which were opened on or about January 8, 2009 and closed on or about January 23, 2009.

<sup>12</sup> It was later explained that some of the other 15 States (other than the State of Koror), arrange to have periodic pickup of the mail and bring it to their government offices for citizens of those states to pick up.

**Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).**

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

Prior to the visit, MLSC provided LSC with a list of its priorities. The priorities are stated as “supporting families, preserving the home, promoting economic stability, achieving safety, stability and health and serving populations with special vulnerabilities.”

Each office has developed its own priorities based on surveys and input from the local client communities.<sup>13</sup> Because each community does have its own sociological and cultural differences this is not only appropriate, but is highly recommended.<sup>14</sup>

MLSC is in compliance with 45 CFR Part 1620. None of the sampled files reviewed revealed cases that were outside of MLSC’s priorities.

No comments were provided to this finding.

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<sup>13</sup> As MLSC explained in its 2009 Grant Application:

Every three years MLSC goes through a very extensive Triennial Needs Appraisal Review (TNAR) to determine the legal needs of the eligible client community and each year in between, every MLSC field office also goes through a priority-setting process updating the needs of our client population and the office's priorities. The last TNAR was done in 2006 and MLSC is looking forward to and preparing to do another one in 2009. As in the past, the upcoming TNAR will be done throughout our service area in Micronesia. The most recent annual appraisal was approved by the MLSC Board of Directors at its first meeting of the year on May 12, 2008 in Saipan, Commonwealth of the Northern Mariana Islands.

<sup>14</sup> *See* 45 CFR § 1620.3(c)(11). *See* also the Supplementary Information published with the regulation at 62 Fed.Reg. at 19,407 (April 21, 1997):

The second new factor is consideration of whether there is a need to vary priorities for different parts of the service area. The rule has added the consideration of whether there is a need to vary priorities for unique parts of the service area, because some recipients serve a diverse community, different parts of which have distinctive characteristics. The differences may arise because of geographic factors, such as the distinctions between rural and urban areas, or because of characteristics of the client population, such as the fact that there is a concentration of the elderly or of immigrants. Program-wide priorities may not be suitable for all recipients, and the rule allows a recipient to set different priorities for a particular segment of its service area.

**Finding 8: MLSC is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). However, there were four staff case files which contained no description of the legal assistance provided.**

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

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

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. See CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

MLSC is in substantial compliance with the CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. However, there were four staff case files reviewed which contained no description of the legal assistance provided. See closed 2009 Case No. 10799 (Yap), closed 2008 Case Nos. TK-24009 (Chuuk) and 08-005 (Pohnpei) See also, closed 2007 Case No. 12084 (Majuro).

These case files, and others like them, are not CSR reportable.

MLSC must take steps to ensure that the legal assistance provided is documented in the case file and that those case files identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all files at the time of closing is necessary.

Comments to the DR stated that MLSC will not report to LSC in future CSR data submissions any of the case files identified in the LSC DR as dormant or lacking documented legal assistance. MLSC is taking steps to provide effective follow-up and oversight review of all files on a periodic basis to ensure that staff case files are not dormant and will further ensure that legal assistance provided is documented by reviewing all files at the time of closing, according to comments to the DR.

Marianas office comments to the DR stated that closed 2008 Case No. 08E-2000990 is actually a “deselected” as a “duplicate” case, and the advocate who deselected the case had failed to change the acceptance code from S [staff] to R [rejected] on their Kemp's Case Management System. The problem is more a situation with learning the new Kemp's system than (sic) failure

to comply with the CSR Handbook, according to comments to the DR. Further comments to the DR stated that the staff has already learned how to better utilize the Kemp's system and to prevent the problem from happening again. Closed 2006 Case No. MS11336, has a hard-copy closing memo in the file that was written by an advocate who is no longer with the program, according to comments to the DR. Additional comments to the DR stated that the closing memo indicates that the client sought help for non-payment of Worker's Compensation benefits and had received them by the first meeting with the advocate; however, the advocate then researched the timeliness of the payments and the law to determine whether there was any further remedy for the delay in payment and advised the client of her findings. This all appears on the closing memo, according to comments to the DR

Further comments to the DR stated that the Marianas office believes that these cases should be deleted from the examples of CSR cases without legal description of assistance.

Closed 2008 Case No. 08E-2000990 and Closed 2006 Case No. MS11336 have been removed from the examples of CSR cases without a description of legal assistance.

**Finding 9: MLSC's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.**

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

The files reviewed demonstrated that MLSC's application of the CSR case closing categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). However, *see* closed 2008 Case No. 08E-2001022 (Marianas) closed with a closing code of "brief service", when the more appropriate closing code would have been "counsel and advice;" closed 2008 Case No. 08E-2001072 (Marianas) closed with a closing code of "counsel and advice", when the more appropriate closing code would have been "brief service;" closed 2008 Case No. 08E-2000718 (Marianas Office) closed with a closing code of "brief service", when the more appropriate closing code would have been "counsel and advice;" closed 2007 Case No. MS11799 (Marianas) closed with a closing code of "referred after legal assessment" when the more appropriate closing code would have been "counsel and advice;" closed 2008 Case No. 21537(Chuuk) closed with a closing code of "other", when more appropriate closing code would have been "extensive service"; and closed 2007 Case No. 07-461 (Pohnpei) closed with a closing code of "insufficient merit to proceed", when the more appropriate closing code would have been "counsel and advice."

No comments were provided to this finding.

**Finding 10: MLSC is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. There were numerous staff case files which were dormant and numerous staff case files which were untimely closed.**

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).<sup>15</sup> 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).

MLSC is not in compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a). There were numerous staff case files which were dormant and numerous staff case files which were untimely closed. These case files and those that are similar are not CSR reportable.

The following example case files, and those similar to them, should not be reported to LSC in MLSC's CSR data submission and should be closed administratively: Case No. MS11685 (Marianas) which was opened on July 20, 2006 and remains open. The case notes indicate that all activity ceased in 2006 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 07E-20000151 (Marianas) which was opened on March 16, 2007 and remains open. All activity ceased in this case file on September 14, 2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. TK-14,593 (Chuuk) which opened July 2, 2001 and remains open. All activity ceased in this case file in 2001 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. TK-23,571 (Chuuk) which was opened on September 11, 2007 and remains open. All activity ceased in this case file on December 3 2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 04-534 (Pohnpei) which was opened May 15, 2006 and remains open. All activity ceased in this case file in 2006 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 03-212 (Pohnpei) which was opened March

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<sup>15</sup> 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).

10, 2003 and remains open. All activity ceased in this case file in 2003 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 03-258 (Pohnpei) which was opened on March 24, 2003 and closed on March 25, 2008. All activity ceased in this case file in 2003; Case No. 7930 (Majuro) which was opened December 16, 1999 and remains open. All activity ceased in this case file in 1999 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 10712 (Majuro) which was opened on November 7, 2003 and remains open. All activity ceased in this case file in 2003 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 7941 (Majuro) which was opened on February 8, 2000 and remains open. All activity ceased in this case file in 2000 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 9216 (Majuro) which was opened on September 20, 1999 and remains open. Intake in this case was never completed; Case No. 7875 (Majuro) which was opened on November 29, 1999 and remains open. A divorce decree was granted on August 7, 2007; Case No. 14384 (Majuro) which was opened on August 17, 2007 and remains open. A Guardianship decree was granted on August 22, 2007; Case No. 11947 (Majuro) which was opened on February 8, 2005 and remains open. All activity ceased in this case file in 2005 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 11767 (Majuro) which was opened on November 5, 2004 and closed in 2008. A support order was granted on January 16, 2006; Case No. 9324 (Majuro) which was opened on April 1, 2002. A petition was filed on April 11, 2002 and the client could not be located. A stipulated dismissal was granted on March 11, 2008; Case No. 9770 (Yap) which was opened on September 22, 2003 and remains open. All activity ceased in this case file in 2003 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 18365 (Chuuk) which was opened in 2004 and remains open. All activity ceased in this case file in 2004 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 18342 (Chuuk) which was opened on June 16, 2004 and remains open. All activity ceased in this case file in 2004 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 14111 (Chuuk) which was opened on December 8, 2000 and remains open. All activity ceased in this case file in 2000 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 93-536 (Kosrae) which was opened on July 14, 1993 and remains open. All activity ceased in this case file in 1996 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; and Case No. PN 87-331 (Kosrae) which was opened on September 28, 1987 and remains open. All activity ceased in this case file on May 19, 1993 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed.

MLSC should take corrective action and review all open cases to identify those that cannot be timely closed. Those cases identified as dormant should be closed in such a manner that they are not reported to LSC in future CSR submissions.

Comments to the DR by the Marianas office stated that this statement is correct as far as it goes, but it omits a salient point: the Kemp's case file shows that on 4/10/2008, the Directing Attorney added a note to the e-case record, flagging the case for work by the advocate and noting it had

not been worked on recently. MLSC did not identify the case number they are referencing in their comments to the DR.

Further comments to the DR stated that MLSC is thankful to the monitors for pointing out our problems regarding dormant staff case files and those which were untimely closed. MLSC wants to assure LSC that the program is taking corrective action to review all open cases and identifying those that cannot be timely closed, and the staff case files identified as dormant are being closed and will not be reported to LSC, according to comments to the DR. Further comments to the DR stated that MLSC is very hopeful that their efforts to deploy the Kemp's case management system in all the offices soon will further help ensure that legal work is being done and cases are closed in a timely manner.

Comments to the DR stated that MLSC will not report to LSC in future CSR data submissions any of the case files identified in the LSC DR as dormant or lacking documented legal assistance. MLSC is taking steps to provide effective follow-up and oversight review of all files on a periodic basis to ensure that staff case files are not dormant and will further ensure that legal assistance provided is documented by reviewing all files at the time of closing, according to comments to the DR.

**Finding 11: Sample 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.

MLSC is in substantial compliance with the requirements of the CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. However, one set of duplicate cases were noted. *See* open Case Nos. 10712 and 10578 (Majuro). These cases were

opened in 2003 and the client has since expired. There is no evidence of legal assistance in the files and the cases are dormant. Both cases should be closed administratively and not reported to LSC in the CSR data submission.

No comments were provided to this finding.

**Finding 12: 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.

Review of MLSC's accounts payable vendor list and detailed listing of certain general ledger expense accounts revealed that no prohibited payments or contributions were made during the review period. Further, discussions with program management confirmed this and indicated that MLSC is not involved in any prohibited political activities.

The limited review of accounting records and documentation for the period January 2008 through February 2009 and interviews with staff disclosed that MLSC has not expended any grant funds, or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b).

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

It was noted that the former Directing Attorney was involved in political activities while working for MLSC during a time period prior to the OCE review. We were advised that he was an elected Senator and was actually only present in the Republic of the Marshall Islands during campaign season and when the legislature was in session, the remainder of the time he lived in his house in Texas. We were further advised that he did not claim pay for time he was out of the country, but nevertheless, he only worked on his cases during the limited time he was in country. In addition, it should be noted this situation occurred during the tenure of the prior MLSC Executive Director. LSC will deal with this issue under separate cover.

No comments were provided to this finding.

**Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably

might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

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

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

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

The Yap office has in its priorities the handling of tort cases and other cases which may be considered fee-generating. Being an insular area – a state made up of a grouping of small islands – there is not a lot of options for the people of Yap to turn to if they need legal assistance.<sup>16</sup> The Directing Attorney explained that there is only one private attorney practicing on the island – a state senator who does not typically take these cases. Accordingly, the program will take these cases basically to ensure the clients can obtain insurance benefits. In these cases, the program does not seek, nor collect, any attorneys' fees. Because of these exigencies, OCE recommends MLSC include these facts in the priority statement for the office (or any office which makes the taking of such cases a priority) and/or attaching a statement from the Executive Director explaining these circumstances and acknowledging MLSC will not be seeking to claim, collect or retain attorneys' fees.

This was also the case in the Chuuk and Pohnpei offices – as can be seen by the office priorities. While none of the cases reviewed implicated the fee-generating regulation, we were assured by the staff that it does not seek out these cases.

As with other offices, the Majuro office provides representation in tort [fee-generating] cases. We were advised by the two trial judges we interviewed that Majuro probably has at most 10 private practitioners and several of these are retired and/or not present in Majuro all the time. The program indicated it does not seek attorneys' fees or a recovery of fees from the clients in these cases. Moreover, in some of these cases, the client is not seeking monetary damages.

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<sup>16</sup> *See* the December 26, 2007 letter from Benjamin D. Tured to Danilo A. Cardona: "There are still no attorneys in private practice on four of the eight islands where we have offices." (Emphasis in original) at page 3.

No comments were provided to this finding.

**Finding 14: A limited review of MLSC's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

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

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

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

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

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

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

forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

The Accounting Guide for LSC Recipients provides that in order to maintain an adequate internal control structure, accounting duties should be segregated to ensure that no individual simultaneously has both the physical control and the record keeping responsibility for any asset, including, but not limited to, cash, client deposits, supplies and property. Duties must be segregated so that no individual can initiate, execute, and record a transaction without a second independent individual being involved in the process.

From a limited review of the charts of accounts, detailed general ledger and trial balances for the period January 1, 2007 through July 31, 2008, observations of the physical locations of all offices, and from interviews with staff, MLSC does not appear to be engaged in any restricted activity which would violate 45 CFR Part 1610.

No comments were provided to this finding.

**Finding 15: MLSC has been granted a complete waiver of the Private Attorney Involvement (“PAI”) requirement pursuant to 45 CFR § 1614.6(b).**

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

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

achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

Pursuant to 45 CFR § 1614.6 (b), MLSC has been granted a complete waiver of the PAI requirement because of the unavailability of qualified private attorneys.

No comments were provided to this finding.

**Finding 16: MLSC is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.**

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

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

The review of accounting records, detailed general ledger for the year 2008 through March 2009, along with discussions with program management disclosed that MLSC is in compliance with 45 CFR § 1627.4(a).

No comments were provided to this finding.

**Finding 17: MLSC is not in compliance with 45 CFR Part 1635 (Timekeeping requirements).**

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or

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

The review of 18 advocates' timekeeping records (selected from six of the MLSC offices), for February 2009, disclosed that the records are electronically and contemporaneously kept in the Marianas and Palau office only. The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c). Two offices, Majuro and Pohnpei, had yet to submit their timekeeping records. However, the remaining offices that manually keep timekeeping records are not in complete compliance with the requirements of 45 CFR Part 1635; clients are not being identified either by name or case number and for matters or supporting activities, an identification of the category of action on which the time was spent must be recorded. MLSC expects to have installed the new ACMS in all offices by 2010. MLSC should take corrective action and have the manually kept timekeeping records identify clients either by name or case number and for matters or supporting activities, an identification of the category of action on which the time was spent, as required by 45 CFR Part 1635. MLSC confirmed it would do so by internal correspondence of May 1, 1996.

The review of five advocates' timekeeping records for the period of September 16-30, 2008 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

Comments to the DR stated that MLSC will make sure that this required corrective action is strictly complied with.

**Finding 18: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

Except as provided by LSC regulations, recipients may 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. 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).

A limited review of MLSC fiscal records, the 2007 Audited Financial Statement, and interviews with the Executive Director and the General Accountant Comptroller evidenced that there were no attorneys' fees awarded, collected, or retained for cases serviced directly by MLSC.

None of the sampled files reviewed contained a prayer for attorneys' fees. Discussions with the Executive Director and fiscal review also confirmed that MLSC is not involved in this prohibited activity.

No comments were provided to this finding.

**Finding 19: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

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

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

No comments were provided to this finding.

**Finding 20: 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 sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that MLSC is not involved in this prohibited activity.

No comments were provided to this finding.

**Finding 21: 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).<sup>17</sup>

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

No comments were provided to this finding.

**Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

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

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

No comments were provided to this finding.

**Finding 23: 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.

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<sup>17</sup> 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).

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

No comments were provided to this finding.

**Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).**

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

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

No comments were provided to this finding.

**Finding 25: 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.<sup>18</sup> This restriction has been contained in all subsequent appropriations acts.<sup>19</sup> This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, nor documentation reviewed such as community education materials and program literature, indicated program involvement in such activity. Discussions with the Executive Director also confirmed that MLSC is not involved in this prohibited activity.

No comments were provided to this finding.

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<sup>18</sup> *See* Section 504(a)(18).

<sup>19</sup> *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).

**Finding 26: 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 advocatc, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

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

No comments were provided to this finding.

**Finding 27: 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 rcviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that MLSC was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

No comments were provided to this finding.

**Finding 28: Bank reconciliations for January and February 2009 were reviewed and were found to be performed in a timely and accurate manner.**

The bank reconciliations for the operating client trust fund and investments accounts were reviewed and found to be reconciled timely and approved. However, there were checks outstanding on the operating account since March 2007, August 2007, and June 2008. MLSC should establish a policy that any checks that are outstanding for a period of six months are reviewed. The matter should be investigated and a new check issued, the check voided, or some other overt act taken to address the matter.

No comments were provided to this finding.

**Finding 29: MLSC does not have an Accounting Manual. In addition, MLSC's Personnel Manual needs updating.**

MLSC lacks an Accounting Manual. MLSC should take corrective action and implement an Accounting Manual as required by the Accounting Guide for LSC Recipients. Two copies of an Accounting Manual were provided to MLSC for guidance in this process. MLSC should review and update all their policies and procedures and incorporate them into its Office Policies Binder.

A cursory review of the Personnel Manual disclosed a need for updating as the last revision was conducted in 1991. In addition to requiring revision, the manual also needs to be enforced, *e.g.*, MLSC has a policy referring to Rules Governing Conflict of Interest and Nepotism, but a mother and daughter were employed as an assistant to the accountant and accountant, respectively. This failure to follow policy resulted in the theft of an estimated \$5,500 from the client trust fund account in the Marianas office. Only \$700 was recovered. The missing funds were discovered when MLSC implemented an automated accounting system, hired an independent accountant for this task, and hired a new general accountant. The LSC Office of the Inspector General ("OIG") was informed of the theft in September 2007 via email by the Office of Program Performance. MLSC has had no communication from the OIG since then.

Comments to the DR stated that MLSC wants to assure LSC that they are taking corrective action to implement an Accounting Manual. Thanks to the monitoring visit, MLSC now realizes that it was a problem not having an Accounting Manual, but were little confused, however, about the statement that MLSC does not have a Policies and Procedures Manual, according to comments to the DR. Further comments to the DR stated that MLSC does have a MLSC Office Policies Binder containing such manuals and policies as the Personnel Manual, Client Financial Eligibility Policy, and the Client Service Manual. The comments stated that any guidance with regards to this requirement that LSC could provide would be most appreciated. Additional comments to the DR stated that MLSC also realized that the Personnel Manual may need to be further revised, but noted that the last revision was done in November 2006, instead of 1991 as indicated in the DR.

Comments to the DR stated that MLSC is already taking steps to develop and implement an Accounting Manual and to update all policies and procedures and incorporate them into its Office Policies Manual.

LSC has modified Finding 29 to reflect that MLSC does indeed have a Policies Manual. Thus, all MLSC needs to do, as stated it would do in its comments to the DR, is to update its policies and procedures, where needed, and incorporate the updated material into its Office Policies Binder.

**Finding 30: MLSC has adequate segregation of duties, adequate internal controls, and adequate controls with the payroll system.**

A limited review of the internal controls and the review of payments disclosed that MLSC has good segregation of duties, internal controls and adequate control with the payroll system considering the limited number of staff in the administrative office. Every quarter a Certified Public Accountant (“CPA”) visits MLSC to review accounting records and prepare a quarterly financial statement with the exception of the fourth quarter that is replaced by the December 31, Audited Financial Statement (“AFS”) being prepared by the Independent Public Accountant. However, several payments reviewed disclosed that supporting documents need to be stamped as paid in order to avoid duplicate payments and bank reconciliations should be dated after being reviewed and signed.

No comments were provided to this finding.

**Finding 31: MLSC is not in compliance with 45 CFR Part 1629 (Bonding of recipients).**

45 CFR Part 1629 requires that any program which receives Corporation funds that is not a government, or an agency or instrumentality thereof, shall carry fidelity bond coverage at a minimum level of at least ten (10) percent of the program’s annualized LSC funding level for the previous fiscal year. No coverage carried pursuant to this part shall be at a level less than \$50,000.

The review of records and interviews with the Executive Director and the general accountant disclosed that MLSC does not carry fidelity bond coverage. The Executive Director stated that he was not aware of this requirement and he was going to look into it. OCE was informed via email on April 14, 2009, that the Executive Director had discovered that Kemper Insurance discontinued its Bond Division and apparently MLSC was having difficulty finding a company that offers bonding insurance. The Executive Director indicated that he is pursuing the matter and has contacted Complete Equity Markets to find an insurance company that provides such coverage in Saipan. MLSC should take corrective action to comply with 45 CFR Part 1629 Bonding of Recipients.

Comments to the DR stated that MLSC continues to search for a company that is willing to write this kind of insurance and will inform LSC of the out (sic) of their search.

**Finding 32: MLSC salary advance policy requires an extraordinary circumstance to grant a salary advance, and salary advances are granted when vacation is requested.**

The review of records disclosed that presently salary advances are provided when staff is leaving on vacation and such advances are to be repaid by payroll deduction within two pay periods after returning from vacation. A review of accounting records verified that such policy is followed. However, without a definition of what constitutes extraordinary circumstances, salary advances for taking vacations does not appear to be an extraordinary circumstance.

Salaries and a portion of benefits are being charged to LSC funds and a portion of benefits and all other operating expenses are being charged to non-LSC funds as disclosed in the 2007 Audited Financial Statements and in interviews with the Executive Director and the General Accountant. Total LSC funding is approximately 33% of all funding.

It is recommended that MLSC review its salary advance policy in order to define what extraordinary circumstances merit a salary advance.

No comments were provided to this finding.

**Finding 33: While LSC regulations do not require MLSC to apply the standard citizenship and alien eligibility tests in the service area, the program is obtaining citizenship attestations and reviewing for alien eligibility status.**

Since the passage of the first LSC Act in 1974 and the reauthorization in 1977, the status of the area served by MLSC has changed over the years from the Trust Territories status to independent nations (except for the Northern Marianas).<sup>20</sup> In addition, during the time since the last LSC reauthorization, the Congress has added certain restrictions to LSC funding which require attestation of US citizenship and verification of eligible alien status for program clients, as applicable.<sup>21</sup> Because of inequalities in access to legal assistance (for example, a Yapese client

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<sup>20</sup> It should be noted that persons born in Guam (as well as Puerto Rico, the CNMI, and the Virgin Islands) are American citizens; those born in American Samoa are American nationals. An American national is either a citizen or someone who "owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(21), (22). Citizenship is derived either from the Fourteenth Amendment to the Constitution ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States . . .") or from a specific statute that confers citizenship on the inhabitants of an area that, although not a state, is under the sovereignty of the United States. Such legislation has been enacted for Puerto Rico (8 U.S.C. § 1402); the Virgin Islands (8 U.S.C. § 1406); Guam (8 U.S.C. § 1407); and the CNMI (sec. 303 of the Covenant, as approved by the Congress). [Under section 302 of the Covenant, authority exists for certain CNMI residents to have elected to become nationals but not citizens of the United States.] LSC provides service to all these areas, with the current exception of American Samoa.

<sup>21</sup> In brief, the LSC Act initially defined the Trust Territories as a "State" for the purposes of the Act. The Act thus conferred eligibility for LSC-funded legal services to Trust Territory residents to the same extent provided to residents of any other State of the United States. Section 1002(8) of the LSC Act; 42 U.S.C. 2996a(8). Beginning in 1983, with the adoption of a new statutory restriction on legal assistance to aliens, LSC interpreted this to be a modification to the LSC Act and now required special treatment for persons who were the citizens of the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands. Following 1983, there were modifications to the status of the Trust Territories and the Citizens of these Territories formally became citizens of foreign nations. Following these changes, LSC adopted new revisions in 1989 which provided "...All citizens of these entities [also including citizens of the Commonwealth of the Northern Marianas] are eligible to receive legal

could receive assistance in Yap, but not in Hawaii), LSC revised the regulations in 2007. The new provision states:

§ 1626.10 Special eligibility questions

(a)(1) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(2) All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.

Accordingly, pursuant to § 1626.26(a)(1) MLSC is not obligated to comply with the verification of eligibility requirements of 45 CFR Part 1626.

Nevertheless, the offices of MLSC were reviewing all applicants for citizenship (of the local country) and verifying documents for persons who were not either US citizens or citizens of the home country.

Most case files reviewed had proper attestation of Palau or US citizenship. However, the screening of non-citizens is problematic. In the past, what the Palau office has done is to have clients scratch out "U.S." on the citizenship attestation and substitute "Palau" or "FSM." Both of these may be served by MLSC. The problem is that in other instances, MLSC has been having Filipino citizens also attest to their Philippine citizenship and to have Indonesians and others do the same. This was discussed with the Directing Attorney and explained that while citizenship may be attested to; eligible alien status must be verified and documented. Until there is a more formal resolution of this matter, the Palau office will review and document the citizenship of eligible aliens and will end the practice of having these persons attest to their alien status.

No comments were provided to this finding.

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assistance, provided they are otherwise eligible under the [LSC] Act." § 1626.10(a). At that time it was further interpreted by LSC that while citizens of these entities were fully eligible for legal assistance without the burden of documenting eligible alien status by Recipients providing legal assistance in these jurisdictions, they could not be represented by Recipients which were not operating in these jurisdictions. In 1997, the LSC Office of the Inspector General ("OIG") challenged this interpretation, however LSC persisted without modification. In 2006, the U.S. Senate also unanimously and formally went on record as challenging LSC's interpretation. Subsequently, LSC formally withdrew its prior interpretation and acknowledged it was wrong:

In light of the above, it would appear that LSC's interpretation of the CFA Act, while permissible, was not the only permissible reading and perhaps, in hindsight, not the best available reading.

Id. At 52,490.

#### IV. RECOMMENDATIONS<sup>22</sup>

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

1. Establish a policy that would require investigation of all outstanding checks over six months old. The policy should require that the checks should be reissued or canceled, based upon the findings of the investigation; and
2. Review its salary advance policy in order to define what extraordinary circumstance merit a salary advance.

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<sup>22</sup> Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

By contrast, the items listed in “Required Corrective Actions” must be addressed by the program, and will be enforced by LSC.

## V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that staff case files are not dormant by providing effective follow-up and oversight and that those case files identified in this report that are dormant are not reported to LSC in future CSR data submissions. As part of this corrective action, a review of all files on a periodic basis should be conducted;

Comments to the DR by the Marianas office stated that this statement is correct as far as it goes, but it omits a salient point: the Kemp's case file shows that on 4/10/2008, the Directing Attorney added a note to the e-case record, flagging the case for work by the Advocate and noting it had not been worked on recently. MLSC did not identify the case number in their comments to the DR.

Further comments to the DR stated that MLSC is thankful to the monitors for pointing out their problems regarding dormant staff case files and those which were untimely closed. MLSC wants to assure LSC that we are taking corrective action to review all open cases and identifying those that cannot be timely closed, and the staff case files identified as dormant are being closed and will not be reported to LSC, according to comments to the DR. Further comments to the DR stated that MLSC is very hopeful that their efforts to deploy the Kemp's Case Management System to all the offices soon will further help ensure that legal work is being done and cases are closed in a timely manner.

Comments to the DR stated that MLSC will not report to LSC in future CSR data submissions any of the case files identified in the LSC DR as dormant or lacking documented legal assistance. MLSC is taking steps to provide effective follow-up and oversight review of all files on a periodic basis to ensure that staff case files are not dormant and will further ensure that legal assistance provided is documented by reviewing all files at the time of closing, according to comments to the DR.

2. Ensure that the legal assistance provided is documented in the case file and that those case files identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all files at the time of closing is necessary;

Comments to the DR stated that MLSC will not report to LSC in future CSR data submissions any of the case files identified in the LSC DR as dormant or lacking documented legal assistance. MLSC is taking steps to provide effective follow-up and oversight review of all files on a periodic basis to ensure that staff case files are not dormant and will further ensure that legal assistance provided is documented by reviewing all files at the time of closing, according to comments to the DR.

3. Ensure that the size of the household is properly documented when determining financial eligibility;

Comments to the DR stated that MLSC has already informed all of its offices to make sure that size of the household is properly documented when determining financial eligibility.

4. Ensure compliance with 45 CFR Part 1629 (Bonding of recipients);

Comments to the DR stated that MLSC continues to search for a company that is willing to write this kind of insurance and will inform LSC of the out (sic) of their search.

5. Develop and implement an Accounting Manual as required by the Accounting Guide for LSC Recipients;

Comments to the DR stated that MLSC wants to assure LSC that they are taking corrective action to implement an Accounting Manual. Thanks to the monitoring visit, MLSC now realizes that it was a problem not having an Accounting Manual, but were a little confused however, about the statement that MLSC does not have a Policies and Procedures Manual, according to comments to the DR. Further comments to the DR stated that MLSC does have a MLSC Office Policies Binder containing such manuals and policies as the Personnel Manual, Client Financial Eligibility Policy, and the Client Service Manual. According to comments to the DR, any guidance with regards to this requirement that LSC could provide would be most appreciated. Additional comments to the DR stated that MLSC also realized that the Personnel Manual may need to be further revised, but noted that the last revision was done in November 2006, instead of 1991 as indicated in the DR.

Comments to the DR stated that MLSC is already taking steps to develop and implement an Accounting Manual and to update all policies and procedures and incorporate them into its Office Policies Manual.

LSC has modified Finding 29 to reflect that MLSC does indeed have a Policies Manual. Thus, all MLSC needs to do, as stated it would do in its comments to the DR, is to update its policies and procedures, where needed, and incorporate the updated material into its Office Policies Binder.

6. Review and update all policies and procedures and incorporate them into a policies and procedures manual;

Comments to the DR stated that MLSC is already taking steps to develop and implement an Accounting Manual and to update all policies and procedures and incorporate them into its Office Policies Manual.

7. Ensure that the program stamp as paid all supporting documents to avoid duplicate payments as required by the Accounting Guide for LSC Recipients;

Comments to the DR stated that MLSC will ensure that they stamp as paid all supporting documents to avoid duplicate payments as required by the Accounting Guide for LSC recipients. Further comments to the DR stated that MLSC will make sure that all the required corrective action identified in RCA Nos. 8, 9 and 10 are strictly complied with.

8. Ensure that the program date bank reconciliations, after reviewing and signing, as required by the Accounting Guide for LSC Recipient;

Comments to the DR stated that MLSC will make sure that this required corrective action is strictly complied with.

9. Ensure that timekeeping records 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 as required by 45 CFR Part 1635; and

Comments to the DR stated that MLSC will make sure that this required corrective action is strictly complied with.

10. Ensure that the scope of the representation to be provided to the client is contained in the retainer and that the retainer has been executed.

Comments to the DR stated that MLSC will make sure that this required corrective action is strictly complied with.



# MLSC

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AND ENFORCEMENT

2009 NOV 23 P 4: 14

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November 13, 2009

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

Re: MLSC's comments to LSC's Draft Report for the March 13-27, 2009  
On-Site Review of MLSC.

Dear Mr. Cardona:

Micronesian Legal Services Corporation ["MLSC"] respectfully submits the following Comments below to the Legal Services Corporation's ["LSC"] Draft Report for the March 13-27, 2009 on-site Case Service Report/Case Management System ["CSR/CMS"] Review of MLSC.

We would like to thank LSC for the on-site review. We learned a great deal and benefited tremendously from the review and appreciated the professionalism with which the LSC team conducted the on-site review. We, too, consider our stewardship of the taxpayer's dollars as one of our most important responsibilities and we try to conduct the affairs of MLSC and take the services we provide to our clients very seriously.

We would also like to assure LSC that MLSC management and Board will take deliberate steps to deal with all required corrective actions and will remain vigilant in addressing all issues brought to our attention.

Below are our comments to some of the findings in the LSC's on-site review Draft Report.

**Finding No 3:** The Draft Report on page 11, reads: "However, in some instances MLSC did not record the number of persons in the household. See closed 2007 Case Nos. ... 14952(Yap)...."

**Comments:** The Yap office comments that closed 2007 Case No. 14952, cited as lacking any record of the number of persons in the household, was in error, because the office does not have such a case file number.

**Finding No. 8:** The Draft Report on page 15, reads: "However, there were six staff case files reviewed which contained no description of the legal assistance provided. See ... closed 2008 Nos. ... 08E-2000990 (Marianas). See also, ... closed 2006 Case No. MS11336 (Marianas)."

**Comments:** The Marianas office comments that closed 2008 Case No. 08E-2000990 is actually a "deselected" as a "duplicate" case, and the advocate who deselected the case had failed to change the acceptance code from S [staff] to R [rejected] on their Kemp's Case Management System. The problem is more a situation with learning the new Kemp's system than failure to comply with the CSR Handbook. The staff has already learned how to better utilize the Kemp's system and to prevent the problem from happening again. And closed 2006 Case No. MS11336, has a hard-copy closing memo in the file that was written by an advocate who is no longer with the program. The closing memo indicates that the client sought help for non-payment of Worker's Compensation benefits and had received them by the first meeting with the advocate; however, the advocate then researched the timeliness of the payments and the law to determine whether there was any further remedy for the delay in payment and advised the client of her findings. This all appears on the closing memo.

The Marianas office believes that these cases should be deleted from the examples of CSR cases without legal description of assistance.

**Finding No. 10:** The Draft Report on page 16, reads: "The following example case files, and those similar to them, should not be reported to LSC in MLSC's CSR data submission and should be closed administratively: Case No. MS11685 (Marianas) which was opened on July 20, 2006 and remains open. The case notes indicate that all activity ceased in 2006 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed."

**Comments:** The Marianas office comments that this statement is correct as far as it goes, but it omits a salient point: the Kemp's case file shows that on 4/10/2008, the Directing Attorney added a note to the e-case record, flagging the case for work by the Advocate and noting it had not been worked on recently.

MLSC is thankful to the monitors for pointing out our problems regarding dormant staff case files and those which were untimely closed. We want to assure LSC that we are taking corrective action to review all open cases and identifying those that cannot be timely closed, and the staff case files identified as dormant are being closed and will not be reported to LSC. We are very hopeful that our efforts to deploy the Kemp's Case Management System to all the offices soon will further help ensure that legal work is being done and cases are closed in a timely manner.

**Finding No. 29:** "MLSC does not have an Accounting Manual or a Policies and Procedures Manual. In addition, MLSC's Personnel Manual needs updating."

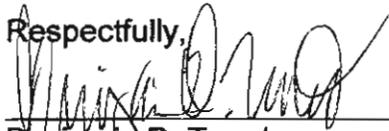
**Comments:** MLSC wants to assure LSC that we are taking corrective action to implement an Accounting Manual. Thanks to the monitoring visit, we now realize that it was a problem not having an Accounting Manual. We are a little confused however, about the statement that MLSC does not have a Policies and Procedures Manual. We do have a MLSC Office Policies Binder containing such manuals and policies as the Personnel Manual, Client Financial Eligibility Policy, the Client Service Manual, etc.<sup>1</sup> Any guidance with regards to this requirement that LSC could provide us would be most appreciated.

We also realize that the Personnel Manual may need to be further revised, however, the last revision was done in November 2006, instead of 1991.<sup>2</sup>

**Finding No. 31:** "MLSC is not in compliance with 45 CFR Part 1629 (Bonding of recipients)."

**Comments:** Despite its best efforts, MLSC has been unable to find an insurance company that provides this type of coverage in Micronesia. Any guidance with regards to this requirement that LSC could provide us would be most appreciated.

On behalf of the entire MLSC organization, we want to thank LSC, the Office of Compliance and Enforcement, and the On-Site Review Team for the Review and the opportunity to comment on the Draft Report.

Respectfully,  
  
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<sup>1</sup> MLSC Office Policies Binder has 21 different chapters containing various manuals and policies and procedures.

<sup>2</sup> During its regular meeting on November 27 & 28, 2006, the MLSC Board approved the following proposed amendments to its Personnel Manual: 1) Part B.2.d – setting limit on starting salary for trial counselors; 2) Part B.4.d & e – setting policies and procedures regarding *Per Diem*; 3) Part B.4.f – setting policies regarding reimbursement for the use of a private automobile in the conduct of MLSC business; 4) Part B.6 – prescribing that no MLSC employee shall accept employment or work in government while still employed by MLSC; 5) Part D.6. – setting policies regarding legal holidays; 6) Part F – prescribing that no amendment or modification to the Personnel Manual shall be made without the consent of the MLSC Board.



MLSC

www.mlscnet.org

original. J. Green  
cc: Loren

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**BY E-MAIL & AIR MAIL**

December 4, 2009

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3333 K Street, NW 3<sup>rd</sup> Floor  
Washington, DC 20007-3522

Re: MLSC's further comments to LSC's Draft Report for the March 13-27, 2009 On-Site Review of MLSC.

Dear Mr. Cardona:

Micronesian Legal Services Corporation ["MLSC"] respectfully wishes to address the corrective actions one through ten (1-10) provided in the Legal Services Corporation's ["LSC"] Draft Report for the March 13-27, 2009 on-site Case Service Report/Case Management System ["CSR/CMS"] Review of MLSC.

We apologize for failing to specifically address the ten required corrective actions described in the LSC Draft Report. It goes without saying that MLSC takes its responsibility to ensure that it is in full compliance with all LSC rules and regulations very seriously and, in fact, have already started taking steps to correct all the areas identified in the LSC Draft Report requiring corrective action.

Required Corrective Action [RCA] Nos. 1 and 2.

MLSC will not report to LSC in future CSR data submission any of the case files identified in the LSC Draft Report as dormant or lacking documented legal assistance. MLSC is taking steps to provide effective follow-up and oversight review of all files on a periodic basis to ensure that staff case files are not dormant and will further ensure that legal assistance provided is documented by reviewing all files at the time of closing.

RCA No. 3.

We have already informed all the offices to make sure that size of the household is properly documented when determining financial eligibility.

RCA No. 4.

We continue to search for a company that's willing to write this kind of insurance for MLSC. We will inform LSC of the out of our search.

RCA Nos. 5 and 6.

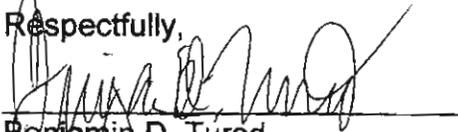
MLSC is already taking steps to develop and implement an Accounting Manual and to update all policies and procedures and incorporate them into its Office Policies Manual.

RCA Nos. 7, 8, 9, and 10.

MLSC will ensure that we stamp as paid all supporting documents to avoid duplicate payments as required by the Accounting Guide for LSC recipients. And we will make sure that all the required corrective actions identified in RCA Nos. 8, 9 and 10 are strictly complied with.

MLSC considers its stewardship of the taxpayer's dollars very seriously and, consistent therewith, will take all deliberate steps necessary to deal with all required corrective actions identified in the LSC Draft Report and will remain vigilant in addressing all issues brought to its attention.

Respectfully,



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