



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Merrimack Valley Legal Services, Inc.
October 6-10, 2008
Case Service Report/Case Management System Review

Recipient No. 122090

I. EXECUTIVE SUMMARY

Finding 1: MVLS' 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: MVLS' intake procedures and case management system support the program's compliance related requirements.

Finding 3: MVLS 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: MVLS 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. However, MVLS was not conducting asset screening in accordance with its current asset policy.

Finding 5: MVLS is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

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

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

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

Finding 9: MVLS 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 10: MVLS' 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.).

Finding 11: MVLS is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. However, there were three case files which were dormant and are not CSR reportable.

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

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

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

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

Finding 16: MVLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, indirect costs are not being allocated based on reasonable operating data pursuant to 45 CFR § 1614.3(e)(1)(i) In addition, MVLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

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

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

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

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

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

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

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

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

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

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

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

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

Finding 29: MVLS is not in compliance with 45 CFR § 1610.5 (Notification).

Finding 30: Bank reconciliations are performed timely.

Finding 31: Credit card payments are adequately recorded.

Finding 32: Some improvements are needed for internal controls.

II. BACKGROUND OF REVIEW

On October 6 through 10, 2008, 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 Merrimack Valley Legal Services, Inc. ("MVLS"). 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 MVLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed MVLS for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 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); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 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 MVLS' upper and middle management, staff attorneys and support staff. MVLS' 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 August 15, 2008. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed 132 case files which included nine targeted files.

MVLS is a legal aid program which provides free legal advice and representation in civil legal cases to low-income and elderly residents of parts of Essex and Middlesex counties. Since 1974 MVLS has represented victims of domestic violence, kept clients from becoming homeless, represented children with special needs, represented elderly and disabled people in obtaining disability, welfare, and medical benefits, helping people making the transition from welfare to work, and those denied unemployment compensation.

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

In its 2006 submission to LSC, MVLS reported 666 closed cases and in 2007 MVLS reported 756 closed cases. MVLS' 2006 self-inspection certification revealed a 0.1% error rate in CSR reporting. One case was identified which not timely closed. There were cases excluded as a result of the case review done prior to the self-inspection because case closure was not timely and after initial intake and the client was unable to be contacted and/or never returned.

MVLS' 2007 self-inspection certification revealed a 0.0% error rate in reporting. There were cases excluded as a result of the case review done prior to the self-inspection because the client never returned after intake.

By letter dated August 11, 2008, OCE requested that MVLS 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 August 15, 2008 ("closed 2008 cases"), and a list of all cases which remained open as of August 15, 2008 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by MVLS staff and the other for cases handled through MVLS' PAI component. MVLS 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. MVLS 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, and 2008 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 MVLS agreement of September 17, 2008, MVLS 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.² MVLS' management and staff cooperated fully in the course of the review process. As discussed more fully below, MVLS 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.

² 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.

At the conclusion of the visit on October 10, 2008, OCE conducted an exit conference during which MVLS 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 donor notification. In addition, MVLS was advised that its Accounting Manual needed updating. MVLS 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.

MVLS was provided a Draft Report ("DR") and given an opportunity to comment. After an extension of time was granted, MVLS' comments were received on February 12, 2009. The comments have been incorporated in this Final Report, where appropriate, and are affixed as an exhibit.

III. FINDINGS

Finding 1: MVLS' 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, MVLS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, *see* closed 2008 Case No. 005L00001244 (ACMS indicates that the case was open, but the case file indicates that the case was closed on December 12, 2005).

Discussions with MVLS' CSR-responsible staff revealed that MVLS uses the "R", or "rejected", status code as one of its methods to de-select cases that have been accepted for services but cannot be reported in a CSR for certain reasons. Use of a "rejected" code has been explicitly disallowed pursuant to the CSR Handbook (2008 Ed.), § 3.5. Footnote 15 of the CSR Handbook (2008 Ed.) states:

If a program uses a "rejected" code, it shall be used only for applicants who do not qualify for program services or who are otherwise not accepted for services by the program. Cases for eligible clients that have been accepted for services cannot subsequently be coded as "rejected." Programs should have the ability to distinguish between cases that were initially rejected and cases that were initially accepted but could not be reported as closed cases in the CSR.

As such, MVLS needs to either create another deselect methodology or rely on its other currently used methodologies instead of using the "R" code for deselected cases. If the program has not accepted the case, use of the rejected code is appropriate. However, it is recommended that a "deselect for CSR reporting" type of field be added to the ACMS interface so as to clearly mark cases that were accepted for services but cannot be reported to LSC in the CSR submission.

Comments to the DR stated that MVLS will rely on its currently used methodologies instead of using the "R" code for deselected cases.

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

MVLS' intake procedures fully support the program's compliance-related requirements. The following represents a description of MVLS' intake procedures, including the screening procedures of both Neighborhood Legal Services and MVLS' Lowell office.

Since November 2005, MVLS has participated in a centralized regional telephone intake system with two other Massachusetts legal services providers, Neighborhood Legal Services (“NLS”) and the Children’s Law Center (“CLC”). NLS and CLC are not LSC recipients and neither entity is subject to LSC regulations and restrictions. Although all three legal services providers participated in the creation of the regional telephone intake system, NLS administers the actual intake screening system for itself and MVLS from its Lawrence, MA office.³

MVLS intake is conducted both by telephone through NLS and in-person in its Lowell office every day from 9:00 a.m. to 5:00 p.m. MVLS estimated that more than 90% of its intake is performed by telephone. If an applicant calls the centralized intake line for services, the call is routed to an available receptionist in one of the three regional offices in Lawrence (NLS employees), Lowell (MVLS employee), and Lynn (NLS employees) for a preliminary eligibility screening, including a preliminary region-wide conflict check. The receptionist will ask questions including the applicant’s name, address, birth date, and brief description of the legal problem. The receptionist then will find an available NLS intake screener to conduct a full intake screening interview.

The intake staff enters all applicant information directly into the shared ACMS. According to staff, NLS has to share certain parts of MVLS’ ACMS in order to easily transfer intake information but that there is a firewall between the programs so that NLS does not have access to MVLS’ client case information. Intake staff also uses a “wiki”, collaborative software that is easily updated and is used as a replacement for static intranets, to provide guidance to intake screeners throughout the intake process. The intake wiki includes written substantive law protocols which track program priorities, etc. to determine if a particular case should be sent to MVLS, remain with NLS, or referred elsewhere. In addition, the wiki includes the different eligibility standards for both NLS and MVLS (e.g. NLS assists with ineligible aliens and class actions). Generally, applicants speak to intake staff on their first call, but sometimes call volumes require call-backs which usually occur before the end of the following day. The NLS intake staff that conducts full intakes is supervised by an NLS intake supervisor. The intake supervisor indicated that the intake system had caps on the number of a particular type of cases that could be accepted based on priorities and resources. If a type of case was full, applicants are instructed to call back the following week. Applicants with legal emergencies are screened and provided with immediate services, if applicable.

If a case falls within MVLS protocols, intake staff will complete the intake and export the case file to the MVLS site (the separate part behind the firewall) and will also notify MVLS staff via e-mail of the new case. Once the case is referred to MVLS, it is closed for NLS purposes. Upon receipt of all intake referrals, MVLS staff reviews them for eligibility, priorities, and legal issues. If MVLS staff notes an issue or mistake with any intake, they will contact NLS for an explanation. MVLS’ Associate Director reviews all family law intakes and generally assigns them within two to three days. MVLS’ office manager reviews all other cases and usually assigns them within 24 hours. Because NLS generally screens most cases, MVLS rejects fewer cases than the average LSC program. However, in the event a case is rejected, MVLS staff will

³ While CLC uses the regional telephone system, it does its own intake due to its specialized work.

notify the applicant. Advocates assigned to a case have the authority to decide the scope of the representation.

Cases are also screened directly by MVLS staff in the event an applicant walks-in to the program's Lowell office. For walk-in applicants, the MVLS receptionist performs a full intake screening using the intake wiki and inquiring about the applicant's legal issue, income and asset eligibility, citizenship or alien status, etc. If a walk-in applicant manifests as financially ineligible, outside of MVLS program priorities, or is not a legal alien, the case is referred to NLS. In the event the case is acceptable for MVLS services, the receptionist sends an e-mail to the office manager or the Associate Director for family law regarding the case. The office manager or Associate Director will then assign the case to a specific case handler.

When interviewed, staff was aware of income guidelines, program priorities, citizenship/eligible alien requirements, and the VAWA 2006 Amendments. Intake staff for both NLS and MVLS does not inquire as to prospective income. A spend-down is used in situations where an applicant is above 125% but below 200% of the Federal Poverty Guidelines ("FPG") and both the original and the adjusted income are captured in the ACMS. Government benefits exemptions are not used by either MVLS or NLS. There has been no representation of groups in recent times. No defaults related to eligibility were noted in the ACMS.

NLS intake staff did not have copies of the CSR Handbook (2008 Ed.). MVLS sole intake staff also did not have a copy of the CSR Handbook (2008 Ed.) but did receive a training on the new Handbook's changes in January 2008. Changes to intake screening or other LSC requirements are conveyed to NLS and to MVLS in the staff meetings when needed. MVLS sends closing letters to all clients and uses a closing checklist to ensure all compliance requirements are evidenced within closed case files. All closed cases are reviewed by the office manager for compliance before administrative closing.

Asset screening questions asked by intake staff do not fully capture the assets set out in MVLS' asset policy. If the program decides to keep its current asset policy, intake staff needs to ask additional questions regarding household assets in order to be compliant with 45 CFR Part 1611. MVLS' asset policy includes several standard exclusions, including vehicles and residence, but it also lists some assets exempt from attachment under state and federal law. This list of exclusions includes, among other items, "Bibles and books to \$200 total", "sewing machine to \$200", "burial plots, tombs, and church pew", "cooperative association shares to \$100", and "two cows, 12 sheep, two swine, and four tons of hay", "furniture to \$3,000" and "bank or credit union deposits to \$500.00."

According to interviews, intake staff is not inquiring about Bibles, sewing machines, cooperative association shares, or cows, sheep, swine, and hay – primarily, intake staff is only asking about those assets listed in the ACMS (vehicles, residence, stocks, bonds, bank account, etc.). To be in compliance with its own asset policy and 45 CFR Part 1611, staff must ask about the equity value of the assets listed in the policy that have a value limit. If that value limit exceeds what is stated as an exemption, then it must be applied to the applicant's total household assets. For example, under current policy, any applicant with four cows would have to count the value of two of them as non-excluded assets.

As such, MVLS must revisit its asset policies and procedures to ensure they are in compliance with all LSC regulations and requirements, including but not limited to those noted above. Training for all staff is required on any asset policy and/or procedures revisions that occur as a result.

An additional issue regarding compliance with intake screening procedures is related to the program's domestic violence outreach project.⁴ The paralegal staffing the outreach uses paper intake forms while at court to screen applicants for eligibility. However, upon review, the program's paper intake form appears to have been in use for some time without revision. MVLS should update its paper intake form to mirror its ACMS intake form.

Comments to the DR stated that the MVLS paper intake form has been updated to mirror its ACMS intake form.

Finding 3: MVLS 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.⁵ *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 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

⁴ There is another planned MVLS outreach project specifically targeted at Cambodians in connection with the Lowell County Health Center that has not started yet. In the event paper intake forms are used, they should mirror the ACMS intake form.

⁵ 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.

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.

Sampled cases evidenced that MVLS is in substantial 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, *see* closed 2006 Case No. 05L00001311, closed 2008 Case No. 08LO0000063 and open Case No. 5LO0001244 evidencing that the applicant's income exceeded 125% of the FPG and lacking any documentation of the authorized exceptions pursuant to 45 CFR § 1611.5. These case files, and others like them, are not CSR reportable.

No comments were made by MVLS to this finding.

Finding 4: MVLS 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. However, MVLS was not conducting asset screening in accordance with its current asset policy.

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.⁶ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

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

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

⁶ 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.

The policy approved by the MVLS Board of Directors on December 26, 2006 establishes the asset ceiling on a graduated scale based on the size of the household assets and cannot exceed \$8,000 for a household of one person and \$20,000 for an eight-person household. 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 state or federal law, including health aids, jewelry up to \$1,075 fair market value; group annuity policy; group life insurance policy; life or endowment policy; life annuity contracts which says it is exempt; private retirement benefits; public employee pensions and saving bank employee pensions; bank deposits to \$125.00; food or cash for food to \$300.00; beds, bedding and health units; needed clothing; Bibles and books to \$200.00 total; sewing machine to \$200.00; burial plots, tombs and church pews; two cows, 12 sheep, two swine and four tons of hay; furniture to \$3,000; and bank or credit union deposits to \$500.00. The Executive Director or designee may waive the asset ceiling under unusual circumstances.

Sampled case files reviewed revealed that MVLS 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),⁷ CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Comments to the DR stated that MVLS' asset policies and procedures are in compliance with all LSC regulations and requirements. However, MVLS will change its asset policy to make it easier to administer, according to comments to the DR. Further comments to the DR stated that the specific exclusions mentioned refer to state law and were intended for use with bankruptcy cases and not to add a layer of complexity to the intake process.

Finding 5: MVLS is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

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

⁷ 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.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁸ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

MVLS is in compliance with 45 CFR § 1626.6, and all files reviewed were in compliance. There were some instances where the citizenship attestations were not dated. MVLS is reminded to have the applicant date the citizenship attestation.

No comments were made by MVLS to this finding.

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

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

MVLS is in compliance with the requirements of 45 CFR § 1611.9.

No comments were made by MVLS to this finding.

⁸ *See* Kennedy Amendment at 45 CFR § 1626.4.

⁹ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

Finding 7: MVLS 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 MVLS is in compliance with the requirements of 45 CFR Part 1636.

No comments were made by MVLS to this finding.

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

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

Prior to the visit, MVLS 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.”

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

No comments were made by MVLS to this finding.

Finding 9: MVLS 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.

MVLS is in substantial compliance with the CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. There were four staff case files reviewed which contained no description of the legal assistance provided. *See* closed 2007 Case Nos. 07-OL-000306 and 07-OL-000307, and closed 2006 Case Nos. 06-OL-000235 and 06-JA-9900307.

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

Comments to the DR stated that MVLS reviews all files at the time of closing to insure that the legal assistance provided is documented in the case file. This has been a long standing MVLS policy and any errors in reporting were inadvertent, according to comments to the DR.

Finding 10: MVLS' 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.),

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 MVLS' 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 2007 Case No. 07-LO-0000550. This case involved a client who appeared in court with a program paralegal and the case was closed as "Court Decision." MVLS was not counsel of record and closing the case as a court decision was incorrect. Discussion with MVLS staff in the course of case review revealed that using the "Court Decision" closing code for such cases has been the practice of the program but that it would be changed immediately. In addition, discussion revealed some confusion regarding the new closing codes, particularly "Extensive Service" and how it might affect the use of closing

code “Other.” As such, it is recommended that MVLS provide staff training regarding the correct use of closing codes consistent with Chapter VIII of the CSR Handbook (2008 Ed.).

Comments to the DR stated that all paper forms reflect the new closing codes of Chapter VIII, CSR Handbook (2008 Ed.).

Finding 11: MVLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. However, there were three staff case files which were dormant and are not CSR reportable.

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).¹⁰ 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).

MVLS is substantial compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a), however there were three staff case files which were dormant.

The following case files, and those similar to them, should not be reported to LSC in MVLS’ CSR data submission and should be closed administratively. Examples include: Case No. 05LO0001244 which was opened on November 18, 2005 and remains open. The case notes indicate that all activity ceased on December 12, 2005 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Case No. 07LO0000263 which was opened on April 6, 2007 and remains open. All activity ceased in this case file on May 1, 2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; and Case No. 06LO0001383 which was opened on February 8, 2006 and remains open. All activity ceased in this case file on October 7,

¹⁰ 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).

2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed.

MVLS 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 stated that MVLS will insure that dormant files are not reported to LSC in future CSR data transmission by periodically reviewing all files, sorted by date of last activity on Legal Files.

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

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

When a recipient provides 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.

MVLS is in compliance with the requirements of the CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases and there were no duplicate case files noted.

No comments were made by MVLS to this finding.

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

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party

office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

Review of MVLS' 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 MVLS is not involved in any prohibited political activities.

The limited review of accounting records and documentation for the period January 2007 through July 31, 2008 and interviews with staff disclosed that MVLS 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 MVLS is not involved in such activity. Discussions with the Executive Director also confirmed that MVLS is not involved in these prohibited activities.

No comments were made by MVLS to this finding.

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

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

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

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

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

No comments were made by MVLS to this finding.

Finding 15: A review of MVLS' 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 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, MVLS does not appear to be engaged in any restricted activity which would violate 45 CFR Part 1610.

No comments were made by MVLS to this finding.

Finding 16: MVLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, indirect costs are not being allocated based on reasonable operating data pursuant to 45 CFR § 1614.3(e)(1)(i). In addition, MVLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

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

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

staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

The Audited Financial Statement (“AFS”) for year ending December 31, 2007 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). A separate statement “schedule of program expenses private bar referral program” reported the total PAI expenditures in the amount of \$109,893, which translates to 13.7% of the total basic field grant (\$800,191).

The review of the year ending statement “schedule of program expenses private bar referral program” for the FYE December 31, 2007 disclosed that MVLS allocates the salaries of attorneys and paralegals on actual time based on timekeeping records as required by 45 CFR § 1614.3(e)(1)(i). Several costs allocated to PAI were reviewed and were found to be related to PAI activities, in compliance with 45 CFR § 1614.3(e).

Indirect costs were tested and found to be allocated on the basis of estimates and a percentage. MVLS should allocate its indirect costs related to PAI activities and non-personnel costs on the basis of PAI related activities, i.e. PAI salaries over total MVLS salaries, PAI closed cases over total MVLS closed cases, etc., as required by 45 CFR § 1614.3(e)(1)(i).

According to the PAI plan submitted by MVLS, all financial systems and procedures with the program shall conform to the LSC Audit and Accounting guide for Recipients and Auditors and shall further account for administrative overhead and other support costs.

MVLS’ PAI plan is designed to ensure that MVLS involves private attorneys in the delivery of legal assistance to eligible clients through an open delivery model for pro bono.

NLS is a non LSC funded legal services provider and operates a PAI program in southern Essex County in coordination with MVLS. More than 3,000 attorneys are eligible to participate in the PAI programs in the Northern Middlesex and Essex Counties. One-hundred eighty-four attorneys participate in MVLS PAI program and about the same number participate in NLS PAI program.

MVLS primarily refers bankruptcy and family law cases to its PAI attorneys for representation. These are almost exclusively full service cases that substitute for lack of in-house capacity (bankruptcy) or that complement a substantial in-house practice (family). If the staff referring the case has the available resources, the case will be forwarded to the PAI attorney as soon as possible, or else the case will be placed on a waiting list. Once a referral is successful, a referral packet is sent which includes limited client information and a case acceptance report (“CAR”). The PAI attorney reviews the CAR and returns it to MVLS within 30 days from the date of referral. Once the report is returned, it is docketed in the case file. The MVLS staff keeps and maintains records on all PAI attorneys, listing their specific areas of skill and subject matter expertise and will make referrals accordingly. Conflict checks are made prior to intake and all PAI attorneys will certify on each CAR that the referral is not a conflict.

Following referral of a case, the file is scheduled for a six month inquiry concerning the status of the referral. MVLS uses a tickler system. The PAI paralegal, who is also the office manager and computer responsible person, e-mails a weekly tickler list of cases and referrals to the PAI attorney. The attorney files status reports based on these reminders and queries, which insures that referrals remain timely and cases are prodded in an organized manner.

The MVLS retainer agreement in referral cases creates a three party agreement between the program, the client and the referral attorney. Upon completion of the case, the attorney must provide MVLS with copies of all pleadings, orders and decisions. The PAI staff reviews the case prior to closing and the Executive Director will complete the final review of the cases, and the client is asked to evaluate the services provided.

Sampled PAI case files reviewed were in compliance with the LSC Act, LSC regulations and the CSR Handbook, 2001 Edition and 2008 Edition, with the exception of three cases. *See* closed 2007 Case No. 07L0000338 (case lacking documented legal assistance), closed 2006 Case No. 05L000006 (case lacking documented legal assistance) and closed 2006 Case No. 04-L00001422 (case lacking documented legal assistance). These case files, and those similarly situated, should not have been reported to LSC in the CSR data submission. MVLS must take steps to ensure that all PAI cases reported in the CSR data contain documentation of legal assistance provided by the private attorney.

Comments to the DR stated that MVLS' indirect costs related to PAI activities and non-personnel costs will be allocated on the basis of PAI activities.

Finding 17: MVLS 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 and trial balances, along with discussions with program management disclosed that MVLS is in compliance with 45 CFR § 1627.4(a).

No comments were made by MVLS to this finding.

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

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The review of 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).

No comments were made by MVLS to this finding.

Finding 19: 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 the MVLS fiscal records, the 2007 Audited Financial Statement, and interview with the Comptroller evidenced that there were no attorney fees awarded, collected, and retained for cases serviced directly by MVLS.

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

No comments were made by MVLS to this finding.

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

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

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

No comments were made by MVLS to this finding.

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

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

None of the 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 MVLS is not involved in this prohibited activity.

No comments were made by MVLS to this finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹¹

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

No comments were made by MVLS to this finding.

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

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

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

No comments were made by MVLS to this finding.

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

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

¹¹ 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 MVLS is not involved in this prohibited activity.

No comments were made by MVLS to this finding.

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

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

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

No comments were made by MVLS to this finding.

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹² This restriction has been contained in all subsequent appropriations acts.¹³ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

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

No comments were made by MVLS to this finding.

¹² *See* Section 504(a)(18).

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

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

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

No comments were made by MVLS to this finding.

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

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that MVLS 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 made by MVLS to this finding.

Finding 29: MVLS is not in compliance with 45 CFR § 1610.5 (Notification).

45 CFR §1610.5 (Notification) and Program Letter 96-3, dated June 14, 1996, require LSC recipients to notify in writing all funding sources of the application of LSC prohibitions and conditions to the non-LSC funder's funding and donations. LSC regulations and guidelines state that recipients may not accept funds from non-LSC sources unless they provide written notice to the funder that their funds may not be used in any manner inconsistent with the LSC Act or Section 504 of LSC appropriations act.

A review of MVLS' donor notification and acknowledgement letters found that MVLS does not notify its non-LSC funding sources and donors of the application of LSC restrictions and conditions to the non-LSC funds.

Comments to the DR stated that MVLS will provide written notice of the LSC prohibitions to all donors of funds in excess of \$250.00.

Finding 30: Bank reconciliations are performed timely.

Bank reconciliations for the operating payroll and client trust funds accounts for July, August and September 2008 were reconciled timely and approved; however, bank statements are being delivered to the same person performing this task. Procedures should be developed which would allow the bank statements to be delivered unopened to a staff person for review, who has no accounting responsibilities, and then forwarded to the person performing the reconciliations duties.

Comments to the DR stated that MVLS will separate the check signing and reconciliation responsibilities of its Comptroller. MVLS has four administrators and its collective bargaining agreement limits the procedures that can be performed by non-administrative union members, according to comments to the DR. Further comments to the DR stated that MVLS will segregate the duties of the Comptroller for proper internal control by replacing the Comptroller with the Office Manager as the manager responsible for reconciling the monthly bank statements.

Finding 31: Credit card payments are adequately recorded.

A review of the credit card payments and other payments in 2007 through July 31, 2008 disclosed that the recordkeeping and approvals were adequately recorded. All requests for payments and the documentation are carefully reviewed by the Comptroller and by the Executive Director. The use of the Visa credit card is very limited, with four payments between 2007 and 2008.

No comments were made by MVLS to this finding.

Finding 32: Some improvements are needed for internal controls.

To establish an adequate internal control structure, MVLS' Accounting Manual must be updated. The Comptroller indicated that many changes have occurred, but these changes have not been incorporated into the Accounting Manual, the last revision being in 1992. MVLS' Finance Committee should update the Accounting Manual and present it to the full Board for approval.

The review of the internal controls revealed that too many accounting functions fall under one individual "the Comptroller" whom is also a co-signer of checks.

Since only one individual, the Comptroller, has accounting responsibilities, MVLS should take action by removing the Comptroller as a co-signer of checks, and have another individual perform the bank reconciliations.

Comments to the DR stated that MVLS will separate the check signing and reconciliation responsibilities of its Comptroller. MVLS has four administrators and its collective bargaining agreement limits the procedures that can be performed by non-administrative union members, according to comments to the DR. Further comments to the DR stated that MVLS will segregate the duties of the Comptroller for proper internal control by replacing the Comptroller with the Office Manager as the manager responsible for reconciling the monthly bank statements.

IV. RECOMMENDATIONS¹⁴

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

1. Make sure all citizenship attestations are dated;
2. Add a “deselect for CSR reporting” type of field to the ACMS interface so as to clearly mark cases that were accepted for services but cannot be reported in the program’s CSRs;
3. Provide additional training to staff and strengthen its supervisory procedures to avoid dormancy and timeliness issues;
4. Use an alternative closing, such as “X”, for deselected cases, rather than using a CSR closing code;
5. Make sure that bank statements are delivered unopened to either the Executive Director or the Associate Director for review and then forwarded to the Comptroller to perform the reconciliations; and
6. Provide copies of CSR Handbook to NLS intake staff and all MVLS staff.

¹⁴ 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, MVLS 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 stated that MVLS will insure that dormant files are not reported to LSC in future CSR data transmission by periodically reviewing all files, sorted by date of last activity on Legal Files.

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 MVLS reviews all files at the time of closing to insure that the legal assistance provided is documented in the case file. This has been a long standing MVLS policy and any errors in reporting were inadvertent, according to comments to the DR.

3. Either create another deselect methodology or rely on its other currently used methodologies instead of using the “R” code for deselected cases;

Comments to the DR stated that MVLS will rely on its currently used methodologies instead of using the “R” code for deselected cases.

4. Provide written notification of the prohibitions which applies to donors of funds in excess of \$250.00 pursuant to 45 CFR § 1610.5(a)(b);

Comments to the DR stated that MVLS will provide written notice of the LSC prohibitions to all donors of funds in excess of \$250.00.

5. Allocate MVLS’ indirect costs related to PAI activities and non-personnel costs on the basis of PAI related activities, i.e. PAI salaries over total MVLS salaries, PAI closed cases over total MVLS closed cases, etc., as required by 45 CFR § 1614.3(e)(1)(i);

Comments to the DR stated that MVLS’ indirect costs related to PAI activities and non-personnel costs will be allocated on the basis of PAI activities.

6. Require that the Board Finance Committee take immediate action by having MVLS update the Accounting Manual, outlining the specific procedures to be followed by MVLS to comply with the Accounting Guide for LSC Recipients;

MVLS is in the process of updating the Accounting Manual to conform with the Accounting Guide for LSC Recipients. MVLS expects to complete this for presentation to the Board Finance Committee for review and for approval by the Board of Directors at its April meeting.

7. Establish an adequate internal control as required by the Accounting Guide for LSC Recipients. Remove the Comptroller as co-signer of checks and have another individual perform bank reconciliations, as stated in the Accounting Guide for LSC Recipients, in appendix VII “Accounting Procedures and Internal Control Check List” under Section J-4 “Segregation of Duties;”

Comments to the DR stated that MVLS will separate the check signing and reconciliation responsibilities of its Comptroller. MVLS has four administrators and its collective bargaining agreement limits the procedures that can be performed by non-administrative union members, according to comments to the DR. Further comments to the DR stated that MVLS will segregate the duties of the Comptroller for proper internal control by replacing the Comptroller with the Office Manager as the manager responsible for reconciling the monthly bank statements.

8. Revisit its asset policies and procedures to ensure they are in compliance with all LSC regulations and requirements. Training for all staff is required on any asset policy and/or procedures revisions that occur as a result;

Comments to the DR stated that MVLS’ asset policies and procedures are in compliance with all LSC regulations and requirements. However, MVLS will change its asset policy to make it easier to administer, according to comments to the DR. Further comments to the DR stated that the specific exclusions mentioned refer to state law and were intended for use with bankruptcy cases and not to add a layer of complexity to the intake process.

9. Update its paper intake form to mirror its ACMS intake form;

Comments to the DR stated that the MVLS paper intake form has been updated to mirror its ACMS intake form; and

10. Update any paper forms to reflect the new closing codes of Chapter VIII, CSR Handbook (2008 Ed.).

Comments to the DR stated that all paper forms reflect the new closing codes of Chapter VIII, CSR Handbook (2008 Ed.).