



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Massachusetts Justice Project
August 1-4, 2011
Case Service Report/Case Management System Review

Recipient No. 122107

I. EXECUTIVE SUMMARY

Finding 1: MJP's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were three (3) instances of inconsistent information in the ACMS and the sampled case files.

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

Finding 3: MJP maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. However, MJP's income eligibility policy is not in compliance with 45 CFR Part 1611 and must be revised.

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

Finding 5: MJP is not in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Numerous sampled files lacked written citizenship attestations. Further, MJP is not in compliance with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5.

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

Finding 7: MJP 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: MJP is not in compliance with CSR Handbook CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). A number of sampled files reviewed did not contain a description of the legal assistance provided.

Finding 10: The sampled files reviewed demonstrate that MJP's application of the CSR case closing categories are generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). However, the files evidenced (2) patterns which resulted in many instances of case closure errors.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 regarding the timely closing of cases. Case review revealed one (1) sampled case that was untimely closed.

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

Finding 13: Review of MJP’s policies and the list of attorneys who have engaged in the outside practice of law revealed that MJP is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). OCE’s review of MJP’s accounting and financial records for the review period and discussions with program management did not uncover any indicators of non-compliance with the requirements of 45 CFR Part 1608.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 16: A limited review of MJP’s accounting and financial records indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 17: MJP 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, a few exceptions were noted and some improvement is required. OCE’s review of Private Attorney Involvement (“PAI”) fiscal activities concluded that MJP complies with the accounting and fiscal requirements of 45 CFR 1614, except that a paralegal who does PAI work does not record and capture the actual PAI hours worked.

Finding 18: MJP 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 19: MJP is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 20: OCE’s review found MJP’s internal control policies and procedures compare favorably to LSC’s Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Chapter 3-Accounting Guide for LSC Recipients), except that MJP needs to complete the updating of its accounting policies and procedures manual.

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys’ fees).

Finding 22: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 23: 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 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 30: 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)).

II. BACKGROUND OF REVIEW

On August 1 through 4, 2011, 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 Massachusetts Justice Project ("MJP"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by two (2) attorneys and one (1) fiscal analyst. Both attorneys 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 MJP has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed MJP 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 1604 (Outside Practice of Law); 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)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 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 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of MJP's upper and middle management, staff attorneys and support staff. MJP'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, 2009 through June 30, 2011. 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 a total of 176 case files.

MJP is an LSC recipient that operates two (2) offices in Massachusetts. MJP operates a toll free intake and referral hotline, providing centralized telephone intake advice and referral to five (5)

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

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

counties in western and central Massachusetts. MJP is partners with Western Massachusetts Legal Services (“WMLS”) and Legal Assistance Corporation of Central Massachusetts (“LACCM”) to provide for more in depth services. MJP’s offices are located in Holyoke and Worcester. MJP’s executive staff consists of an Executive Director, two (2) Managing Attorneys, two (2) PAI Coordinators, a Fiscal Analyst, and a Human Resources Officer. MJP received a grant award from LSC in the amount of \$1,664,935 for 2011, \$1,736,728 for 2010, and \$1,608,471 for 2009.

For 2010, MJP reported 5,643 closed cases in its CSR data. MJP’s 2010 self-inspection report indicated a 3.3% error rate with exceptions noted in five (5) files out of 152 reviewed. The problem areas identified were: telephone cases in which citizenship/alien status was not noted, non-telephone cases which lacked citizenship attestation or documentation of alien eligibility, and cases in which there was no written evidence of advice or representation.

For 2009, MJP reported 6,102 cases closed in its CSR data. MJP’s 2009 self-inspection report indicated a 3.3% error rate with exceptions noted in five (5) files out of the 150 cases reviewed. The problem areas identified were: telephone cases which lacked a citizenship attestation or documentation of alien eligibility, cases in which there was no written evidence of advice or representation, and cases where case closure was not timely.

By letter dated June 1, 2011, OCE requested that MJP provide a list of all cases reported to LSC in its 2010 CSR data submission (“closed 2010 cases”), a list of all cases reported in its 2009 CSR data submission (“closed 2009 cases”), a list of all cases closed between January 1, 2011 and June 30, 2011 (“closed 2011 cases”), and a list of all cases which remained open as of June 30, 2011 (“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 MJP staff and the other for cases handled through MJP’s PAI component. MJP was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). MJP was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2009, 2010, and 2011 closed and 2011 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 MJP agreement of June 16, 2011, MJP staff maintained possession of the file and discussed with the team the nature of the client’s legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the

assistance provided.³ MJP's management and staff cooperated fully in the course of the review process. As discussed more fully below, MJP 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.

At the conclusion of the visit on August 4, 2011, OCE conducted an exit conference during which MJP was made aware of the areas in which a pattern of non-compliance was found. No distinction between 2011, 2010, and 2009 cases was found. OCE cited instances of non-compliance in the areas of execution of citizenship attestations, documentation of legal advice, application of closing codes, and allocation of PAI time and PAI oversight.

MJP 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.

By letter dated January 3, 2012, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the August 1-4, 2011 CSR/CMS visit. MJP was asked to review the DR and provide written comments. By letter dated January 24, 2012, MJP's comments were received. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

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

III. FINDINGS

Finding 1: MJP’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were three (3) instances of inconsistent information in the ACMS and the sampled case files.

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 (2008 Ed.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, MJP’s ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were three (3) instances of inconsistent information in the ACMS and the sampled case files.

One (1) sampled file contained an inconsistent problem code definition and two (2) sampled files contained inconsistent staff or PAI designations. *See* closed 2011 Case No. 10 MJP 02743 (ACMS described the case as a “2-Collections” but the file reflected that MJP obtained a bankruptcy discharge for the client. The more accurate problem code definition would be “1-Bankruptcy/Debtor Relief”). *See also*, Closed 2009 Case No. 09 MJP 16683 (ACMS indicated file was a PAI case and the documented legal assistance was provided by MJP staff. There was insufficient information in the file to determine whether the private attorney provided legal assistance) and closed 2010 Case No. 10 MJP 05516 (ACMS indicated file was a PAI case and the documented legal assistance was provided by MJP staff as the client failed to contact the private attorney). Both of the cases contained inconsistent PAI and staff designations because the client failed to contact the private attorney. The client was provided with legal assistance prior to referral to the private attorney; thus both cases should have been closed as staff cases.

In response to the DR, MJP stated that the three (3) instances of non-compliance were oversights on the part of staff.

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

Intake

MJP operates a centralized intake system (“hotline”). The hotline staff screens cases and advocates provide advice and brief services to eligible clients in five (5) counties in central and western Massachusetts. MJP’s offices are located in Holyoke and Worcester. The MJP intake process also refers cases to two (2) non-LSC funded programs: Legal Assistance Corporation of Central Massachusetts (“LACCM”) and Western Massachusetts Legal Services (“WMLS”).⁴

⁴ On July 1, 2011, LACCM and WMLS consolidated to form Community Legal Aid (“CLA”).

The majority of intake is conducted by telephone although walk-in applicants are accepted. Hotline hours of operation are Monday through Thursday, 9:30 am- 4:00 pm and Friday 9:30am- 1:00 pm. Emergency intake is conducted on an as-needed basis. MJP utilizes LegalFiles as its ACMS.

The telephone intake process is initiated by calling MJP's toll-free number. An intake screener asks the applicant a series of questions in order to determine eligibility (the nature of the legal problem, priorities, conflicts, citizenship, income, assets and household composition). Income eligibility screening for applicants whose income exceeds 125% of the Federal Poverty Guidelines ("FPG") involves a consideration of the authorized exemptions. Applicants with income over 200% of the FPG are deemed ineligible for services and are referred to outside agencies. Information provided by the applicant is entered into LegalFiles by the screener, thereby creating an electronic case file. Questions regarding prospective income are asked by intake staff. No defaults were observed in the ACMS. MJP has adopted the government benefits exemption for those applicants who are applying for or seeking to maintain public benefits.

If an applicant is deemed eligible for assistance, the screener forwards the application to the Supervising Attorney of the Day ("SAD"). It is the SAD's responsibility to review all new applications for assistance and determine whether the applicant can be provided with assistance. If the case is deemed a Priority One case, the application is put into the telephone queue and will be handled by an intake advocate for immediate assistance. If the case is deemed a Priority Two case, the applicant is given an office appointment to speak to an intake advocate at a later date.

Priority One cases are emergency cases that fall into the following categories: Housing (lockout, utility shutoff, receipt of 48 hours' notice, appeal deadline within two (2) days, hearing or foreclosure sale scheduled within five (5) days); Benefits (homeless, no food or money, appeal deadline within two (2) days, hearing within five (5) days); and Family (applicant wanting shelter and/or TRO due to recent domestic violence, child kidnapping, appeal within two (2) days, or hearing within five (5) days). Priority Two cases are non-emergency cases and applicants are given an office appointment to return at a later date.

When a walk-in applicant comes into the office requesting assistance, an intake screener asks a series of preliminary questions (nature of their legal problem, name of opposing party, income and assets for financial eligibility). If the answers are deemed sufficient, the applicant is given an application to complete. The application consists of information necessary to screen the applicant for eligibility (income, assets, citizenship, household composition, and name of opposing party). The applicant is required to sign the application; certifying the information provided is truthful and accurate. If the case is categorized as a Priority One case, the screener forwards it to the SAD, who assigns it to an intake advocate for immediate assistance. In the Worcester office, a walk-in applicant with a Priority One case is directed to a telephone to speak to an intake advocate. The Holyoke office conducts outreach at the Western Mass Housing Court Clinic. The clinic is held one day a week and serves clients in Hampden County with eviction cases. Clients fill out paper intake forms and their information is brought back to the office and entered into Legal Files.

The Worcester office operates a “lawyer for the day” program in the Worcester Housing Court, serving clients with eviction cases. The lawyer for the day utilizes paper intake and limited retainer agreement forms to conduct intake and accept cases at the housing court. Applicants fill out paper intake forms and their information is brought back to the office and entered into LegalFiles.

Supervising attorneys are responsible for closing cases and selecting the appropriate case closings codes. Managing Attorneys and supervising attorneys are also responsible for oversight of open cases.

In response to the DR, MJP stated that the narrative for this finding contains a detailed description of MJP’s intake system. MJP also stated that except for some small details which are non-consequential to the outcome of this finding, the description provided is generally accurate.

Finding 3: MJP is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines (“FPG”). However, MJP’s income eligibility policy is not in compliance with 45 CFR Part 1611 and must be revised.

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) 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* 45 CFR § 1611.5(b) 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), 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 (2008 Ed.), § 4.3.

⁵ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

Financial Eligibility Policy

MJP submitted a copy of its current Financial Eligibility Guidelines (“Policy”) to LSC prior to the review, however, the copy provided was not dated, nor did it indicate whether it was approved by the MJP Board of Directors.⁶ The Policy sets forth eligibility requirements to receive LSC funded assistance. The Policy is not in compliance because it fails to specify “that only individuals and groups determined to be financially eligible under the recipient’s financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.” This provision is required to be part of all financial eligibility policies for LSC funded legal assistance pursuant to 45 CFR § 1611.3(b). Also, the Policy does not contain a definition of the term “household,” leading to uncertainty as to whether there is a consistent determination of household size for individuals applying for services.

Upon review, it appears that the Policy references a former version of 45 CFR Part 1611, as it is replete with outdated regulatory references. For example, the Policy sets the annual maximum income ceiling at “less than 125% FPG,” and under current regulations the maximum income ceilings is set not to “exceed 125% FPG.” The Policy provides that MJP accepts applicants for services if they are trying to secure benefits provided by a “government program for the poor” and the current regulation provides for the acceptance of applicants for service if they are trying to secure benefits provided by a “program for low income individuals and their families.”⁷ Thirdly, LSC abandoned the distinction between “liquid and non-liquid” assets, however, MJP’s Policy still makes a distinction between these two (2) types of assets.⁸

MJP’s Policy lists factors staff may consider in determining financial eligibility if the applicant’s household income is between 125-200% FPG (i.e., the applicant is “over income”). Many of these factor considerations are partial statements of regulatory provisions upon which they are based which results in MJP factors being broader than LSC regulations allow. For example, LSC regulations provide that the program may consider “*unreimbursed* medical expense *and medical insurance* premiums” expenses, however, MJP’s Policy is broader than the LSC regulation, because it permits MJP to consider all “medical expenses.” Similarly, LSC regulation authorizes programs to consider *non-medical* expenses associated with age or disability as a factor; however, MJP’s Policy is broader than LSC regulation in that it permits MJP to consider all “expenses” associated with age or disability. Additionally, LSC authorizes the consideration of “current taxes” as a factor; however, MJP’s Policy restricts the consideration of taxes to “taxes from prior years.”⁹ Programs may adopt factor policies that are more restrictive than LSC regulations. MJP is not required to consider current taxes as an exception factor. Finally, MJP’s Policy provides that the Executive Director may waive the “annual maximum income limits if a person’s gross income is primarily committed to medical or nursing home expenses,” however, MJP’s income waiver policy is broader than LSC regulation because LSC regulation allows for waiver if a person’s gross income is primarily committed to medical or nursing home expenses, only if the applicant would otherwise be financially eligible for services “after excluding the

⁶ The Executive Director indicated that the financial eligibility policy has been approved by the Board; however, he was not sure whether the policy has been reviewed and approved within the last three (3) years as required by 45 CFR § 1611.3(a).

⁷ See MJP Eligibility Guidelines, (a)I(B) and 45 CFR § 1611.5(a)(1).

⁸ See MJP Eligibility Guidelines, (a)I(D).

⁹ See MJP Eligibility Guidelines, (a) I(B)(1)(b) and (e) and 45 CFR § 1611.5(a)(4)(ii), (v) and (vi).

portion of the applicant's income which is committed to medical or nursing expenses.”¹⁰ MJP may consider exempting “vehicles used for transportation” rather than automobiles “required for work or to enable the applicant to obtain food, medical care, or other goods and services necessary to sustain life.”¹¹

Moreover, MJP failed to document that it followed its Policy that it consider in every case “the availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought,” the “consequences for the individual if legal assistance is denied,” and “other significant factors related to financial inability to afford legal assistance” in the files reviewed.¹² Although the first two (2) considerations are not required by LSC and the third consideration does not have to be considered in every case, LSC requires programs to screen each applicant in accordance with its board-approved policy and if the policy includes the above-referenced considerations, they must be the subject of inquiry and consideration in determining whether an applicant is eligible for assistance with LSC funds.

LSC recommends that MJP review its Policy to determine whether it will continue to require intake screeners to adhere to the current income policy considerations. Further, LSC recommends that MJP revise its income policy considerations to focus questioning on those considerations which are most likely to screen out households whose financial status circumstances would allow them to hire a private attorney.¹³

Documentation of Financial Eligibility in the Sampled Cases

All sampled cases contained evidence of financial eligibility screening. One (1) sampled case for an applicant whose income was between 125-200% FPG, (“over-income”) failed to contain documentation that MJP determined financial eligibility based upon a consideration of one (1) or more of MJP’s financial eligibility factors. *See* Open Case No. 11 MJP 0124 (file reflected household income of 152% FPG; contained no documentation that any expenses or other factors had been considered). This case and other similar cases should not be reported to LSC in the CSR submission; nor charged to LSC funds.

The remainder of the other 21 sampled “over income cases” documented the factors that were considered, which were medical care, child care, employment expenses, fuel expense, expenses associated with age or infirmity, fixed debts (secured and unsecured)(not specified), health expense, “Mass. Health” expense, unreimbursed medical, medical premiums, and work related tools. However, none of these sampled files contained documentation as to the specific amount

¹⁰ *See* MJP Eligibility Guidelines, (a)I(B)(3) and 45 CFR § 1611.5(a)(2).

¹¹ *See* MJP Eligibility Guidelines, (a)I(D)(2)(e) and 45 CFR § 1611.3(d)(1).

¹² *See* MJP Eligibility Policy,(a)I(C) which notes that “if an applicant for legal services has been tentatively deemed to be eligible because of low income, the program will consider these factors, as well as those set forth in in the prior subsection, before making a final determination regarding the applicant’s financial need for free legal representation.”

¹³ The Executive Director indicated that he would initiate a thorough review of MJP’s financial policies. In reviewing these policies, the Executive Director should review the assets exempt under state and federal law to determine if the asset categories excluded by MJP Policy are consistent with the exclusions provided by the State of Massachusetts and federal law.

of the expense that MJP considered. For example, the files failed to contain documentation concerning the type of fixed debt, the specific work tool being used for employment, the nature of the reimbursed medical debt, etc. Although MJP recorded the specific factors it relied on to make a financial eligibility determination in the over-income cases (medical expense, work related tools, fixed debt), it failed to adequately record the specific facts it relied upon during its consideration of the factors. For example, specifically stating in the file that co-pays and prescription drugs costs of \$50.00 per month were noted would be a clear description of the factor taken into consideration. 45 CFR § 1611.5(b) requires programs to document the basis for the financial eligibility determination and to keep such records as may be necessary to inform LSC of the specific facts and factors relied upon to make such determinations. Although the sampled cases contained documentation of the specific factors considered, the files failed to contain documentation of the specific facts MJP relied upon to determine financial eligibility for applicants with household income between 125-200% of the FPG.¹⁴

Of primary concern to OCE was MJP's practice of stating \$0 as the expense associated with the considered factor. *See* Open Case Nos. 10 MJP 08463 (file reflected household income at 152% FPG and factors noted in the file were \$0 medical, transportation and employment expenses), 11 MJP 03512 (file reflected household income at 132% FPG and factors noted in the file were \$0 medical and fuel expenses) and 10 MJP 02649 (file reflected household income at 167% FPG and factors noted in the file were \$0 medical premiums and unreimbursed expenses). Although MJP recorded the specific factors it relied on to make a financial eligibility determination in these over income cases (medical expense, work related tools, fixed debt), its recordation of \$0 as the monetary amount associated with the factors is confusing. The regulation provides that the program, when using the exceptions to justify finding an over-income applicant to be financially eligible, must "keep such records as many be necessary to inform the Corporation of the specific facts and factors relied on to make such determination." If the program applies a factor analysis to determine eligibility, it is not necessary to record the specific dollar amount of the expense considered. However, the particular facts and factors the program relies upon to determine eligibility must be recorded. The particular facts to be recorded is a case-by-case determination (as the determination of an applicant's eligibility is necessarily case-by-case determination.)

See also Closed 2011 Case Nos. 10 MJP 11332 (file reflected household income at 137% of the FPG and documentation in file indicated "\$0" for expenses associated with age or infirmity); 10 MJP 03372 (file reflected household income at 164% of the FPG and documentation in file indicated "\$0" for expenses for work related tools, medical and transportation); 09 MJP 17292 (file reflected household income at 158% of the FPG and documentation in file indicated "\$0"

¹⁴ For example, a single box of decongestants for a cold, a \$20 co-pay for a single doctor's appointment, and \$3,000 in hospital bills for a surgery and hospital stay are all unreimbursed medical expenses. While the latter certainly has a major impact on an applicant's ability to afford legal assistance, the former may not impact the ability to afford legal assistance. Similarly, it might be enough to say that someone who comes in at 126% of FPG has day care and mortgage expenses and, considering those, the recipient found the applicant to be financially eligible; whereas if an applicant comes in at 200% and has no rent or mortgage payments, but only had day care expenses, the program might need to have some more detail to the documentation to explain how significant an expense the day care was (for example if the child has physical disabilities which require specialty care) such that the program found the applicant to be financially eligible.

for medical and transportation expenses); 10 MJP 08010 (file reflected household income at 149% FPG and documentation in file indicated "\$0" for medical expenses); 10 MJP 08594 (file reflected household income at 166% FPG and documentation in file indicated "\$0" for expenses associated with age or infirmity); 10 MJP 08456 (file reflected household income at 171% FPG and documentation in file indicated "\$0" for fixed debt expenses); 10 MJP 11473 (file reflected household income at 142% FPG and documentation in file indicated "\$0" for employment related expenses); 10 MJP 11456 (file reflected household income at 168% FPG and documentation in file indicated "\$0" for transportation expenses); 10 MJP 01847 (file reflected household income at 139% FPG and documentation in file indicated "\$0" for child care expenses), and 11 MJP 02949 (file reflected household income at 160% of the FPG and documentation in file indicated "\$0" for transportation and work related tools expenses).

MJP is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the FPG. However, MJP's practice of recording a factor considered, i.e., medical expenses, and then recording the amount as zero, with nothing more, lacks clarity. A zero amount in the expense field indicates there are no expenses. If there are no expenses, then the exception cannot be used to justify finding an over-income applicant to be financially eligible. MJP is required to document the specific factors and facts, as necessary, that it relies upon to determine financial eligibility for applicants with household incomes between 125-200%.

In response to the DR, MJP stated that it acknowledges that its written financial eligibility policy has not been updated in many years and is no longer in full compliance with 45 CFR 1611. The response also stated that the Executive Director has already brought this matter to the attention of MJP's Board of Directors and the Executive Director is in the process of preparing a revised written financial eligibility policy for their review and approval at the next meeting of the Board on March 19, 2012.

In response to the DR, MJP noted that the narrative cites one (1) case, 11MJP00124, as having income recorded at 152% of FPG with no documentation of any factors that would permit making an exception. This case number, however, matches up with a file wherein the household income was reported at 88% of FPG. MJP questioned whether the case number cited in the report was a typo and asked for clarification or confirmation as to the correct case number. LSC acknowledges that the case cited in the DR is incorrect and the correct case number for the case recorded at 152% of the FPG with no documentation of any factors is 11MJP01254.

In response to the DR, MJP stated there are numerous instances where clients whose household income was recorded as between 125 and 200% FPG were accepted without sufficient documentation as to the actual facts supporting use of one or more of the permissible factors. MJP further stated that up to this point, it had not been MJP's policy to require intake staff to list the specific dollar amount or specific facts that supports use of any factor. In its response to the DR, MJP also stated a program wide meeting will be held on February 10, 2012 at which management will re-train all staff regarding the need to document more specifically the factual basis by which a factor applies.

Finding 4: MJP maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) 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.¹⁵ *See* 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.

Sampled case files reviewed revealed that MJP maintains asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d),¹⁶ and CSR Handbook (2008 Ed.), § 5.4.

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

Finding 5: MJP is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Numerous sampled files lacked written citizenship attestations. Further, MJP is not in compliance with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5.

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

¹⁵ 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.

¹⁶ 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.

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 (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 (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.¹⁷ 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.

MJP is not in compliance with 45 CFR § 1626.6 as there were a number of files that did not document citizenship status or alien eligibility. *See* Closed 2010 Case Nos. 10 MJP 11332, and 10 MJP 01901, and Closed 2009 Case Nos. MJP 20322, 09 MJP 17548, 05E-6003453, and 08 MJP 04422 (each case lacked evidence of a written citizenship attestation). *See also*, Closed 2011 Case Nos. 11 MJP01413, (citizenship certification not completed) and 11 MJP 01930, (no signed citizenship documentation).¹⁸

Finally, MJP is not in compliance with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5, as all but one (1) of the citizenship attestation forms contained in the sampled files, either did not have a date line or the signature line tied to the citizenship attestation. These attestation forms are not in compliance with the requirements of § 5.5 of the CSR Handbook (2008 Ed.), which requires that a citizenship attestation may be contained on a document "provided there is a separate signature line tied only to the citizenship attestation."

In response to the DR, MJP stated that there are two (2) aspects to this Finding. MJP stated that first, the DR cites several closed cases in which the files did not properly document citizenship status or alien eligibility and that these cases mostly involved lack of a written attestation of citizenship where one was required. MJP further stated that, while not an excuse, these instances of non-compliance reflect largely a failure of execution by staff, not the lack of a policy in and of itself. MJP also stated that the requirements of 45 CFR Part 1626 will be reviewed at the upcoming program wide staff meeting on February 10, 2012.

Second, MJP's response stated the DR takes issue with the format of the written citizenship attestation being used. MJP stated that this problem has already been corrected in that they have

¹⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

¹⁸ MJP will contact these two clients in order to get a signed citizenship attestation. If MJP does not obtain the required attestations, they will deselect the case from CSR.

revised their forms to provide a specific attestation of US citizenship followed by signature and date.

Finding 6: MJP 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.¹⁹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Case review demonstrated that MJP is in compliance with the requirements of 45 CFR § 1611.9.

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

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

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

¹⁹ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

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

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

Prior to the visit, MJP provided LSC with a list of its priorities. The priorities are stated as “shelter preservation, family stability and economic security.”

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

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

Finding 9: MJP is not in compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). A number of sampled files reviewed did not contain a 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 (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 (2008 Ed.), § 5.6.

MJP is not in compliance with CSR Handbook (2008 Ed.), § 5.6. Two (2) patterns of error were noted. The first pattern of error came about because legal assistance was not provided to the client, either because the client never met with the attorney or the attorney declined representation. These cases should have been de-selected as no legal work had been performed. *See* Closed 2011 Case Nos. 10 MJP 10660 (file reflects that no legal services provided as case was rejected) and 09 MJP 20411 (client withdrew before legal services could be provided).

See also Closed 2010 Case Nos. 09 MJP 15541 (file fails to document any legal services were provided to client) and 09 MJP 21748 (private attorney declined representation and did not provide legal services) and Closed 2009 Case Nos. 08 MJP 10439 and 08 MJP 00316 (files reflect client failed to contact private attorney and no legal services were provided by MJP staff).

Also See Open Case Nos. 11MJP 00081 (case referred to LACCM, no advice provided, case will be closed as a matter), 11MJP 04458 (no legal advice provided. MJP will send client a seven (7) day letter); 11MJP 04150 (housing court case, no legal advice provided, case will be deselected); and 11MJP04391 (waiting for client to return bankruptcy questionnaire, no legal advice provided, case will be deselected) and Closed 2011 Case Nos. 11MJP 04551 (no legal advice provided, case will be closed as a matter), and 11MJP 05291 (no legal advice provided, case will be closed as a matter).

The second pattern of error dealt with files that failed to contain sufficient documentation of the legal work provided to the client as required by § 5.6 of the Handbook. This pattern of error can be traced to the MJP's Case Disposition Form ("CDF"). The CDF requests private attorneys to check a box to indicate the reason the case was closed.²⁰ This form is insufficient as only the level of service provided to the client is documented. The CSR Handbook requires programs *document the legal assistance provided and then assign the level of service*. The legal assistance documented must be specific to the client's unique circumstances and involve a legal analysis that is tailored to the client's unique factual situation.²¹ The legal assistance provided should meet the criteria of the CSR Closure Categories described in the CSR Handbook--not be the CSR Closure Categories described in the CSR Handbook-- as both the level of service and legal assistance must be recorded in the file.²²

The CDF utilized by private attorneys to document the assistance provided to the client is insufficient to obtain the necessary information needed to meet the requirements of § 5.6 of the CSR Handbook. *See* Open Case Nos. 09 MJP 12941 and 08 MJP 00861 (files document "advice given" but does not describe the advice that was provided): 10 MJP 03445; 10 MJP 05443, 10 MJP 08933, 08 MJP 01312, and 07E-2002430 (status reports indicate "case remains open" and files contains no other documentation concerning the legal services provided). *See also* Closed 2011 Case Nos. 09 MJP 14320 (file contains a CDF which indicates that the private attorney checked that the service provided was "IA-Court decision-Uncontested," however, the file contains no other documentation of the legal services provided to support the IA closing code), and 09 MJP 11353 (file contains a CDF which indicates that the private attorney checked that the service provided was "F-Negotiated Settlement without Litigation," however, the file contains no other documentation of the legal services provided to support the F closing code). *See also* Closed 2010 Case No. 10 MJP 09149 (file documents "private attorney spoke to client" but there is no documentation in the file describing the advice that was provided).

²⁰ The "reason case closed" selections mirror LSC CSR closure codes. The private attorney has the choice of checking A-Counsel and Advice, B-Limited Action, F-Negotiated Settlement without Litigation, G-Negotiated Settlement with Litigation, H-Administrative Agency decision, IA-Court decision Uncontested, IB-Court decision-Contested, IC-Court decision-Appeals, K-Other and L-Extensive Services(not resulting in Settlement of court of Administrative Agency Action) and the form also allows the private attorneys to provide comments (most of the attorneys in the case files reviewed did not provide comments).

²¹ *See* CSR Handbook (2008 Ed.), § 2.2.

²² *See* CSR Handbook (2008 Ed.), § 2.1.

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

MJP's response to the DR stated that the non-compliance issue at the heart of this Finding is one which MJP has been grappling with as an internal matter for many years. MJP stated that the challenge here – as is probably the true with other high volume hotline programs – is getting staff to take the time to document their advice so as to be able to determine upon closing that legal assistance was rendered (as opposed to the provision of legal information). MJP stated that the Hotline staff has a hard time distinguishing between advice and information and MJP continues to train on this distinction as well as the need for case notes to be more specific about what advice was actually provided. MJP also stated that senior staff who review the files and close cases also are trained to reject files where there is not sufficient documentation of legal assistance. MJP also stated that this will also be one of the items reviewed at the upcoming staff meeting. Finally, MJP's response stated that the Executive Director was previously a managing attorney supervising case closings, and that he believes it is an area in which MJP has made great strides in improving compliance over the years.

Finding 10: The sampled files reviewed demonstrate that MJP's application of the CSR case closing categories are generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.) However, the files evidenced two (2) patterns which resulted in many instances of case closure errors.

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 (2008 Ed.), § 6.1.

The files reviewed demonstrate that MJP's application of the CSR case closing categories is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.) However, the files evidenced two (2) patterns of error which resulted in many instances of case closure errors.

Six (6) of the sampled files reflected the incorrect usage of the "F-Negotiated settlement without Litigation" and "G-Negotiated settlement with Litigation" closing codes. *See* closed 2011 Case Nos. 10 MJP 04185, 09 MJP 12029 and 10 MJP 07438. These files failed to contain a copy of the actual written settlement, a written confirmation of the settlement with the opposing party, or, if neither of these were available, a copy of a communication to the client outlining the terms of the settlement or any other documentation of the negotiation.²³ The failure to obtain the documentation required to support the F and G closing codes may be attributable to the CDF the private attorneys use to document the services provided to the program.

MJP should reformat the CDF to require that private attorneys submit documentation of the settlement when returning the form to the program. Additionally, two (2) cases were incorrectly closed F as the files reflected the cases were litigated. *See* Closed 2009 Case Nos. 05E-6003453 and 08 MJP 04422 (The cases were closed with a closing code of "F-Negotiated settlement

²³ *See* CSR Handbook (2008 Ed.), § 8.3.

without Litigation” when the more appropriate closing code would have been “I-Court Decision” because the private attorneys obtained bankruptcy discharges for the clients).

The second pattern of error found in nine (9) sampled cases involved the use of closing code “K-Other” in cases in which another closing code category better described the nature of the legal services performed. MJP was under the misunderstanding that “K-Other” was the proper closing code for bankruptcy discharge cases, rejected cases, and the preparation of other type documents. *See* Closed 2010 Case Nos. 09 MJP 15541 (The case was closed with a closing code of “K-Other” when the case should have been deselected as MJP rejected the case) and 10 MJP 01901 (The case was closed with a closing code of “K-Other” when the more appropriate closing code would have been “L-Extensive Services” because the private attorney prepared a special needs trust for the client).

The 2008 CSR Handbook requires that cases be closed in the category that best reflects the level of service provided, and if a descriptive closure category is applicable, the “K-Other” code should not be used.²⁴ The cases described above indicate that MJP should question its use of the “K” closing codes, as LSC did not anticipate that this closing category would be used frequently as most common services provided to clients should fit more accurately within another closing code category.

MJP’s response to the DR stated that following OCE’s August 2011 visit, MJP revised its case disposition form which is sent to attorneys to use for reporting on the status of their legal work. MJP stated that the form has been revised to ask attorneys to provide a brief summary of the legal work provided (whereas before it simply asked the attorney to check off the box corresponding to the highest level of service provided). MJP also stated that if the attorney indicates that a settlement was reached (with or without litigation), the forms asks the attorney to provide a copy of the agreement or a brief summary of the settlement. Finally, MJP stated that they no longer use closing code K to close uncontested bankruptcy cases.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 regarding the timely closing of cases. Case review revealed one (1) sampled case that was 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 or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).²⁵ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is

²⁴*See* CSR Handbook (2008 Ed.), § 8.1 at FN 41.

²⁵ 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).

likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant 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 (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).

The sampled file review only contained one (1) untimely closed file. *See* Closed 2009 Case No. 05E-6003453. (The case was opened on November 2, 2005, and closed on April 27, 2009, as “F-Negotiated Settlement without Litigation.” The private attorney obtained a bankruptcy discharge for the client during 2007. The last legal activity and follow-up by the program documented in the file was during the year 2007 and the file contains no further follow-up or documentation that further legal work was pending or needed during the years 2008 and 2009).

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

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 (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 (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 (2008 Ed.), § 6.4.

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

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

Finding 13: Review of MJP’s policies and the list of attorneys who have engaged in the outside practice of law revealed that MJP is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients’ full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Based on an interview with the Executive Director and review of the recipient’s policies and the list of attorneys who have engaged in the outside practice of law, MJP is in compliance with the requirements of 45 CFR Part 1604.

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

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). OCE’s review of MJP’s accounting and financial records for the review period and discussions with program management did not undercover any indicators of non-compliance with the requirements of 45 CFR Part 1608.

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

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

OCE’s review of MJP’s cash journal (vendor list) and check register of cash disbursements made for the review period along with discussion with program management did not reveal or indicate that the program expended grant funds or contributed personnel or equipment and resources in violation of 45 CFR §§ 1608.3(b) and 1608.4(b).

MJP’s cash disbursement records reviewed did not include any noticeable payments or contributions to a political party or association, the campaign of a candidate for public or party office or for use in advocating or opposing a ballot measure, initiative or referendum. Further, the Executive Director and the Director of Fiscal Services both stated that neither MJP nor its employees are involved in any political activities that are prohibited by LSC regulation(s) or make contributions of the program’s grant funds or resources to support or promote political activities or interests.

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

Finding 15: 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 MJP is not involved in any fee-generating case.

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

Finding 16: A review of MJP'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).

OCE's review of MJP's general ledger (GL), its chart of GL accounts, GL account coding of transactions, the GL trial balances as of December 31, 2010 and January 31, 2011, and the program's accounting manual found that MJP's accounting system along with its operating policies and procedures have the capabilities to separately and distinctly account for LSC and non-LSC funds. The design of MJP's accounting records also properly identifies the source of non-LSC funds and documents how MJP spends/transfers its non-LSC and LSC funds, respectively, as required by this Part and the Accounting Guide for LSC Recipients. Further the review found noted no exceptions or inconsistencies in this area with LSC accounting and financial reporting requirements.

OCE's review of the program's donor notification policies and procedures determined that MJP does not notify its non-LSC funding sources and individual donor, who contribute more than \$250, of the LSC prohibitions and conditions that apply to their funds and contributions as required by 45 CFR § 1610.5 – *Notification*. While on-site MJP developed a donor acknowledgement and thank you letter. OCE informed MJP of the annual notification requirement and reviewed the sample letter. The text of MJP's donor notification of LSC prohibitions and conditions is consistent with 45 CFR § 1610.5 and no further exceptions were noted.

While on-site, MJP provided OCE with its 2009 and 2010 program integrity certifications and the executive director's memorandums to the board of directors. The review found no exceptions with this documentation and overall compliance with 45 CFR § 1610.8 - *Program integrity of recipient*. Observation of MJP's office location and the existence of shared personnel found no inconsistencies with the requirement of this section of 45 CFR Part 1610.

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

Finding 17: MJP 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, a few exceptions were noted and some improvement is required. OCE's review of Private Attorney Involvement ("PAI") fiscal activities concluded that MJP complies with the accounting and fiscal requirements of 45 CFR 1614, except that a paralegal who does PAI work does not record and capture the actual PAI hours worked.

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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct

and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

MJP's PAI program does not contract with private attorneys for PAI purposes, but has a pro bono panel of private attorneys to provide legal assistance to LSC-eligible clients. The program is known as Volunteer Legal Services ("VLS"). The Worcester office operates the Worcester County VLS in cooperation with the Worcester County Bar Association. The Holyoke office coordinates its VLS with the Bar Associations in Hampden, Hampshire, Franklin and Berkshire counties. The Holyoke office coordinates various clinics and partners with the Senior Partnership for Justice, and Bay Path and Elms Colleges.

Recruitment activities are conducted by MJP via the following methods: sponsoring free training events in exchange for acceptance of pro bono cases or participating in the Lawyer of the Day Program; attending local bar functions; distributing PAI pamphlets/flyers to new law graduates; and writing articles for local bar newsletters. In addition, the Worcester PAI program, which receives financial support from the Worcester County Bar, also distributes a quarterly newsletter to all bar members in an attempt to recruit new members. Volunteer attorneys are given special recognition via awards, events and newsletters. Accordingly, MJP has developed an extensive number of contacts in the legal system, the judiciary and the bar and appear to work effectively with their various bar memberships and the judiciary. Approximately 25% of the 4,600 attorneys in the five (5) county areas participate in the PAI program.²⁶

Both Holyoke and Worcester offices provide diverse opportunities for pro bono attorneys to volunteer, such as case handling, participating in advice hotlines and community education seminars; and acting as trainers or mentors for other private attorneys. Additionally, the Holyoke office coordinates full service clinics, Lawyer of the Day Programs, and partners with local professors to represent MJP pro bono clients in simple divorces and bankruptcies after their students have prepared the pleadings and other documents required to obtain the discharges and court orders.²⁷ In 2010, of the 5,643 cases reported to LSC, 14% (396 cases) were PAI. During 2009, 6,102 cases were closed by MJP, 8% (751 cases) of which were PAI cases.

Interviews with management and staff evidenced that the coordinators operate separate pro bono programs. There is little to no coordination between the two office's PAI programs. This has resulted in each office developing its own approaches to refer and place cases. Moreover, while both offices have similar systems in place to periodically track the volunteer attorneys' progress on cases, and use similar case tracking forms, the oversight process in each office is a little different. The lack of coordination and similarity has not affected the quality of the services provided as each program is strong and each coordinator provides effective follow-up and oversight of PAI cases.

In order to facilitate the operation of the Pro Bono program, there is a PAI coordinator in each of the program's offices to help recruit attorneys for the pro bono panel, assign cases to them, send letters to clients informing them of the attorney assigned, maintain records of cases assigned, and

²⁶See 2010 Proposed PAI Plan, Massachusetts Justice Project.

²⁷Previously there were significant wait lists for divorce services. MJP has changed its procedures and will only accept applicants for divorce referral if it is likely the case can be referred and no longer operates wait lists.

keep track of cases. Both coordinators receive intakes directly from the MJP Managing Attorneys, conduct referral, and use consistent, although not identical, forms and letters. The PAI coordinators are supervised by their respective Managing Attorneys and the Executive Director, who reviews and closes each and every pro bono case.

VLS primarily receives cases for possible placement with a volunteer attorney through MJP's intake system. Nevertheless, PAI referrals come from many different sources (MJP advocates, outreach efforts, phone calls, Community Legal Aid, and other legal services offices, court personnel, and social services agencies). An applicant's case is assigned for PAI if the case falls within the referral priorities of MJP's PAI program. The Managing Attorney of the referring office reviews the intake for financial eligibility and referral suitability. Before either Managing Attorney attempts to place a case, eligibility information and a referral agreement form are obtained. Frequently, the Managing Attorney requires the applicant to complete a Family Law or Bankruptcy Questionnaire prior to referral for those services. Once the forms are returned and all eligibility information has been received, the applicant is requested to sign and return the referral agreement form. If the applicant does not return this information, the Worcester office will send the applicant another letter informing them that the case will be closed if the information is not returned in 10 days. In Holyoke a case will be closed if the applicant does not respond to the initial letter within two (2) weeks of it being sent. The PAI coordinators are not responsible for conducting intake or reviewing intakes for compliance, however, they review financial and compliance information and whether the client meets other case acceptance criteria imposed on PAI cases. For example, an applicant will only be referred for a pro bono bankruptcy in Worcester county if their income is below 175% FPG, in Hampshire, Franklin and Berkshire counties, the income guidelines for referral to a bankruptcy is 150%. In family law cases, home equity cannot exceed \$30,000.²⁸

PAI cases are placed by the Worcester office via telephone calls. The Holyoke office places cases via mail. The Holyoke office reports that few volunteers reject placements received through the mail. Each office will make between 3-5 calls to secure a pro bono attorney and will reject applicants if they are unable to locate an attorney to represent them within five (5) attempts. Although each office employs different referral mechanisms, each practice appears to result in placement of cases with private attorneys.

Once an attorney has accepted a case, the case is set for a one (1) month initial tickle in Holyoke to determine whether the client and private attorney have made contact. After that month, a status letter is sent with an Initial Disposition Form for the attorney to complete and return.²⁹ The case is then set for three (3) or six (6) month tickle dates and reviewed for status checks by tickle date. All cases, with the exception of divorce cases, are tickled after three months. Divorce cases are tickled after six (6) months. If there is no response to the first update letter, another letter is sent. If there is no response to the second letter, a phone call is made to get the update.

²⁸See 2010 Proposed PAI Plan, Massachusetts Justice Project.

²⁹If the client fails to contact the attorney after a month, the PAI coordinator will contact the client and will attempt to refer the client to another attorney if the client is not satisfied with the attorney provided or the attorney declined to represent the client.

In Worcester, PAI follow up is every 3-6 months via case update letters sent to the pro bono attorney. If there is no response, the PAI coordinator telephones the attorney to find out the status of the case or the PAI coordinator walks to the attorneys' office or the local courthouse to get an update. The PAI coordinator may contact the client to determine the status of the case. If the PAI coordinator is unable to find out the status of the case, the case will be closed based upon the information in the file. MJP does not request private attorneys provide supporting documentation when a case is not closed nor check the court dockets or court records to determine the legal assistance provided.

Both offices use a Case Disposition Form to document the provision of legal assistance. The private attorneys check any of six (6) reasons for closing the case. These reasons parallel CSR closing codes. Once the final Case Disposition Form is returned, as previously explained, the PAI Coordinators enter the case information into the ACMS, review and ready the case for closing, prepare a closing letter for the client and private attorney, and return the case to the Executive Director. The Executive Director reviews the file and the Case Disposition Form and assigns the closing code based on the information in the file, his knowledge of the history of the case and information supplied in the closing letter. At times, he may call the volunteer to obtain further information. Once the PAI coordinators receive confirmation that the case has been closed, the client will receive a client satisfaction survey letter. Case lists are generated frequently in order to determine status and statistics for all PAI cases.

Interviews and case review demonstrated that both offices' systems ensure that PAI cases are active and are adequate to ensure current and accurate information is maintained within the PAI files. As discussed above in Finding 11, file review evidenced only one (1) untimely case which was the result of a simple human error. MJP has made significant improvements since the 2008 Final Quality Report in preventing dormant and untimely closed files.³⁰

However, as discussed above in Findings 1 and 9, there were cases allocated to the PAI component that yielded no evidence of private attorney involvement or legal assistance provided. In such cases, management is reminded that activities undertaken by the recipient to meet the requirement of 45 CFR Part 1614 must include the direct delivery of legal assistance to eligible clients by *private attorneys*. Accordingly, if the legal assistance is not provided by a private attorney it cannot be allocated to the PAI component and is a *staff* case. Moreover, if legal assistance is not provided to the client, the case cannot be reported to LSC in the CSR data submission as it is not a case.

As discussed in Finding 9, MJP must reformat its Case Disposition Form so that it elicits from the private attorney a description of the legal services rendered that meets the level of specificity required by LSC to document the provision of legal assistance as required by § 5.6 of the CSR Handbook (2008 Ed.). Secondly, MJP should develop additional tickle time periods and more intensive follow-up for attorneys who do not respond to initial status letters to ensure that cases

³⁰ The Final Report issued by LSC on July 14, 2008 found that MJP's PAI component was not in compliance with the case oversight requirement of 45 CFR § 1614.3(d)(3). MJP was required to ensure that no untimely and dormant cases (staff as well as PAI) are reported to LSC. See Massachusetts Justice Project Quality Review of Casework and Systems Report, Finding 16.

in which a client and private attorney fail to make contact can be resolved or timely closed as a staff case, or deselected and excluded from the CSR data submission as necessary.

LSC regulation 45 CFR Part 1614 requires that the recipient utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

To meet LSC's PAI requirement, MJP utilizes a pro-bono PAI model. PAI costs consist of MJP's staff PAI time and allocated non-personnel costs based on allocation percentages derived from casehandlers' PAI time to total casehandlers time. MJP requires its casehandlers to document PAI time in the program's case management system. While on-site MJP provided copies of its PAI cost allocation worksheets for 2010 and 2009 and sample PAI time records.

OCE's review of MJP's PAI cost allocation worksheets, its written cost allocation methodology statement contained in the accounting manual, and MJP's financial statement reporting of its PAI activity found that it utilizes a financial management system that fully comply with LSC PAI accounting and financial reporting requirement. *See* 45 CFR 1614. Further, cost allocation methodology is based on reasonable operating data and PAI time records are supported by staff PAI personnel charges and approved by program management.

The review noted no exceptions or inconsistencies in this area except that a PAI paralegal does not record and capture actual PAI hours worked. To comply with 45 CFR Part 1614, the paralegal must capture and record PAI hours worked.

In its response to the DR, MJP stated that since OCE's visit in August 2011, MJP has revised its referral criteria for bankruptcy cases so it is uniform throughout its five (5) county service area. MJP stated that this revision was undertaken with input from the private bar and bench. MJP also stated that, as noted in comment to Finding 10, MJP has already begun using a revised case disposition form to address the problem of insufficient case closing information. Finally, MJP stated that the one (1) paralegal that split her time between PAI and staff work is now making that distinction in her daily time reports.

Finding 18: MJP 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.

OCE's review of MJP's cash disbursement journals and discussions with Community Legal Aid's Chief Financial Officer and MJP's Executive Director found compliance with 45 CFR § 1627.4(a) - Membership fees or dues. The LSC grant fund was charged with mandatory state bar dues only and other type of membership fees and dues, such as payments to NLADA, were paid with non-LSC funds.

With regard to subgrants, MJP has no subgrant relationships using LSC funds. The review of accounting records did not reveal any subgrants.

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

Finding 19: MJP 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.

As previously discussed, MJP uses LegalFiles as its case management system and utilizes its timekeeping component to record time spent by attorneys and paralegals. The program requires its casehandlers to document within LegalFiles the amount of time spent on each case, matter, or supporting activity. MJP's time records are 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.

While on-site, the program provided a sample of its time records for several payroll periods. OCE's review of MJP's time records found that the records contain the required information, accounts for all of the casehandlers' time, and complies with time requirements of 45 CFR Part 1635.

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 activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

OCE's review of MJP's timekeeping policies and procedures and a sample of completed time records for casehandlers along with discussion with the executive director and the administrator disclosed that time records are kept electronically and contemporaneously and time spent on cases, matters or supporting activities complies with 45 CFR §§ 1635.3(b) and (c). OCE's review noted no exceptions or inconsistencies in MJP's timekeeping policies and procedures and time records.

With regard to part-time casehandlers, the Executive Director indicated that MJP does not employ any casehandlers on a part-time basis. Per the sample time records, all casehandlers' daily time recorded equal or exceeded seven and half (7.5) hours per day.

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

Finding 20: OCE's review found MJP's internal control policies and procedures compare Favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Chapter 3-Accounting Guide for LSC Recipients), except that MJP needs to complete the updating of its accounting policies and procedures manual.

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

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

controls that could be considered to be material weaknesses. However, MJP needs to finalize the updating of its accounting policies and procedures manual.

While on-site, the program provided sample copies of its cash disbursement supporting documentation and monthly bank reconciliations for its general operating accounts. The documentation illustrated that cash disbursements are reviewed and approval initials prior to payment and cash/bank accounts are reconciled monthly by accounting staff and reviewed and approved by the Executive Director and Director of Fiscal Services.

MJP's internal controls policies and procedures are outlined in the program's accounting manual. While on-site, using LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System ("FCR") checklist, OCE interviewed and discussed the internal control and accounting policies and procedures currently being followed. To corroborate the information obtained, MJP completed LSC's internal control worksheet which also identifies the duties and responsibilities of accounting staff.

The results of the FCR checklist inquiries and a review of the above noted documents indicate adequate segregation of duties in that a transaction cannot be completed without some else's knowledge and/or approval. OCE's review found that the program's internal control and accounting procedures as outlined its accounting manual appear to be adhere to and followed by the program in that there was evidence of managerial review and approval.

As a result of the above review, the only corrective action that needs to be taken is completion of its accounting policies and procedures manual.

MJP's response to the DR stated that MJP has been working with its fiscal agent to complete an Accounting Policies and Procedures Manual and they expect this will be completed by end of February 2012.

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.³¹ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys, fees was lifted. Therefore, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of

³¹ The regulations defined "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).

attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter10-1 (February 18, 2010).³²

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

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

Finding 22: 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 MJP is not involved in this prohibited activity.

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

Finding 23: 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 MJP is not involved in this prohibited activity.

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

³² Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

Finding 24: 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).³³

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

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

Finding 25: 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 MJP is not involved in this prohibited activity.

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

Finding 26: 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.

³³ 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 MJP is not involved in this prohibited activity.

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

Finding 27: 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 MJP is not involved in this prohibited activity.

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

Finding 28: 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.³⁴ This restriction has been contained in all subsequent appropriations acts.³⁵ 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 MJP is not involved in this prohibited activity.

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

³⁴ *See* Section 504(a)(18).

³⁵ *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 29: 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 MJP is not involved in these prohibited activities.

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

Finding 30: 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 MJP was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

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

IV. RECOMMENDATIONS³⁶

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

1. Review its policy to determine whether it will continue to require intake screeners to adhere to the current income policy considerations. Further, LSC recommends that MJP revise its income policy considerations to focus questioning on those considerations which are most likely to screen out households whose financial status circumstances would allow them to hire a private attorney.

In response to the DR, MJP stated that they will be reviewing its income policy with staff at its upcoming program wide meeting. MJP further stated that their VLS staff has already implemented some changes to their tickle system which they hope will lead to more timely reporting of case updates.

2. Develop additional tickle time periods and more intensive follow-up for private attorneys who do not respond to initial status letters to ensure that cases in which a client and private attorney fail to make contact can be resolved or timely closed as a staff case, or deselected and excluded from the CSR data submission.

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

³⁶ 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, MJP is required to take the following corrective actions:

1. Develop procedures to review the staff/PAI designations prior to closure for all PAI designated cases. A more formalized review of PAI designations may be all that is required to prevent these errors;

In response to the DR, MJP stated the closing of cases is only carried out by senior staff at MJP. They also stated that they are aware of the distinction between PAI and staff cases and better attention will be paid when closing files to insure that the appropriate designation is on the case file.

2. Ensure compliance with 45 CFR § 1626.6 regarding the inclusion (when required) of a signed citizenship attestation in all cases files;

In response to the DR, MJP stated the non-compliance at issue here is largely one of human error and that staff has been reminded of the requirement of obtaining this documentation.

3. Revise its citizenship attestation forms to comply with the documentation requirements of the CSR Handbook (2008 Ed.), § 5.5. which requires that a citizenship attestation may be contained on a document provided there is a separate signature line tied only to the citizenship attestation;

In response to the DR, MJP stated that the citizenship attestation forms have already been revised in accordance with the requirements of CSR Handbook (2008 Ed.), § 5.5.

4. Ensure that the legal assistance provided to a client 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;

In response to the DR, MJP stated that the non-compliance at issue here is largely one of staff expediency and sloppiness. MJP also stated in its response that they will continue to train advocates on what notes are needed in the file to insure that there is sufficient documentation to report the file as a case. MJP further stated that case closers are also required to de-select files without sufficient documentation of legal assistance. (Many of these files may end up qualifying as matters).

5. Revise its Case Disposition Form so that it elicits from the private attorney a description of the legal services rendered that meets the level of specificity to document the provision of legal assistance as required by § 5.6 of the CSR Handbook (2008 Ed.);

In response to the DR, MJP stated they have already revised the case disposition form used in the PAI component so that it elicits more detailed information from volunteer lawyers about the legal services they have rendered.

6. Ensure that staff is trained on the proper closing codes categories to comply with CSR Handbook (2008 Ed.), § 6.1;

In response to the DR, MJP stated that staff has been trained on the proper case closing code categories; MJP also stated that only senior staff close cases and they each have been provided a copy of the latest edition of the CSR Handbook.

7. Complete its accounting policies and procedures manual;

In response to the DR, MJP stated that as noted in its comment to Finding 20, the Accounting Policies and Procedures Manual will be completed by the end of February 2012.

8. Ensure that all staff who work on PAI cases, record and capture actual PAI time worked; and

In response to the DR, MJP stated that all staff who work on PAI cases are now recording their actual time on this component of MJP services.

9. Revise its financial eligibility policy so that it is consistent with 45 CFR Part 1611.

In response to the DR, MJP stated that the Executive Director is in the process of preparing a revised financial eligibility policy for review and adoption by MJP's Board of Director and that it is expected that the Board will vote to accept this new policy at its next scheduled meeting on March 19, 2012.