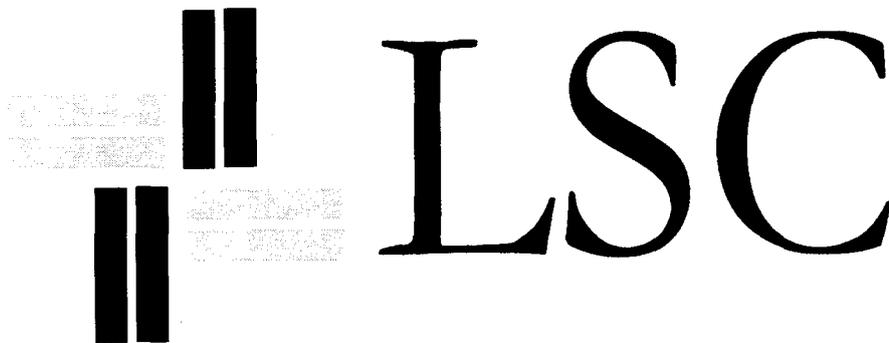


**LEGAL SERVICES CORPORATION  
OFFICE OF INSPECTOR GENERAL**

**REVIEW OF GRANTEE'S  
TRANSFER OF FUNDS  
AND COMPLIANCE WITH  
PROGRAM INTEGRITY STANDARDS**



**Grantee: Legal Services of South Central Michigan, Inc.**

**Recipient No. 423010**

**Report No. 03-03**

**June 2003**

[www.oig.lsc.gov](http://www.oig.lsc.gov)



June 24 2003

Mr. Robert F. Gillett  
Executive Director  
Legal Services of South Central Michigan, Inc.  
420 North Fourth Avenue  
Ann Arbor, Michigan 48104

Dear Mr. Gillett:

Attached is our audit report on the Legal Service of South Central Michigan's transfer of funds and compliance with program integrity standards. We considered your comments on the draft report in finalizing the report, including your disagreement with our finding and recommendation. Your comments are included in Appendix I. We made some changes to the report as a result of your comments, however, we continue to believe that our finding is valid and our recommendation should be implemented.

Please provide this office a corrective action plan addressing the recommendation within 30 days. The corrective action plan should include a description of any action taken or planned to implement the recommendation and the date corrective action will be completed.

Copies of this report will be sent to the Chair of South Central Michigan's Board of Directors, LSC management, and will be available to the public via the OIG's website.

If you have any questions, please contact Richard Adkins on (202) 295-1661 or me on (202) 295-1651. I appreciate the courtesy and cooperation you and your staff extended to my staff during the audit.

Sincerely,

A handwritten signature in cursive script that reads "Leonard J. Koczur".

Leonard J. Koczur  
Acting Inspector General

Enclosure

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## RESULTS OF AUDIT

The Legal Services Corporation (LSC) Office of Inspector General (OIG) conducted this audit to determine whether Legal Services of South Central Michigan (grantee) complied with certain requirements of 45 CFR Part 1610. This regulation requires grantees to maintain objective integrity from any organization that engages in activities prohibited by the LSC Act, LSC appropriations acts, and LSC regulations. To do so, grantees must be legally separate from such organizations, not transfer LSC funds to them, not subsidize any restricted activities with LSC funds, and maintain physical and financial separation from them. An exception applies for transfers of LSC funds solely for private attorney involvement activities.

Between January 1, 2001 and September 30, 2002, the grantee did not fully comply with the program integrity requirement of Part 1610. The grantee did not maintain objective integrity and independence from an organization that engaged in LSC restricted activities. The grantee, although not meeting the 1610 requirements, did not do restricted cases nor were LSC funds used to support such cases.

In addition, the OIG found that :

- no improper payments were made to over 300 vendors.
- grantee employees were generally aware of the LSC prohibitions and restrictions.
- for sampled cases, no prohibited or restricted cases were undertaken and the clients met eligibility requirements.
- the grantee complied with LSC regulations on client intake and timekeeping.

The OIG reviewed a sample of cases that had been filed with the courts. There was no indication that these cases involved restricted or prohibited activities.

### OBJECTIVE INTEGRITY AND INDEPENDENCE

The grantee did not establish and maintain objective integrity and independence as required by 45 CFR Section 1610.8. It participated in a collaborative effort to operate the Michigan Poverty Law Program, an organization that handles LSC restricted cases within one of its two divisions. The grantee's activities were carried out in a separate division from the division performing the LSC restricted work, but despite the separation between the divisions, the separation between the grantee and the Michigan Poverty Law Program was not adequate.

## Description of the Michigan Poverty Law Program

The Michigan Poverty Law Program is a collaborative state support program. The University of Michigan Law School (Law School) and the grantee are partners in this collaboration. The stated purpose of the Michigan Poverty Law Program is to provide case consultation support, oversee statewide training, participate in law task forces, and coordinate advocacy on issues of statewide impact. It carries out its activities through two separate divisions: the Support division and the Clinic division.

The grantee and the Law School have an agreement governing their relationship and spelling out the responsibilities of each organization. This agreement distinguishes between the Clinic division and Support division. The Law School operates the Clinic division which focuses on systemic impact cases, including appeals, class actions, or other law reform litigation. The Clinic does some LSC restricted work. The grantee manages the Support division, which operates subject to LSC restrictions and performs the local program support work. LSC funds are not used to operate either division.

The grantee submitted a letter to LSC in February 1997 informing LSC about the Michigan Poverty Law Program and offering to discuss any concerns that LSC had about the program. While the grantee never received a written reply, grantee management indicated that it believed that LSC had approved the structure.

## Requirements

Section 1610.8 states that grantees must have objective integrity and independence from organizations that engage in LSC restricted activities. The grantee meets the requirements of this regulation if:

1. The other organization is a legally separate entity.
2. The grantee does not transfer LSC funds to the organization and LSC funds do not subsidize restricted activities, and
3. The grantee is physically and financially separate from the other organization. Such factors as the existence of separate personnel, accounting and timekeeping records, facilities, and signs should be considered in determining whether the other organization is physically and financially separate.

Section 1610.8 requires the grantee to ensure that it is not identified with restricted activities and that the other organization is not so closely identified with

the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities.

### Compliance With Requirements

The grantee met the second requirement. The grantee does not use LSC funds to operate the Support division of the Michigan Poverty Law Program. We found no indication that the grantee transferred LSC funds to any organization engaged in restricted activities, nor did LSC funds subsidize restricted activities. However, the first and third requirements were not met. The Michigan Poverty Law Program is not a legally separate entity and the grantee does not maintain physical or financial separation from the Michigan Poverty Law Program.

### Legal Entity

The grantee and the Law School are legally separate entities. The result of the collaborative effort between the two organizations, the Michigan Poverty Law Program, is not a legally separate entity. It has not been incorporated, nor is it otherwise a separate legal entity; therefore it is not legally separate from the grantee. The Michigan Poverty Law Program's Clinic division does restricted work, resulting in the grantee's violation of 1610.8.

### Physical and Financial Separation

The grantee is a part of the Michigan Poverty Law Program and therefore is not physically or financially separate from an organization that does restricted cases. Grantee financial records indicate that the grantee annually provides about \$335,000 of non-LSC funds, which is about 30 percent of the Michigan Poverty Law Program's budget. The grantee provided personnel for the Michigan Poverty Law Program and continued to maintain accounting records for the Support division operations and timekeeping records for its Support division personnel. Although the Clinic and Support divisions are located in separate suites, they are housed together in one location and identified through signs, websites, and telephone listings as the Michigan Poverty Law Program. The Michigan Poverty Law Program maintains one work plan, co-counsel guidelines, and priorities and case acceptance criteria.

No LSC funds are used to operate the Michigan Poverty Law Program but the regulation requires the grantee to maintain physical and financial separation from any organization doing prohibited or restricted activities. Under the totality of the circumstances, the grantee did not meet the requirement for financial and physical separation from Michigan Poverty Law Program.

### Conclusion

The totality of the facts presented above show that the grantee did not establish objective integrity and physical and financial separation between itself and the Michigan Poverty Law Program. At least two options are available to correct the problem. The grantee could sever ties with the Michigan Poverty Law Program. Alternatively, the grantee and the Law School could agree to preclude the Clinic division from accepting restricted cases. These cases could be assigned to other clinic units outside of the Michigan Poverty Law Program umbrella while ensuring that the grantee maintains program integrity from the Law School. Other options may be available that would allow the grantee to comply with program integrity requirements.

### RECOMMENDATION

To clearly separate itself from restricted activities performed at the Michigan Poverty Law Program, we recommend that the grantee:

Disassociate itself from the Michigan Poverty Law Program or work with the Law School to restructure the Michigan Poverty Law Program to preclude the performance of LSC restricted activity.

### **BACKGROUND**

The Legal Services of South Central Michigan is a non-profit corporation established to provide legal services to indigents who meet applicable eligibility requirements. This grantee is headquartered in Ann Arbor, Michigan and maintains six additional offices throughout the state. Staffing at the time of our audit included 45 attorneys, 4 paralegals, and 24 other employees who provide administrative support. Funding for 2002 included a basic field grant of \$1.375 million, a migrant workers grant of \$544,000, and technical grants totaling \$157,500.

The grantee was established in January 2002, through a merger of Legal Services of Southern Michigan and Legal Aid of Central Michigan.

### **OBJECTIVES, SCOPE, AND METHODOLOGY**

The focus of the audit was compliance with requirements established in 45 CFR, Part 1610, relating to program integrity standards, including the transfer of funds to other organizations (non-LSC). The on-site portion of the audit was performed from October 28, 2002, to November 8, 2002.

The audit covered the period from January 1, 2001, through September 30, 2002. The OIG reviewed materials pertaining to the grant, including Certifications of Program Integrity, audited financial statements, grant proposals and recipient profiles. The OIG also discussed issues pertaining to the grantee with LSC program and management officials. The OIG performed audit field work in Ann Arbor, including the headquarters office as well as the Michigan Poverty Law Program and Family Law Project offices. In addition, the OIG performed field work in the Lansing Office and the Bangor Office (Farm workers Program).

During the on-site audit, the OIG interviewed and evaluated documentation provided by the Executive Director as well as attorneys and administrators. The OIG evaluated grantee employees' familiarity with the guidelines set forth in Part 1610. The audit included an assessment of the grantee's policies and procedures in meeting program integrity requirements, including procedures applicable to the transfer of funds to other organizations. The audit also included an evaluation of the client intake process. In addition, the OIG evaluated the grantee's controls for oversight of the Private Attorney Involvement Program.

The OIG reviewed a sample of the grantee's case files for each of the offices and programs to determine if financial, citizenship and other eligibility requirements were met. The OIG also tested a sample of court cases filed by the grantees' attorneys to determine if the attorneys provided representation in any prohibited cases. In addition, these court cases were traced to Part 1644 Reports (Disclosure of Case Information) to evaluate compliance with reporting requirements.

## **SUMMARY OF GRANTEE'S COMMENTS ON DRAFT REPORT AND THE OIG'S RESPONSE**

The grantee expressed concerns about the OIG procedures that were followed and the lack of reporting on affirmative findings in the draft report. The grantee did not agree with the conclusion that it did not fully comply with the program integrity requirement of Part 1610 due to its collaborative effort to operate the Michigan Poverty Law Program. The grantee also requested that its disclosure of its relationship with the Michigan Poverty Law Program to LSC officials be included in the report. The grantee's comments are included in Appendix I.

The OIG considered the grantee's comments in finalizing the report and made some revisions as indicated below. The OIG does not agree that the finding is erroneous. A summary of the grantee's comments and our response follows.

### **GRANTEE COMMENT – OIG PROCEDURES**

The grantee stated that the audit team reported that there were no findings of regulatory non-compliance at the exit conference but the draft report included a finding on the Michigan Poverty Law Program. According to the grantee, this inconsistency in reporting denied the grantee the opportunity to discuss the findings with the audit team.

The grantee also stated that it received assurance through a status report that the findings had not significantly changed.

### **OIG RESPONSE**

The OIG disagrees with the grantee's comments. The OIG stated at the exit conference that while it did not have material instances of non-compliance to report at that time, it was not able to express an overall conclusion on the audit objective because more steps needed to be taken--particularly the need to resolve the issue of whether the structure of the Michigan Poverty Law Program complied with program integrity requirements. The grantee provided a memorandum discussing its views as to why the Michigan Poverty Law Program complies with the program integrity requirements.

The unresolved issue with the Michigan Poverty Law Program was the only issue being deliberated and our email response to the grantee's inquiry about the status only stated that there were no new issues that had arisen. The email response did not discuss findings. A grantee official was notified and briefed on the draft report contents before it was issued (the Executive Director

was out of town). After the draft report was issued, the audit team leader and the  
OIG Counsel discussed the report with the Executive Director.

### GRANTEE COMMENT – AFFIRMATIVE FINDINGS

The grantee requested that the affirmative findings from the audit be  
included in the report.

### OIG RESPONSE

The draft report was written in an exception reporting style with overall  
statements of the positive conclusions (no restricted cases, no LSC funds used  
to support restricted cases). Additional information has been added on page 1 of  
the report to provide more specific information on the positive conclusions.

### GRANTEE COMMENT – OBJECTIVE INTEGRITY AND INDEPENDENCE

The grantee disagreed with the OIG's conclusion in the draft report on  
compliance with program integrity requirements. The OIG concluded that:

“The grantee did not establish and maintain objective integrity and  
independence as required by 45 CFR Section 1610.8. It participated in a  
collaborative effort to operate the Michigan Poverty Law Program, an  
organization that handles LSC restricted cases within one of its two divisions.  
The grantee's activities were carried out in a separate division from the division  
performing the LSC restricted work, but despite the separation between the  
divisions, the separation between the grantee and the Michigan Poverty Law  
Program was not adequate.”

The grantee indicated that the legal question that should be addressed by  
the OIG is whether there is objective integrity and independence between the  
grantee and the University of Michigan Law School (the collaborating  
organization), not between the grantee and the Michigan Poverty Law Program.  
The grantee stated that:

“From a legal point of view, LSSM cannot exhibit ‘objective independence’  
from MPLP-because MPLP is a creature of contract-not an independent entity.  
In other words, a ‘collaboration’ is not an ‘organization.’ In order to determine  
whether a grantee's participation in a collaboration violates 45 CFR 1610, LSC is  
required to determine whether the two collaborating ‘organizations’ that are  
involved in the collaboration have ‘objective and independence’ from each other.”

## OIG RESPONSE

We reviewed the grantee's comments and the information collected on site and confirmed our conclusion that the grantee did not comply with program integrity requirements. Part 1610 requires a recipient to have objective integrity and independence from any organization that engages in restricted activities. The Michigan Poverty Law Program is an organization that engages in restricted activities and should be evaluated against this requirement. The distinction as to whether the Michigan Poverty Law Program is an organization or a collaboration does not change the way it should be evaluated against this requirement.

Dictionaries generally define an organization as "an administrative and functional structure (as a business or a political party)," and a "group whose members work together for a shared purpose in a continuing way." A collaboration is defined as "to work jointly with others or together especially in an intellectual endeavor" and "to work together or with someone else for a special purpose."

Excerpts from both the Executive Director's memorandum of November 16, 2002 and the agreement referenced by the Executive Director and attached to his response to the draft report provide indications of the nature of the Michigan Poverty Law Program.

The memorandum: "MPLP was created..."; "MPLP program was operational"; "MPLP has a single 'Advisory Board.'" MPLP has divisions, issues a brochure, and has a website.

The agreement: "[MPLP] is created to establish a high quality program to provide support services..."; MPLP is governed, is advised by a "coordination and Planning Committee"; has divisions, an Advisory Board, employees, and offices, it provides services, issues publications, and receives funding.

Thus, the Michigan Poverty Law Program has "an administrative and functional structure" and is comprised of "members working together for a shared purpose in a continuing way" (see definitions above). It is an organization and therefore LSC regulations require the grantee to have objective integrity and independence from it. As our report demonstrates, the grantee does not meet this requirement. The report states, "the grantee's activities were carried out in a separate division from the division performing the LSC restricted work, but despite the separation between the divisions, the separation between the grantee and [MPLP] was not adequate." The report goes on to list the three criteria for program integrity and describes how two of them were not met: The Michigan Poverty Law Program is not a separate legal entity, nor are the grantee and the Michigan Poverty Law Program physically and financially separate.

## GRANTEE COMMENT – LSC’S REVIEW AND APPROVAL

The grantee informed LSC about its relationship with the Michigan Poverty Law Program in a letter dated February 7, 1997. Although there was no reply to this letter, the grantee indicated that subsequent discussions with LSC officials and LSC site visits are strong evidence that LSC reviewed and approved the relationship.

The grantee asked the OIG to review LSC files and discuss with LSC program staff to confirm there was a full review of the structure of the Michigan Poverty Law Program in 1997. The grantee also requested that, at a minimum, the final report state that the grantee fully disclosed the issue to LSC.

### OIG RESPONSE

Prior to issuing the draft report, the OIG met with LSC’s current state responsible official and the state responsible official as of early 1997 who was referred to in the grantee’s comments as an LSC staff person who reported on the Michigan Poverty Law Program. Neither of these LSC officials was able to provide information concerning a full review of the structure of the Michigan Poverty Law Program. The state responsible official in 1997 stated that he visited the grantee in 1998 but that his visit did not involve a rigorous assessment of the nature of the relationship between the law school and the grantee in the establishment and operations of the Michigan Poverty Law Program.

The OIG has added statements on page 2 of the final report discussing the grantee’s disclosure of this issue to LSC.

# LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN

## APPENDIX I - Grantee Comments

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Washtenaw County Office: 420 N. Fourth Avenue, Ann Arbor, MI 48104-1104 • phone (734) 665-6181 • fax (734) 665-2974

May 28, 2003

Leonard J. Koczur  
Acting Inspector General  
Legal Services Corporation  
750 1<sup>st</sup> St., N.E., 11<sup>th</sup> Floor  
Washington, D.C., 20002-4250

Re: Comments on draft report

Dear Mr. Koczur,

Thank you for the opportunity to comment on the draft OIG report sent with your letter of April 11, 2003. The report reflects the OIG findings from a two week site visit to Legal Services of South Central Michigan (LSSCM) between October 28 and November 8, 2002. The purpose of the visit was to assess LSSCM's compliance with 45 CFR 1610, the "program integrity" regulation.

In our opinion, the draft report does not fairly describe the visit or the on site findings of the OIG team. In our opinion, the core finding of the report—i.e., that LSSCM "did not fully comply with the program integrity requirement of Part 1610" due to its "collaborative effort to operate the Michigan Poverty Law Program" [draft report, p.1]—is factually and legally erroneous. The reasons for our disagreement with the draft report are explained in detail below.

**OIG Protocols.** At the outset, we wish to express surprise at the Report and its findings.

Prior to the site visit, OIG staff provided us with a publication called "Audit Procedures". This publication provides, inter alia, that:

When the on-site audit work is completed, an exit conference is held with the grantee management. The auditors summarize the preliminary findings and conclusions and the proposed recommendations for corrective action. The grantee is encouraged to provide information on mitigating circumstances or additional information putting the findings in context."

Audit Procedures, at p. 5. The publication further provides that if, after returning to LSC headquarters, "the conclusions and findings change from the exit conference, the grantee is informed." Audit Procedures, at p. 5.



*A member agency of the Jackson County, Monroe County and South Central Michigan United Ways*

We believe that the report process followed for this draft report violates the OIG's published procedures. First, the report is inconsistent with the findings reported to us by the team at the exit interview. At that interview we were told that there were no findings of regulatory non-compliance.

Second, because these findings were not presented to us during the site visit or at any other time prior to our receipt of the draft report, we were denied the opportunity to discuss the proposed findings with the team or to provide additional information or context to the finding.

During the visit, we were told that we could expect a draft report within 30 to 45 days of the visit. This report was not received until over 150 days after the visit. When the report was not forthcoming, we began a dialogue with the OIG team leader about the status of the report. Not only were we not informed of the change in the team's findings, we were affirmatively assured, as late as April 3, 2003, that there had been no significant change in those findings.<sup>1</sup>

**The final report should include the affirmative findings reported to LSSCM by the OIG team at the exit interview.** The purpose of the OIG visit was to assess LSSCM's overall compliance with LSC program integrity rules. During the course of the visit, OIG staff reviewed hundreds of financial transactions; visited five LSSCM offices; interviewed approximately 25 staff persons; met or spoke with a number of persons outside the program; reviewed hundreds of court files; and reviewed hundreds of pages of internal LSSCM documents. The visit, and the exit interview, focused on overall compliance with Part 1610.

In contrast, the draft report discusses a single finding—that LSSCM's relationship with the University of Michigan Law School through the Michigan Poverty Law Program (MPLP) is violative of Part 1610.

At the exit conference with the team, the team summarized its activities and findings from the site visit as follows:

1. OIG staff interviewed approximately 25 different LSSCM program staff and management personnel; OIG staff also reviewed the annual Board certifications required by Part 1610. The OIG finds that staff were aware of the regulation and that LSSCM has complied with the procedural requirements of Part 1610.
2. OIG staff reviewed in detail over 600 checks payable to over 300 different vendors totaling over \$654,000 in transactions; OIG staff found no transactions that were violative of LSC rules or regulations.
3. OIG staff reviewed all case filings for all LSSCM staff in three separate county court systems for the 18 month period of the audit and found: (a) that no LSSCM staff were involved in any LSC restricted litigation; and (b) that all filings were reported to LSC as required by 45 CFR 1644.

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<sup>1</sup> See e-mail from Richard Adkins to Bob Gillett dated April 3, 2003.

4. OIG reviewed numerous internal case files and had access to LSSCM's entire time record system. OIG staff found that LSSCM maintains a time record system in compliance with 45 CFR 1635; OIG staff found no evidence that any LSSCM staff person was involved in LSC restricted work during the 18 month period audited.
5. LSSCM is involved with many partner agencies in many collaborative efforts to provide services to the client community. OIG staff reviewed partnership agreements, workplans, leases, and financial transactions with the following organizations:
  - A. Michigan Migrant Legal Assistance Project (1997)
  - B. University of Michigan Law School—Michigan Poverty Law Program (2000)
  - C. Western Michigan Legal Services (LSC Technology Initiative Grant, 2000)
  - D. Domestic Violence Project (VAWA grant, 2000)
  - E. AWARE, Inc.
  - F. Calhoun County Circuit Court
  - G. University of Michigan Law School (VAWA grant, 2000)
  - H. Catherine Cobb Domestic Violence Program (VAWA grant, 2000)
  - I. SAFE Place Shelter (VAWA grant, 2000)
  - J. Family Counseling and Shelter Services (VAWA grant, 2000)
  - K. Michigan League for Human Services (Michigan State Bar Foundation subgrant, 2000)
  - L. University of Michigan Law School (LSC Technology Initiative Grant, 2001)
  - M. National Legal Aid and Defender Association (LSC Technology Initiative Grant, 2001)
  - N. Project for the Future of Equal Justice (LSC Technology Initiative grant, 2001)
  - O. Center For Law and Social Policy (LSC Technology Initiative Grant, 2001)
  - P. Legal Aid Society of Orange County (LSC Technology Initiative grant, 2001)
  - Q. Pro Bono Net (LSC Technology Initiative grant, 2002)
  - R. Tech Soup – Legal Services Technology Network (LSC Technology Initiative grant, 2002)
  - S. Fair Housing Center of Southeastern Michigan (lease and corporate documents, 1994)
  - T. Community Action Agency of Southcentral Michigan (sublease agreement, 1997)
  - U. Van Buren ARC (lease, 2002)

With the exception of the OIG finding regarding item B above (the University of Michigan Law School—MPLP agreement), OIG staff found each of these agreements and relationships to be in compliance with Part 1610.<sup>2</sup>

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<sup>2</sup> At the exit interview, LSSCM staff were told that OIG staff “had found no material instances of non-compliance with LSC regulations.” At the interview, OIG staff made six recommendations for consideration by LSSCM. These recommendations were:

1. That the UMLS funded support attorney begin to complete LSSCM timesheets;
2. That LSSCM install a full Kemps system in the MPLP office;
3. That LSSCM consider ways to more formally document the non-work activities of part time employees;
4. That, in approving waivers for clients between 125% and 187.5% FPL, LSSCM include financial calculations in the Kemps notes that document that the client's available income, with permissible waivers, is under 125% FPL;

We request that the final report include these affirmative findings as they were reported to LSSCM at the exit conference.

**The single substantive finding of the report is factually and legally incorrect.** The draft report really makes a single finding—i.e., that “the grantee did not establish and maintain objective integrity...” because LSSCM “participated in a collaborative effort to operate the Michigan Poverty Law Program”, draft report at p.1. This finding is incorrect.

At the outset, it is clear that “participation in a collaborative effort” in and of itself does not violate Part 1610. A violation of Part 1610 exists only if such participation compromises the “program integrity” of the LSC grantee such that the grantee is found to “engage in restricted activities” or to control or to be controlled by organizations that engage in restricted activity, 45 CFR 1610.1.

The draft report is brief (four and one half pages); essentially devoid of legal citation or legal analysis; confusing; and internally inconsistent. The most fundamental and confusing flaw in the report is that it is not consistent in characterizing what organizational relationship it is analyzing under the program integrity regulation.

A. LSSCM is objectively independent from the Law School. In several places, the report appears to be analyzing LSSCM’s program integrity in relationship to the University of Michigan Law School. This is the analysis required by the regulation. At page 1, the draft report correctly states: “The Michigan Poverty Law program is a collaborative state support program. The University of Michigan Law School and the grantee are partners in the collaboration.” At page 3, the draft report correctly states that: “The grantee and the Law School are legally separate entities.”

The report also correctly finds that LSSCM did not “engage in restricted activities”, see 45 CFR 1610.1. “The grantee ... did not do restricted cases nor were LSC funds used to support such cases,” draft report at p.1. Rather the draft report correctly finds that any restricted work was done by the UMLS Clinic, which is managed and operated by the UMLS, draft report at p.2.

The report correctly notes that MPLP consists of two separate offices with two separate staffs— a “Clinic Division” entirely funded and managed by the UMLS and which does some LSC restricted work; and a “Support Division” which is managed by LSSCM and “which operates subject to the LSC restrictions and performs local program support work”, draft report at pages 1 and 2. The draft report describes these two offices as “separate divisions” of MPLP, draft report at page 1.

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5. That, in Kennedy amendment cases, the fact that the client is a Kennedy amendment client be clearly noted in the Kemps notes.
  6. That LSSCM should consider greater separation of duties regarding access to blank checks.

We were puzzled that none of these recommendations were incorporated into the draft report.

**Thus, the legal question faced by the OIG is whether LSSCM has “maintain[ed] objective integrity and independence” from UMLS, the collaborating organization in the MPLP contract, 45 CFR 1610.1.**

The “program integrity” test is set forth at 45 CFR 1610.8. This regulation creates a three part test of “objective integrity and independence”. The first test is whether “the other organization is a legally separate entity”, 1610.8(a)(1). The draft report correctly finds that LSSCM and UMLS are legally separate entities, draft report at page 3.

The second test is that “the other organization receives no transfer of LSC funds”, 45 CFR 1610.8(a)(2). The draft report properly finds (at page 2) that “the grantee does not use any LSC funds to operate the Support division of [MPLP]”.

The third test is whether “the grantee is physically and financially separate from the other organization”, 45 CFR 1610.8(a)(3). This test is determined “on a case by case basis and will be based on the totality of the facts”. The draft report does not undertake the analysis required by the regulation.

However, when the OIG team was on site at LSSCM, the program provided the team with a detailed analysis of MPLP in light of the specific criteria of 45 CFR 1610.8(a)(3). This analysis is not mentioned in the draft report. It is attached and incorporated as Ex. A.

If the criteria of the regulation are applied to a comparison between LSSCM and UMLS, it is clear that there is “objective integrity and independence” as defined by 45 CFR 1610 between the two organizations. See Ex. A.

**B. There is no requirement that LSSCM establish “objective integrity” from the Michigan Poverty Law Program.** In other places, the draft report states that it is assessing LSSCM’s organizational independence from MPLP. In these sections of the draft report, the OIG begins with the erroneous assumption that MPLP is “an organization” (draft report, at p. 1). The draft report describes MPLP as some sort of “legal entity” (draft report, at p.3). The draft report concludes that “the separation between the grantee and the Michigan Poverty Law Program was not adequate” (draft report at page 1); that “the grantee does not maintain physical or financial separation from the Michigan Poverty Law Program” (draft report at page 2); and that LSSCM “is part of the Michigan Poverty Law Program and therefore not physically or financially separate” from this “organization that does restricted work” (draft report, at p.3).<sup>3</sup>

These statements are inconsistent with other sections of the report. They are also inconsistent with Michigan law and 45 CFR 1610.

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<sup>3</sup>The draft report is inconsistent in its characterization of MPLP. For example, at page 2, the draft report states: “The Michigan Poverty Law Program is not a separate legal entity.” And at page 3, the draft report states that: “The grantee and the Law School are separate legal entities. The result of the collaborative effort between the two organizations, the Michigan Poverty Law Program, is not a legally separate entity. It has not been incorporated, nor is it otherwise a separate entity.”

Under Michigan law, four types of “legal entity” are recognized—persons, corporations, partnerships, and limited liability companies (LLC’s). It is clear that MPLP is not a “legal entity” as defined by Michigan law. It is not a person. MPLP is not a corporation or an LLC because these two corporate forms exist solely by statute. See MCLA 450.1101, et seq., and West, **Michigan Civil Jurisprudence, Volume 6** for a discussion of “Corporations”. See MCLA 450.4101 et seq., West, **Michigan Civil Jurisprudence, Volume 16** for a discussion of “Limited Liability Companies”. MPLP is not a partnership, because, under Michigan law, partnerships are, by definition, for profit entities. See MCLA 449.1 et seq.; and West, **Michigan Civil Jurisprudence, Volume 19** for a discussion of “Partnerships”.

Under Michigan law, noncorporeal entities such as MPLP are entirely creatures of contract. They have no independent legal existence beyond the legal existence of the parties to the contract. As in any contract, the MPLP Agreement must be interpreted based on its plain language and the intent of the parties. See, e.g., West, **Michigan Civil Jurisprudence, Volume 5A**, “Contracts”, at Section #156.

From a corporate legal point of view, LSSCM cannot exhibit “objective independence” from MPLP— because MPLP is a creature of contract— not an independent entity. In other words, a “collaboration” is not an “organization”. In order to determine whether a grantee’s participation in a collaboration violates 45 CFR 1610, LSC is required to determine whether the two collaborating “organizations” that are involved in the collaboration have “objective integrity and independence” from each other.

The actual LSSCM – UMLS Agreement governing the MPLP collaboration is attached as Ex. B. This Agreement was provided to the OIG team. The Agreement clearly provides that UMLS and LSSCM are independent entities; that any restricted work will be undertaken by the UMLS Poverty Law Clinic; that the Clinic is a program of and solely controlled by UMLS; and that LSSCM will not control or support any LSC restricted work.

Specifically, the Agreement provides that:

- “the two organizations [LSSCM and UMLS] will remain separate and independent organizations”, Agreement at 2(B);
- general policy direction for MPLP activities will be provided by two Advisory Boards that are independent from both entities, Agreement at 2(D).
- the MPLP Administrative Committee ... “will not direct or supervise the substantive work of any of the MPLP divisions”, Agreement at 2(C);
- the parties acknowledge that LSSCM “receives LSC funding and is therefore subject to the LSC restrictions. The organizations further understand that many local legal services programs in Michigan receive LSC funding. Neither [LSSCM] as an organization nor any employee of [LSSCM] or any other LSC-funded program will perform LSC-prohibited work, or supervise or control LSC-prohibited work, or otherwise fund or support LSC-prohibited work,” Agreement at 2(E);

– “the organizations understand that the [Support] office will be supported in part by LSC funds and that all work of the [Support] office will be performed in accordance with the LSC restrictions,” Agreement at 3(C);

– “UMLS will be solely responsible for LSC prohibited or restricted work”, Agreement, at 3(F);

– “each organization will hire and set the terms of employment for its own employees”, Agreement at 3(A).

The net effect of the LSSCM – UMLS Agreement is to create a collaboration that is premised on the ongoing independence of two organizations—LSSCM as an LSC-funded entity and UMLS as an unrestricted entity. And since MPLP is a creation of contract (not an independent legal entity) it is the language of the contract that defines the parties’ relationship.

During the site visit, one of the questions investigated by OIG staff was whether MPLP was being operated in accord with the written Agreement– or whether some of the practices of the partners were inconsistent with the Agreement. While on site, OIG staff stated that MPLP was being operated in full compliance with the Agreement. Therefore, it follows that the violation of 45 CFR 1610 found by the OIG team must be due to some language in the Agreement that, as a matter of law, compromises LSSCM’s program integrity. However, the draft report only mentions the Agreement briefly and never identifies any specific provision of the Agreement as creating a violation of 45 CFR 1610. If the OIG has concluded that the LSSCM – UMLS Agreement violates 45 CFR 1610.8(a)(1) or (a)(3), the OIG must identify the provisions of the Agreement that conflict with the regulation.

**In our opinion, the draft report asks the wrong question—i.e., whether LSSCM is independent from the MPLP Support office—and therefore comes to the wrong legal conclusion. The proper test is whether LSSCM and the MPLP Support office (which comprise the legal entity called LSSCM) are independent from the UMLS and its Clinical Law Programs (which collectively comprise the legal entity called the University of Michigan Law School). Under this test, there is clear independence between the two organizations. See Ex. A.**

C. The findings of the draft report regarding physical and financial separation are factually and legally erroneous. The draft report makes two findings of non-compliance—that “the Michigan Poverty Law Program is not a legally separate entity” and that “the grantee does not maintain physical or financial separation from the Michigan Poverty Law Program”, draft report at p. 2.

The “legally separate entity” issues are discussed above. However, the finding that LSSCM “is not physically or financially separate from an organization that does restricted cases” (draft report at p.3) is also erroneous.

This finding may be due to the same conceptual error discussed above—i.e., that MPLP is “an organization” (as opposed to a joint project of two independent organizations). While it is true that the MPLP Support division is not physically separate from LSSCM (draft report at p. 3), it is also true that the Support division and the Clinic division of MPLP are physically separate from each other—as the draft report recognizes, they are located in separate offices with separate leases, draft report at p. 3.

It is also clear that the two divisions are fiscally separate. While the two divisions seek one common grant each year (a Michigan State Bar Foundation state support grant), this grant is but one of about 10 funding sources that support one of the two divisions of MPLP. All the other funding sources are applied for and paid directly to either LSSCM or UMLS. And even the MSBF support grant is not paid “to MPLP”—rather, a portion of the grant is paid directly to UMLS and a portion of the grant is paid directly to LSSCM. Except for the combined statements included in the grant documents required by one funder, all UMLS funds are accounted for by UMLS and all LSSCM funds are accounted for by LSSCM. These are entirely separate fiscal systems housed in different locations. There is no shared fiscal staff.<sup>4</sup>

Another problem with the draft report’s handling of the “physically and financially separate” issue is that the report fails to follow the process set forth in the regulation to analyze these issues. The regulation lists four different sets of factors that should be considered; it provides that the program integrity determination will be made “on a case by case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative”, 45 CFR 1610.8(a)(3). The draft report does not analyze the four areas listed in the regulation. The draft report’s conclusion follows a very cursory discussion of two or three of the four factors, see draft report at page 3. For a detailed analysis of the regulation’s application to the MPLP collaboration, see Ex. A.

For these reasons, we respectfully submit that the draft report’s findings that LSSCM is neither legally, physically, nor fiscally separate from the UMLS Clinical Law Program are erroneous.

**D. The draft report fails to discuss LSC’s review and apparent approval of the legality of the LSSCM – UMLS Agreement.** When LSSCM was in the process of forming MPLP

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<sup>4</sup>The draft report states that LSSCM maintains accounting records and timekeeping records for MPLP Support Division personnel. While this is true, it is also legally permissible, since the MPLP Support Division is an office of LSSCM. As noted in the MPLP Agreement, “all work of the [Support Division] will be performed in accordance with the LSC restrictions”. Agreement at Section 3(c). There is no violation of Part 1610 when an LSC-funded program utilizes non-LSC funds to operate an office— so long as that office doesn’t perform LSC-restricted work. What is not stated in the draft report (but which is implied) is that there are no shared accounting or personnel records between LSSCM (Support) and UMLS (Clinic). Thus, the draft report implicitly finds that LSSCM (the Support Division) and UMLS (the Clinic Division) maintain entirely separate personnel and fiscal systems.

(December, 1996), LSSCM staff were contacted by LSC Program staff who indicated that LSC had received an inquiry or a complaint about the possible illegality of the proposed MPLP structure. In response to this inquiry, after discussion with LSC program staff, LSSCM wrote to LSC "so that the Corporation is informed about [MPLP] and so that we can discuss any concerns that the Corporation might have about the program". See Exhibit C, letter from Robert Gillett to Karen Sarjeant dated February 7, 1997. This letter included the following attachments: the MPLP Agreement; a letter sent to all legal services staff in Michigan announcing and describing the MPLP program; and the Michigan State Bar Foundation "Support Services Outline" describing the funder's expectations for the proposed state support system.

After sending these materials to LSC, LSSCM staff discussed them with LSC staff. Based on that discussion, LSSCM staff understood that LSC had no issues with the legal structure of the MPLP program.

Later in February of 1997, Martha Bergmark, the then-President of LSC, visited the program and the Law School. Ms. Bergmark spoke on a panel at the Law School with Suellyn Scarnecchia (the Dean of Clinical Affairs at UMLS and the Law School's designated administrative contact for MPLP) and Robert Gillett (the Director of LSSCM and LSSCM's designated administrative contact for MPLP). The panel included a presentation on the structure and the substantive work of MPLP.

Early in 1998, another LSC staff person, Bristow Hardin, visited LSSCM. This meeting was held at MPLP and included a report on the MPLP program. Mr. Hardin toured both MPLP offices and met with both UMLS and LSSCM staff.

LSSCM's February, 1997 letter to LSC was written shortly after the initial implementation of the PL 104-134 restrictions and while two lawsuits challenging the restrictions were working their ways through the courts. See **Legal Aid Society of Hawaii, et al. v. Legal Services Corporation** and **Velazquez, et al. v. Legal Services Corporation**. (Both the **L.A.S.H.** and **Velazquez** cases were filed in January, 1997.) It is our understanding that, because of the high degree of public visibility of 1610 issues at this time, LSC staff took any complaint regarding 1610 compliance very seriously. We understand that LSC's policy was to fully investigate any such complaint. Further, we understand that LSC staff directly raised any 1610 compliance issues with the program. We also understand that since LSC was awaiting guidance from the courts, it was not issuing opinion letters on 1610 issues at this time.

It is true that LSSCM never received a written reply to Mr. Gillett's February 7, 1997 letter. However, we believe that LSC's comments and actions and practices, taken together, are strong evidence that LSC fully reviewed and approved the MPLP structure in 1997.

We discussed this history with the OIG team during the visit. Neither the extensive communications with LSC nor LSC's apparent approval of the MPLP structure are mentioned in the draft report.

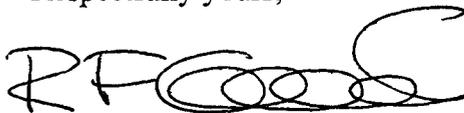
We urge the OIG to review LSC files and to discuss these issues with LSC program staff to confirm that there was a full LSC review of the MPLP structure in 1997. At a minimum, we request that the final report include a finding that LSSCM fully disclosed the MPLP relationship to LSC and asked for LSC's guidance regarding the relationship. These communications are further evidence that LSSCM has made reasonable efforts to understand and comply with the requirements of Part 1610. We would also request that this finding be stated explicitly in any final report.

**Conclusion.** We were very disappointed in the draft report. We were disappointed by its conclusion, which differed dramatically from the report we were given at the exit conference; by its lack of legal analysis; and by its apparent confusion about what relationship it was analyzing.

For the reasons outlined in this letter and its attachments, we would request that you modify the draft report to address these deficiencies. Specifically, we urge you to: (1) withdraw the draft report; (2) provide a second draft report for us that fairly and completely addresses the factual and legal issues raised in this letter; (3) provide us with an opportunity to review and comment on any revised draft report before a final report is issued.

Please contact me if you have any questions or if you need any additional information.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'RF Gillett', with a large, stylized flourish at the end.

Robert F. Gillett  
Director

To: Richard Adkins  
From: Bob Gillett  
re: MPLP and 1610 compliance  
Date: November 6, 2002

You asked me to write a memo addressing the independence of the University of Michigan Clinical Law Program ("the Clinic") from the LSSCM's Michigan Poverty Law Program's ("MPLP") Support office.

As I understand it, you are comfortable that the University of Michigan ("UMLS") and Legal Services of South Central Michigan ("LSSCM") are legally separate and independent entities. You are also comfortable that no restricted work is being performed by the MPLP Support office and that LSSCM provides no subsidy to the UMLS Clinic operations. While there is no question as to the actual independence of the Support office and the Clinic, you have some concerns about the appearance that the two organizations are a single organization.

This memo is meant to address that concern.

Origins. As you know, since 1995, all LSC-funded programs have been under a directive from the Legal Services Corporation (LSC) to assure the creation of "a comprehensive and integrated statewide network" of legal services delivery in their states. Grantees have been directed to assure that this network provides "a full range of services" (LSC permitted and LSC restricted) to all eligible clients. LSC describes the process to develop this network as the "state planning process".

MPLP was created through the Michigan state planning process. After extensive planning discussions, the Michigan State Bar Foundation ("MSBF") published its "Functions and Required Funding Priorities For State Support Services". This document made it clear that the "absolute priority" of the Foundation would be "program support for legal services field programs".

In response to the MSBF request for proposals to implement its plan for State Support Services, UMLS and LSSCM submitted their joint MPLP proposal in the fall of 1996. Under the proposal, the two organizations would form a partnership to jointly fund the Support office (which would operate consistent with the LSC restrictions); in addition, through its independent

Clinic office, UMLS would continue to provide services without regard to the LSC restrictions.<sup>1</sup>

In developing their proposal, UMLS and LSSCM were mindful of the LSC program integrity requirements set forth in 45 CFR 1610 and designed their program with the intent of fully complying with the regulation.

Before the MPLP program was operational, we discussed its structure with LSC staff. Shortly after the program opened its doors, LSSCM sent a letter (including several relevant program documents) to LSC and asked the Corporation to review the program.<sup>2</sup> LSC responded, approving the basic design of MPLP but leaving the door open to further review by the new LSC state planning representative. That representative, Bristow Hardin, visited MPLP in March of 1998; he expressed appreciation for the MPLP program as a model outcome of an effective state planning process. He raised no program integrity or other regulatory concerns about the program.

In sum, MPLP was designed to comply with 45 CFR 1610<sup>3</sup>, and its design and operations were reviewed and approved by LSC program staff at the time the program was created.

Current Status. As you requested, I will review the 45 CFR 1610 criteria in more detail and relate them to the LSSCM - UMLS activities in jointly sponsoring MPLP.

**Legally separate entities– 1610.8(a)(1).** As you have acknowledged, LSSCM and the University of Michigan are clearly separate entities. LSSCM is a Michigan non-profit corporation founded in 1965 and governed by a thirty person Board, the make up of which is consistent with 45 CFR 1607. The University of Michigan is a Michigan governmental corporation founded in 1817; the University is governed by eight Regents elected by the voters of the state of Michigan. There has never been a single position of Board overlap between the University Regents and the LSSCM Board. There has never been a joint Board meeting.<sup>4</sup>

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<sup>1</sup>The University of Michigan Clinical Law Program has existed, as a non-LSC-funded legal services provider, since 1972.

<sup>2</sup>This letter was sent to Karen Sarjeant early in 1997. Around this time, Ms. Sarjeant moved from being the LSC “state planning” representative to Michigan to being LSC’s Vice President for Programs.

<sup>3</sup>Since MPLP was created in 1996, it was created in compliance with the 1996 version of 45 CFR 1610. The regulation was revised in 1997 to reflect the decision in the Legal Aid Society of Hawaii case.

<sup>4</sup>MPLP has a single “Advisory Board” that provides program advice to both the Support and Clinic offices. First, this Board is purely advisory– it is not a governance Board. Second, this Board is independent from both sides of MPLP– UMLS and LSSCM. Its members are

Both organizations have wholly separate administrative personnel. On the University side, there is a University President (Mary Sue Coleman); a Law School Dean (Jeffrey S. Lehman); and an associate Dean of Clinical Affairs (Suellyn Scarnecchia). On the LSSCM side, there is an Executive Director (Robert Gillett) and two Deputy Directors (Ann Routt and Carol Munday).

The overall University Budget is just under \$4 billion per year. The LSSCM budget was about \$5 million in 2002.

**No LSC fund transfers– 1610.8(a)(2).** No LSC funds have been transferred from LSSCM to UMLS. The non-LSC funds that have been transferred from LSSCM to UMLS are: (1) VAWA funds subject to a joint application and a memorandum of understanding that provides that the funds will be used for the grant activities noted in that grant request. (None of these funds may be used for LSC-restricted activities.) (2) State Filing Fees funds used to reimburse UMLS for LSSCM expenses advanced by UMLS for LSC-permissible work.

In turn, UMLS transfers resources (in cash and in kind) to LSSCM. These resources are used by LSSCM for the purposes intended and consistent with LSC restrictions. We believe that the transfer of funds from an unrestricted entity to an LSC-funded entity does not implicate 45 CFR 1610.

**Physical and financial separation– 1610.8(a)(3).**

**(i) Shared personnel.** There are no personnel who are part time UMLS personnel and part time LSSCM personnel. There are no shared personnel between the Clinic (which is operated wholly by UMLS) and the Support office (which is managed by LSSCM).

UMLS provides funding to the Support office. That funding supports staff who spend 100% of their time on LSC-permissible support activities. These staff members are essentially donated to LSSCM by UMLS and, like any donation from a private law firm to an LSC-funded program, the donation does not make the LSC restrictions applicable to the donor firm or cause the LSC-funded program to violate 1610.

**(ii) Separate accounting and timekeeping records.** UMLS and LSSCM each have their own accounting systems that are 100% independent from each other. Neither party charges administrative expenses against this grant.

Each year, LSSCM and the Law School Clinic sit down to develop a “joint budget” for MPLP. This budget is used only for submission of the annual funding application to the MSBF. This budget pulls discrete pieces out of the Law School Clinic budget and the LSSCM budget–

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“MPLP consumers”– project directors, staff attorneys, private bar leaders, and client organization leaders from across the state– who provide feedback and advice on improving MPLP’s services.

but is not a full budget for either entity.

Through the application process, UMLS and LSSCM ask the MSBF to send portions of the support grant to each entity, so there is no commingling of funds between the entities.

The Clinic employees are all paid through the UMLS timekeeping and payroll systems. The LSSCM Support employees are paid through the LSSCM timekeeping and payroll system. The UMLS employees assigned to the Support office are paid through the UMLS timekeeping and payroll systems.<sup>5</sup>

**(iii) Separate facilities.** The University of Michigan Clinical Law Program operates five separate clinics from a number of different locations. These clinics include the Child Advocacy Law Clinic, the Legal Assistance to Urban Communities Clinic, the Criminal Appellate Advocacy Clinic, the Environmental Law Clinic, and the General Clinic. It is this final Clinic that accepts cases referred from legal services funded programs through MPLP. Overall, these clinics employ about 16 clinicians, fellows, and staff attorneys.

The main clinical offices are at the Law School, although several of the clinics have separate offices in the Law School or at satellite offices in other locations. The Law School's determination of when a clinic needs an office outside the school is based on the educational goals of that particular clinic.

The MPLP Support office is located at 611 Church St. ("Church Street"), a privately owned office building about two blocks from the Law School. The Church Street building is rented to a mix of University and commercial tenants. The 4<sup>th</sup> Floor of the building is leased to the University. Half of the floor is used as a University fund raising office. The other half of the floor is leased to the University for the use of the Law School. This Law School space is split into five suites with a separate lease for each suite.

One of these suites houses the MPLP Support office. This space is paid for by UMLS (and treated in the LSSCM audit as donated space).<sup>6</sup> One of the other suites houses two lawyers from the University of Michigan Clinical Law Program. These lawyers are the MPLP liaisons. In addition to the Clinic office space at Church St., the clinic lawyers are also provided office

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<sup>5</sup>During the site visit, it was suggested that LSSCM request that the UMLS funded Support attorney complete LSSCM timesheets— not for payroll purposes, but for additional documentation that this employee is not engaging in any LSC-restricted work while working in the Support office.

<sup>6</sup>Another suite houses LSSCM's Family Law Project— another joint project with the Law School which is staffed by LSSCM lawyers who supervise volunteer law students in the representation of survivors of domestic assault. This space is also donated to LSSCM by the UMLS.

space at the Law School.<sup>7</sup>

**(iv) Signs and form of identification.** The overall signage for LSSCM and the University of Michigan makes it clear that these are separate organizations with separate missions and facilities. The signage on the separate suites at Church Street reflect the six separate organizations that use the 4<sup>th</sup> floor space. The Church Street building is the only building where both LSSCM and the UMLS have offices. The University of Michigan owns or leases over 100 buildings in the state. LSSCM has six other offices.

The MPLP brochure presents both sides of the program in a single document but it clearly distinguishes between the two. The brochure lists separate addresses for the Support Office and the Clinical Program, and in its text, clearly states that the Support office “is subject to the LSC restrictions” and that the Clinic “can accept referrals of restricted and unrestricted cases and projects”.

The MPLP website <[www.mplp.org](http://www.mplp.org)> offers a single entry point to both sides of MPLP’s services. However, this site also clearly states the separate services that are provided by the Support Office and the Clinic, see <[www.mplp.org/mplpinfo/mplpdescription.shtm](http://www.mplp.org/mplpinfo/mplpdescription.shtm)>.

LSSCM and the Support office have been deeply involved in legal services technology planning since 1997. Support office technology staff have worked closely with LSC program staff on technology issues. LSSCM, through the Support office, is currently a grantee in five different LSC Technology Initiative (TIG) grants. LSC program staff are familiar with the MPLP web site and have not raised any regulatory concerns. In fact, we understand that the MPLP site has been selected as the model for the “advocates site” for the national probono.net project funded by LSC.

Finally, while the University of Michigan Clinical Law Program has several offices and phone numbers, the primary phone number for two (of 16) clinicians is through the Church Street phone system. While these clinicians still have use of offices and phones at the Law School, over time it has become clear that, to effectively coordinate work between the Support office and the Clinic, to be fully available to the LSC field programs, and to supervise the clinical students assigned to the Church Street space, it is necessary to have the MPLP number as the primary phone number for these attorneys.

Comparison with the Lane County report. I am aware that, in at least other audit report, the OIG has found that a grantee “did not maintain objective integrity and independence from a legal organization that engaged in prohibited activities”, OIG Report No. AU 02-01 (“Lane County”).

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<sup>7</sup>These two attorneys are two of six attorneys assigned to the UMLS General Clinic. The other four attorneys assigned to the Clinic are at the Law School on a full time basis.

In that case, it appears the LSC grantee had a relationship with the restricted organization (the Advocacy Center) since the Center was created in 1995. The organizations have “intertwined financial arrangements”, including the direct transfer of over \$100,000 per year from the grantee to the Center. The two organizations are wholly co-located, with staff sharing spaces on several floors in a single building. It appears that there was not adequate signage reflecting the two organizations’ use of the building. There is substantial shared staff, including intake staff and administrative staff. There is a single administrative staff for the two organizations. The organizations share accounting and timekeeping systems, a web page, phone numbers, and fax numbers.

Based on “all the above factors”, the OIG concluded that “the grantee and the Center were so closely aligned that they appeared to be one organization”.

There are two points I wish to make based on this report. First, none of the factors that were found compelling in the Lane County report— a shared history; a single shared site; shared staff; financial subsidization; shared fiscal and administrative systems; etc.— exist here.<sup>8</sup>

Second, in the Lane County report, the OIG did not find that the grantee’s relationship with the Advocacy Center was by its nature violative of the regulation. Instead, the OIG made a series of recommendations that would assist the grantee in maintaining its relationship with the Advocacy Center while documenting compliance with 45 CFR 1610. Almost all of these recommendations<sup>9</sup> have been built into the structure of MPLP since its creation.

Conclusion. All LSC grantees are under a somewhat contradictory message from LSC program staff— to carefully observe all regulatory restrictions while creating a seamless legal services delivery system that services all needs of all clients. MPLP was designed to meet both these goals.

MPLP is exactly what it appears to be, i.e. a partnership between two strong, independent organizations— one LSC-funded and subject to the LSC restrictions and the other non-LSC-funded and independent of the LSC restrictions— who share a commitment to the provision of high quality legal services to low income persons.

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<sup>8</sup>Indeed, the level of connection between the University of Michigan Law School Clinical Law Program and LSSCM is much less than the connections found unobjectionable in OIG Report AU-02-03 (Central Virginia Legal Aid Society); and arguably less than the part time staff arrangements found unobjectionable in OIG Report AU-01-04 (Pine Tree Legal Assistance).

<sup>9</sup>See, for example, Recommendations # 1, 4, 7, 10, 11, 12, and 13 in the Lane County Report.

# MICHIGAN POVERTY LAW PROGRAM

## AGREEMENT

### 1. Purpose

The Michigan Poverty Law Program ("MPLP") is created to establish a high quality program to provide support services (as described in the Michigan State Bar Foundation ("MSBF") "Support Functions" outline dated 9/24/96) for programs providing free civil legal assistance to low income persons within Michigan. In establishing this program, the MPLP intends to create a partnership among the current legal services provider community, the private bar, and the University of Michigan Law School. The MPLP seeks to increase the involvement of the private bar in all aspects of legal services delivery and, through the participation of the University of Michigan Law School, involve the state's educational institutions and their students in the provision of legal services to Michigan's poorest citizens.

### 2. Sponsorship and Governance

A. The Michigan Poverty Law Program will be a joint program of the University of Michigan Law School ("UMLS") and Legal Services of Southeastern Michigan ("LSSEM"). UMLS understands that LSSEM will subgrant a portion of the funding for the program to the Michigan League for Human Services ("MLHS") to assist the program in providing legislative support services to legal services providers.

B. The two organizations will remain separate and independent organizations. The organizations will jointly participate in program planning for the MPLP.

C. In order to coordinate the efforts of the organizations, the organizations will establish a Coordination and Planning Committee to advise the MPLP. This Board will consist of representatives of UMLS, MLHS, and LSSEM. The Committee will not direct or supervise the substantive legal work of any of the MPLP divisions.

D. The MPLP will accept policy direction on substantive priorities and training needs from the MPLP Advisory Board. The MPLP will accept policy direction on technology issues from the Legal Services Computer Committee ("LSCC").

E. The organizations understand that LSSEM receives Legal Services Corporation ("LSC") funding and is therefore subject to the LSC restrictions. The organizations further understand that many local legal services programs in Michigan receive LSC funding. Neither LSSEM as an organization nor any employee of LSSEM or any other LSC-funded program will perform LSC-prohibited work, or supervise or control LSC-prohibited work, or otherwise fund or support LSC-prohibited work.

### 3. Delivery

A. Each organization will hire and set the terms of employment for its own employees.

B. At least one employee will be a clinical assistant professor ("CAP") at the UMLS. Any CAP employees will be employees of UMLS. CAPs will be responsible for supervising clinical law students and training volunteer students assigned to the MPLP. The work of the CAPs will be integrated into the overall workplan of the MPLP. All parties agree that the involvement of law students in the MPLP is a goal of the program. LSSEM agrees to make clinical or internship placements available to UMLS students.

C. The MPLP East employees will be housed at a single site jointly selected by LSSEM and UMLS. All MPLP employees will comply with the terms of the lease and the rules and regulations of the building. The Managing Attorney of the MPLP East Office will be an employee of LSSEM. The remaining MPLP East employees may be employees of LSSEM or UMLS. The parties' agreements about personnel policies are attached as Ex. A. The organizations will jointly plan the staffing of the MPLP East office. All MPLP East employees will be hired by a joint LSSEM/UMLS hiring committee. The organizations understand that the MPLP East office will be supported in part by LSC funds and that all work of the MPLP East office will be performed in accordance with the LSC restrictions.

D. The organizations agree to consult with each other regarding hiring for all MPLP positions.

F. UMLS will be solely responsible for LSC prohibited or restricted litigation. No UMLS employee will engage in any direct lobbying activities prohibited by University of Michigan policies.

G. MPLP East (also supported by the UMLS Clinics) will be primarily responsible for the remaining support functions set forth in the MSBF "Support Functions" outline dated 9/24/96. LSSEM will, consistent with the regulatory restrictions imposed by LSC, provide tracking and information services on legislative issues. In addition, LSSEM will enter into a contract with the MLHS for additional services in the legislative area.

H. There will be space available in both the MPLP offices for the CAP position(s) and for student workspace. UMLS agrees to make sufficient law school space available to the MPLP to permit full student involvement in the program.

I. The parties recognize that the primary services of the program are "support services" as defined in the MSBF "Support Functions" outline. MPLP staff may be involved in litigation; however, we expect that most of this litigation will be done in conjunction with local MSBF-funded programs or with pro bono attorneys identified through the MI-LAPP program.

The MPLP will accept policy direction (as to litigation and non-litigation advocacy issues) from the advisory boards referred to in section 1(d), above. The parties further agree that any potential

liability, with limits of no less than \$1,000,000 per occurrence and \$1,000,000 aggregate and professional liability insurance with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

**5. Accountability and Reporting.**

A. UMLS and LSSEM agree to cooperate in the provision of reports to the MSBF, to MSBF-funded programs, to the Advisory Boards described in Section I of this document, and to other funders.

B. UMLS and LSSEM agree to meet on the request of any party or on the request of the MSBF to discuss any conflicts or concerns arising regarding the MPLP.

**6. Additional Considerations and Agreements.**

A. LSSEM agrees that the financial and programmatic support from the UMLS has been critical to the creation of the MPLP. The joint sponsorship of the MPLP by UMLS will be acknowledged on all MPLP publications. LSSEM further agrees to fully acknowledge UMLS sponsorship and support of this program as requested by UMLS.

B. While the parties agree to the specific statements in this agreement, they also acknowledge that their basic agreement is to develop the best state support program possible for programs providing free civil legal services to the poor. The parties agree to discuss changes and modifications in this agreement with this basic goal in mind. The parties agree to review this agreement on an annual basis and to evaluate the program and to discuss the need for any changes in the structure of the program or in the delivery of services through the program.

C. The parties agree that the long term viability of a high quality MPLP depends on stable long term funding for the program. The parties agree to cooperate in fund-raising efforts for the MPLP.

\_\_\_\_\_  
Jeffrey S. Lehman  
University of Michigan  
Law School

\_\_\_\_\_  
Robert F. Gillett  
Legal Services of  
Southeastern  
Michigan

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

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01/11/00

# LEGAL SERVICES OF SOUTHEASTERN MICHIGAN, INC.

*... there can be no equal justice without  
the kind of trial ... (one) enjoys ...  
on the amount of money (one) has.*  
— Hon. Hugo Black  
*Griffin v. Illinois*  
351 US 12 (1956)

Washtenaw County Office: 420 N. Fourth Ave., Ann Arbor, MI 48104-1197 (313) 665-6181/FAX (313)665-2974

February 7, 1997

Karen Sarjeant  
Legal Services Corporation  
750 1st St., 11th Floor  
Washington, D.C., 20002

re: Michigan Poverty Law Program

Dear Ms. Sarjeant,

We spoke briefly in late December about this program, which is a collaborative state support program. The partners in the collaboration are the University of Michigan Law School ("UMLS"), the Michigan Migrant Legal Assistance Project ("MMLAP"), and Legal Services of Southeastern Michigan ("LSSEM").

I am enclosing three documents that provide additional background regarding the program: (1) the letter we sent out to the field describing our initial plans for the program and its services; (2) the coordination agreement between the partners; (3) the Michigan State Bar Foundation's "Support Services Outline" which guided us in planning the program.

I'm writing so that the Corporation is informed about the program and so that we can discuss any concerns that the Corporation might have about the program.

In writing, I wish to emphasize several points. First, this project is a collaborative project among the three partners. While we will collaborate in planning the program and its services, each organization retains its own governance structure and ultimate control over its portion of the overall MPLP program.

Second, LSSEM understands that as an LSC grantee all its funds are subject to the LSC restrictions. LSSEM will not engage in or support LSC-prohibited activity through its MPLP subgrant or otherwise.

Third, in the extensive discussions that led to the formation of MPLP, there were three overriding goals: (1) to establish a state support system that emphasized support for field programs and



**Jackson County Office:** 180 W. Michigan Ave., 800 Harris Bldg., Jackson, MI 49201 (517) 787-6111

**Monroe/Lenawee County Office:** 105 E. Front St., Room 201, Monroe, MI 48161 (313) 241-8310/(517) 263-0850 / FAX (313)241-1381

**Family Law Project:** University of Michigan Law School, Hutchins Hall, Ann Arbor, MI 48109-1215 (313) 763-6591

*A member agency of the Jackson County United Way* I - 20

EX. C

Karen Sarjeant  
February 7, 1997  
Page 2

that was responsive to field programs; (2) to retain within the state delivery system the capacity for a full range of advocacy for low income persons; (3) to bring new partners and new resources into the legal services delivery system. None of the partners could address all of these goals; together, we feel that we have addressed them in a way that focuses on direct service by local programs and assures that a full range of services remain available to Michigan's indigent citizens.

It is worth noting that this program exists as a direct result of the 1995 LSC-Mandated State Planning Process, the ongoing leadership of the Michigan State Bar Foundation in implementing the Plan, and the support of the State Bar of Michigan, especially through its Task Force on Access to Justice.

I'm happy to answer any questions you have about the program. If LSC feels that there are changes that should be made to the program design, we're very willing to discuss these.

Very Truly Yours,



Robert F. Gillett  
Director

## APPENDIX – II

### OIG Staff Responsible for the Audit and the Report

Richard Adkins (Auditor-in-Charge)

David Gellman

Anthony Ramirez