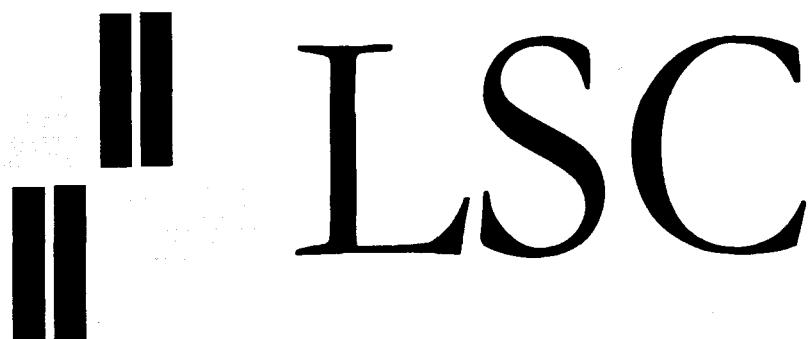


**LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL**

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



**Grantee: Legal Aid Society of Greater Cincinnati
Recipient No. 436040**

Report No. 04-01

January 2004

www.oig.lsc.gov



January 29, 2004

Ms. Mary Asbury
Executive Director
Legal Aid Society of Greater Cincinnati
215 East Ninth Street
Cincinnati, Ohio 45202

Via Fax: (513) 241-7871 and FEDEX

Dear Ms. Asbury:

Enclosed is our final report Legal Aid Society of Greater Cincinnati's compliance with the program integrity requirements of 45 CFR Part 1610. Your comments on the draft report are included as Appendix I. The final report contains two recommendations.

Your response to the draft report indicates that you generally concurred with the finding and the first recommendation regarding training. You disagreed with implementing the second recommendation to revise your "Standards on Practice and Supervision." Your comments indicate that you implemented the first recommendation and took alternative action that met the intent of the second recommendation. The recommendations will remain open until we receive a corrective action plan documenting the corrective action taken. Please provide us with the plan within 30 days of the date of this report.

A copy of this report is also being sent to the Chair of the Board of Directors of your program and to LSC management.

Thank you and your staff for the courtesy and cooperation extended to the audit team. Please contact David Young at 202-295-1662 or me at 202-295-1651 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard J. Koczur".

Leonard J. Koczur
Acting Inspector General

Enclosure

cc: Randi Youells, Vice President for Programs
Legal Services Corporation

Paul W. Heldman, Chairman of the Board,
Legal Aid Society of Greater Cincinnati

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RESULTS OF AUDIT

The Legal Services Corporation (LSC) Office of Inspector General (OIG) conducted this audit to determine whether the Legal Aid Society of Greater Cincinnati (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 (PAI) activities.

The audit provides reasonable, but not absolute, assurance that the Legal Aid Society of Greater Cincinnati (grantee) complied with Part 1610 between July 1, 2001 and April 30, 2003, the period covered by our review.

Although we found no violations of the program integrity regulation, in two cases grantee attorneys claimed attorneys' fees in violation of the LSC regulation and grantee policy. The fees were not collected in either case.

Recommendations for corrective action related to attorney's fees are on page 2. The grantee's response provides a basis for considering the recommendations resolved. However, the grantee needs to provide the OIG with documentation supporting its actions to resolve the recommendations. Therefore, the recommendations remain open.

Claims for Attorneys' Fees

The grantee claimed attorneys' fees in two of 49 cases we reviewed, for the period July 1, 2001 through December 31, 2002. LSC regulation 45 CFR Part 1642, Attorneys' Fees, and the grantee's policy on attorneys' fees prohibit the grantee or its employees from claiming, or collecting and retaining attorneys' fees.

In the first case, *Sweeten vs. Heslamlou*, the grantee's senior attorney who drafted the pleading that requested attorneys' fees stated that she could not recall why she requested attorneys' fees. The senior attorney stated that she was fully aware of the prohibition against claiming attorneys' fees and agreed that the request for attorneys' fees violated LSC and grantee prohibitions. The Executive Director stated that the case was filed in July 2001 but the court was unable to serve the opposing party. The case was dormant until the court dismissed it in July 2002 for want of prosecution. The Executive Director provided a copy of the court's dismissal order and stated that the grantee is no

longer pursuing the case and will close it. The case will not go to trial and attorneys' fees will not be collected.

The second case, *Moore vs. Mitchell*, was co-counseled with a private attorney. In this case, the private attorney drafted the amended complaint and, as part of joining the case as co-counsel, included a general request for attorneys' fees. The case was settled without going to court and no attorney fees were collected.

The grantee's attorney stated that he was aware of the LSC and grantee prohibitions against claiming attorney's fees. He reviewed the amended complaint but missed the fact that the request for fees was not limited to the private attorney. Other grantee co-counseling cases showed that the requests for attorneys' fees typically were phrased to "request fees for the private attorney only."

The grantees' policy on attorneys' fees mirrors LSC regulations and clearly prohibits claiming, accepting and retaining attorneys' fees. However, the grantee's April 2001 "Standards of Practice and Supervision," encourages attorneys to (a) consider the availability of attorneys' fees, and (b) specifically explore the availability of attorneys' fees.

These instructions provide conflicting advice to grantee attorneys in light of the clear prohibition stated in the grantee's policy and LSC regulation. The references in the standards of practice should be amended to clearly state that neither the grantee nor its attorneys may claim, or collect and retain attorneys' fees.

The two cases claiming attorneys' fees and the advice provided in the "Standards of Practice and Supervision" indicate that the grantee needs to reinforce with its staff the prohibition on claiming, or collecting and retaining attorneys' fees.

Recommendations:

We recommend that the Executive Director:

1. Conduct a formal training session with attorneys and paralegals concerning the LSC regulation and grantee policy that prohibit claiming, or collecting and retaining attorneys' fees.
2. Revise "Chapter X. Pleadings – Civil Actions," of the "Standards of Practice and Supervision" to state that neither the grantee nor its employees may claim, or collect and retain attorney's fees.

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

Grantee's Comments

The grantee generally agreed with our finding and the grantee states that it has implemented the first recommendation. The grantee disagreed with our second recommendation that its "Standards of Practice and Supervision" should be revised to recognize LSC's regulation against claiming, or collecting and retaining attorney's fees. The grantee stated that it sees no conflict between its standards of allowing its attorneys to consider and explore the availability of attorney's fees and LSC's restrictions on attorney's fees, because LSC's restrictions are addressed in other grantee documentation. In lieu of adopting our second recommendation, the grantee revised its "Standards of Practice and Supervision" to cross-reference them to LSC's regulations. The grantee's comments in their entirety are in Appendix I.

OIG Response

We disagree with the grantee's assertion that there is no conflict between its "Standards of Practice and Supervision" and LSC's regulation on claiming, or collecting and retaining attorney's fees. While the grantee can investigate the availability of attorney's fees, it must do so with the clear understanding that such fees cannot be claimed, or collected and retained. This clear restriction on attorney's fees was missing from the grantee's written guidance that authorizes its staff to investigate the availability of attorney's fees. Our recommendation would correct this problem. The grantee did not implement the recommendation but took alternative action which met the recommendation's intent and should correct the problem.

The recommendations will remain open pending receipt of a corrective action plan documenting the corrective action taken and the dates it was taken. The plan is due no later than 30 days from the date of this report.

BACKGROUND

The Legal Aid Society of Greater Cincinnati (grantee) is a nonprofit corporation organized to provide legal services to indigent individuals who meet LSC eligibility guidelines. The grantee serves five counties in Ohio and is headquartered in Cincinnati with another full-service office in Hamilton. At the time of our audit, the grantee was staffed with 32 attorneys, 10 paralegal advocates, and 31 other employees who provide administrative services and initial intake screening. In Brown County, where the grantee does not have a full-time presence, the grantee contracts with private attorneys there to provide LSC-eligible clients with legal representation on a reduced fee basis. In addition, the grantee provides administrative assistance to the Volunteer Lawyers Project and assigns cases to private attorneys who are participants. The Volunteer Lawyers Project is a joint lawyer referral project of the grantee and three local bar associations. No LSC funds are used to support the grantee's involvement with the Volunteer Lawyers Project.

On November 1, 1999, the grantee, through its wholly-owned subsidiary, Community Law Center Real Estate Company, purchased the building it currently occupies in Cincinnati. The wholly-owned subsidiary is supported by non-LSC funds and leases space to the grantee and other organizations, including a law firm that engages in activities restricted and prohibited by LSC. The relationship between the grantee and this law firm is that of lessee and lessor and does not violate LSC's program integrity standard. The grantee pays less than market rent while the other lessors pay market rents for their space.

The grantee received total funding of over \$5.4 million during the fiscal year ended December 31, 2002. LSC provided about \$1.46 million which was about 26.8 per cent of total funds received by the grantee during the year.

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit assessed whether the grantee complied with requirements established in 45 CFR Part 1610 relating to the transfer of funds to other organizations and program integrity standards.

Our review covered the period July 1, 2001 through April 30, 2003. We began our audit work in May 2003, and visited the grantee's offices in Cincinnati and Hamilton, Ohio during the period from June 16, 2003 through June 26, 2003. At LSC headquarters in Washington D.C., we reviewed materials pertaining to the grantee including its Certifications of Program Integrity, audited financial statements, grant proposals, and recipient profile. OIG staff also discussed issues relating to the grantee with LSC management officials.

During the on-site visit, we interviewed and collected information from the Executive Director, case handlers, and other staff. We ascertained whether the grantee's employees were generally knowledgeable regarding the guidelines set forth in Part 1610. The audit included an assessment of the grantee's policies and procedures applicable to the transfer of funds to other organizations and program integrity requirements.

We gained an understanding of the client intake process used by the grantee. We identified the grantee's controls regarding its oversight of its Private Attorney Involvement program. The grantee PAI program has two elements: a pro-bono volunteer lawyers program in the counties of Hamilton, Warren, Brown and Clermont, and a reduced-fee, contract attorney program in Brown County. We interviewed two private attorneys who are closely involved with the grantee's assignment of cases through the Volunteer Lawyers Project to discuss their involvement with the grantee and the Volunteer Lawyers Project. We also interviewed two other private attorneys. One attorney is a tenant to the grantee and a participant in the Volunteer Lawyers Project, and the other attorney subleases space in the grantee's building and is a co-counsel for three of the grantee's cases. No LSC funds were used to support the PAI program and no program integrity issues were identified.

We identified and reviewed case files for cases that had been filed in court to determine if the grantee had engaged in any restricted or prohibited activity. The case files were reviewed with the Executive Director. We also discussed the circumstances of the two attorneys' fees cases with the Executive Director and the two attorneys who were responsible for the cases.

We assessed the process used by the grantee to allocate direct and indirect costs to LSC and non-LSC funds. Policies and procedures relating to payroll and timekeeping were evaluated. The grantee's employees were interviewed to determine their understanding of the process. We reviewed the grantee's financial accounts for vendors including contractors, employees, and consultants.

We selected 65 commercial vendors (including 38 attorneys) and 7 current and 3 former employees for a detailed review of their activity during our audit period. Fifty-seven of the commercial vendors and 10 of the current or former employees had activity during the audit period. From these 67 files we reviewed 287 transactions totaling over \$596,000.

All agreements between the grantee and other organizations and individuals were requested. We reviewed all materials provided, including grant funding instruments, leases, and contracts.

We performed the audit in accordance with *Government Auditing Standards* established by the Comptroller General of the United States and under authority of the Inspector General Act of 1978, as amended and Public Law 107-77, incorporating by reference Public Law 104-134.

**LEGAL AID SOCIETY OF
GREATER CINCINNATI**

LEGAL SERVICES IN BROWN, BUTLER, CLERMONT, HAMILTON AND WARREN COUNTIES

November 11, 2003

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Mr Leonard J. Koczur
Acting Inspector General
Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

RE: Comments on OIG Draft Audit Report

Dear Mr. Koczur:

The Legal Aid Society of Greater Cincinnati (LASGC) submits the following comments regarding the report and recommendation of the Office of Inspector General.

First, we appreciate the finding that LASGC complied with §1610, the program integrity regulation, during the time period examined during the audit.

HAMILTON

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Hamilton, Ohio
45011

Telephone (513) 241-9400

Facsimile (513) 894-7669

On the issue of Claims for Attorneys' Fees: LASGC concurs that in one case a grantee attorney made a claim for attorneys' fees in an initial complaint for relief; this violated LSC regulations as well as LASGC policy. As noted in the OIG report, LASGC's policy:

"mirrors LSC regulations and clearly prohibits claiming, accepting and retaining attorneys' fees."

We do not agree that the language in LASGC's Standards of Practice and Supervision, instructing attorneys to (a) consider the availability of attorneys' fees, and (b) specifically explore the availability of attorneys' fees, constitutes conflicting advice. As discussed during the site visit, it is our view that the Standards of Practice have a particular purpose, that is, they serve as a checklist and guide for high-quality and ethical practice of law. LASGC does not weave in the LSC regulatory restrictions, or grant conditions applicable to LSC and other funds. However, these restrictions and conditions are clearly set out in other documents, and are the subject of staff trainings and reminder memos to ensure, to the maximum extent possible, compliance with all applicable rules and regulations.

The attorney who drafted the faulty complaint stated that she was well aware of the LSC regulation and Legal Aid policy prohibiting attorneys' fees, and that she could not



Mr. Leonard J. Koczur
Page 2
November 11, 2003

account for her error in including the claim. During the on-site visit, auditors examined the pleadings in her other pending cases; none contained a claim for fees. LASGC doubts that the Standards of Practice contributed to this error. Both the attorney involved and LASGC management regret that this error occurred.

In the second instance cited, a private attorney co-counsel drafted the complaint, and included a claim for fees. At this stage of the case, it was ambiguous whether a claim for fees was made on behalf of LASGC, and given our clear policy prohibiting such a claim, we are certain that this would not have occurred, had a motion for fees ever been filed. We do agree that the better practice is to clearly state that fees are sought only for private counsel. That is our current policy, and we have issued a memorandum to LASGC attorneys addressing this, and other issues, with respect to co-counseled cases.

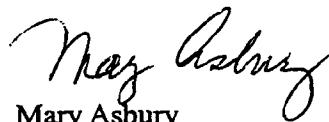
Regarding the Recommendations: We concur with the recommendation for training. The Executive Director conducted a training for all attorney and paralegal staff in July, 2003, covering the LSC restrictions, with special emphasis on the attorney fee and co-counseling issues. We will continue to conduct orientation training, and periodic training for experienced attorneys, covering these issues.

LASGC agrees that it could be helpful to cross-reference the Standards of Practice provision with the applicable LASGC policy regarding claims for attorneys' fees, and we have revised Chapter X of the Standards of Practice to add the following language:

"If attorneys fees or damages may be available, consideration of Legal Aid's policies on fee-generating cases, and the policies and practice guidelines regarding claims for attorneys fees, and procedure in co-counseled cases must be considered and followed."

Thank you for the opportunity to comment on the draft report.

Sincerely,


Mary Asbury
Executive Director
Direct-Dial (513) 362-2800

MA/paa

APPENDIX II

OIG On-Site Audit Team

David Young (Auditor-in-Charge)

Chris Aballe

Amelia Laguilles

Abel Ortunio