

Office of Inspector General

COMPLIANCE WITH SELECTED REGULATIONS AND USE OF FUNDS FOR PROHIBITED AND RESTRICTED ACTIVITIES PERFORMANCE AUDIT & FINANCIAL RELATED AUDIT

Grantee:

**Legal Aid Society of Alameda County
Oakland, California**

Recipient No. 805160

Final Audit Report No. AU96-063D/064D

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INTRODUCTION

In Public Law 104-134 [110 Stat. 1321 (1996)], the 1996 appropriation for the Legal Services Corporation (LSC), Congress imposed restrictions and prohibitions on the types of services LSC grantees may provide to clients and on the methods they may employ in providing those services. The law, enacted on April 26, 1996, required the grantees to discontinue servicing certain types of cases immediately. It also required grantees to divest of three other types of cases (class actions, prisoner litigation, and alien representation) no later than July 31, 1996. Congress required LSC to report whether grantees had divested of these cases within the time allotted.

In order to provide the LSC Board of Directors, management, and Congress with an independent assessment of the grantees' compliance with the new law, the LSC Office of Inspector General (OIG) initiated two types of limited scope audits covering 12 grantees. A performance audit tested: (1) whether the grantees had divested of the prohibited cases and were providing only those legal services permitted in restricted cases; and (2) whether the selected grantees had implemented the policies and procedures to ensure that case-related activities were within the new law. A financial related audit was designed to determine whether selected grantees were supporting prohibited or restricted activities through the grantee or alternative organizations.

This report presents the results of both the performance audit and the financial related audit of Legal Aid Society of Alameda County (LASAC).

BACKGROUND

The following provides background information on program description, transfer agreements, partial separation agreements, and delivery of legal services. This information is pertinent to the audit objectives.

PROGRAM DESCRIPTION

LASAC received \$926,810 from LSC in Fiscal Year 1996. LASAC's main office was located in Oakland, California, and there were two branch office locations. As of the date of fieldwork, LASAC employed, in addition to the Executive Director, approximately 8 attorneys, 2 paralegals, and 8 other staff. In June 1996, LASAC reported 9 class action suits, no prisoner litigation suits, no alien representation cases for a total of 9 cases as potentially subject to divestiture by July 31, 1996. In its July 31, 1996 report to the Corporation, LASAC certified that it was no longer providing legal assistance in any of the three categories of reportable cases: class action suits, certain alien representation cases, and litigation on behalf of incarcerated persons.

TRANSFER AGREEMENTS

LASAC elected to divest of the restricted cases through transfer to four organizations:

- one that served as a pass-through entity for funds received from LASAC, and possibly other legal services programs;
- two new entities formed by employees of LASAC, and which received LASAC funds through the pass-through entity; and
- one that received funds from LASAC for use in certain named cases.

Specifically, the four organizations are as follows:

1. Impact Fund: Pursuant to an agreement, the Impact Fund received \$254,871 from LASAC in order to provide funds to individuals and entities that accepted responsibility for representation of clients in certain named cases.

The Impact Fund also executed supplemental grant agreements with two newly formed organizations, Public Interest Law Project (PILP) and Center for Poverty Law and Economic Opportunity (CPLEO), and subsequently transferred funds received from LASAC.

2. Public Interest Law Project (PILP): Incorporated on January 30, 1996, PILP was formed by two LASAC attorneys who previously worked full-time for LASAC and were working part-time for LASAC and part-time for PILP at the time of field work in December 1996. PILP received funds from the Impact Fund, the pass-through entity.
3. Center for Poverty Law and Economic Opportunity (CPLEO): Incorporated on January 30, 1996, CPLEO was also formed by two LASAC attorneys who previously worked full-time for LASAC and were working part-time for LASAC and part-time for CPLEO at the time of field work in December 1996. CPLEO also received funds from the Impact Fund, the pass-through entity.

4. Public Advocates Fund (PAF): Pursuant to a transfer agreement fully executed December 19, 1995, PAF agreed to take designated LASAC cases for a total amount of \$78,129. The attorney who was previously associated with these cases as a full-time employee of LASAC was working part-time for LASAC at the time of field work in December 1996, and was represented to be employed part-time by PAF.

PARTIAL SEPARATION AGREEMENTS

Effective August 1, 1996, LASAC approved part-time employment arrangements for five of its attorneys under a "partial separation agreement". Under the agreement, the attorneys were required to work a minimum of 21 hours per week to receive benefits offered to part-time employees. The attorneys' compensation was 60% of their previous full-time salary, based on the part-time minimum of 21 hours per week, compared to the previous full-time minimum of 35 hours per week. The agreement provides flexibility to the attorneys to work more or less than 21 hours per week subject to mutual agreement of the parties. The agreement did not provide for set schedules for part-time work hours. These attorneys also worked part-time with the organizations with which LASAC executed donation and transfer agreements to divest of restricted cases as described above.

DELIVERY OF LEGAL SERVICES

LASAC's delivery of legal services consisted primarily of brief service and advice. Client intake was handled by the Executive Director and the legal staff.

OBJECTIVES

The objectives of the performance audit and the financial related audit were as follows.

PERFORMANCE AUDIT:

The specific objectives of the performance audit were to determine whether LASAC had:

- divested of class action, prisoner litigation, and restricted alien cases by the July 31, 1996, deadline as required by section 508(b)(2) of Public Law 104-134;
- continued representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law; and
- adopted new policies and procedures to conform with the new law, and communicated those policies and procedures to its staff.

FINANCIAL RELATED AUDIT:

The specific objectives of the financial related audit were to determine whether:

- LASAC used funds to pay other organizations to handle prohibited or restricted cases;

- current employees, terminated employees, or consultants continued to work on restricted or prohibited cases and received LSC funds for their services after restrictions and prohibitions took effect;
- timekeeping records indicated continued involvement in restricted or prohibited cases.

SCOPE

The performance and financial related audits were conducted at the main office in Oakland, California from December 2-4, 1996, and did not include any branch offices. The OIG conducted follow-up field work from April 30, 1997 to May 7, 1997. Audit procedures for the performance audit were limited to the following six regulations and the applicable interim rules in effect for 1996:

Part 1617	Class Actions
Part 1626	Alien Representation
Part 1633	Drug-related Evictions
Part 1637	Prisoner Litigation
Part 1639	Welfare Reform
Part 1636	Plaintiff Statements of Fact/Client Identity

The revised 45 C.F.R. Part 1610 became effective on June 20, 1997. A component of this rule addresses program integrity as it relates to independence from another entity. This new rule and its application are beyond the scope of these audits.

Relevant to the stated objectives we reviewed cases and other matters existing prior and subsequent to April 26, 1996 through December 1, 1996. We did not review cases or other matters subsequent to December 1, 1996, except as it pertained to our follow-up of issues addressed in this report.

METHODOLOGY

The OIG conducted the performance audit and the financial related audit of LASAC in accordance with generally accepted government auditing standards. Audit procedures for both audits were limited to the following:

- conducting interviews with the Executive Director, managing attorneys and other case handlers to obtain an understanding of the policies, procedures and processes established to implement the regulatory requirements;
- examining documentation supporting management's assertion on its involvement in cases and other matters related to class actions, certain categories of aliens, and certain types of representation involving incarcerated persons;
- examining the court records for a sample of restricted and unrestricted cases;
- conducting a search for restricted cases that were not reported and not divested by July 31, 1996;

- examining a sample of case files opened prior to and after April 26, 1996 to ascertain whether there was continued involvement in restricted cases;
- determining whether the recipient established policies and procedures as required by the respective regulations and communicated those policies and procedures to its staff;
- conducting interviews with LASAC personnel, and reviewing policies and procedures to obtain an understanding of the controls in place to ensure that payments are not made for, or in support of prohibited or restricted activities; and
- examining LASAC accounting records and other documents.

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

CONCLUSION 1

- We could not determine that LASAC divested of class action, prisoner litigation, and restricted alien cases by the July 31, 1996, deadline as required by section 508(b)(2) of Public Law 104-134, and we express no opinion on this audit objective.

We could not determine that LASAC divested of class action, prisoner litigation, and restricted alien cases by July 31, 1996 because of the conditions identified in findings 1, 2, and 3.

Finding 1 - In some instances, cases that were transferred to other organizations remained open on LASAC's case management system.

As part of transfer agreements executed to divest of restricted cases, 43 cases (restricted and unrestricted) were designated for transfer to another organization. For some cases transferred (both restricted and unrestricted), LASAC did not close these cases within its case management system.

As a result, LASAC's case management system could not be relied upon to determine whether or not LASAC had divested of prohibited and restricted cases. Also, LASAC's case management system was not reliable for producing case statistical information required to be reported to LSC.

Recommendation 1 - LASAC should ensure that its case management system accurately reflects that cases transferred are closed.

Grantee Management Response

LASAC management disagreed with the finding and stated with respect to 17 of the transferred cases :

"... Several of these cases are not on LASAC's case management system. Some of these in fact, could not have been on the system because they were closed before LASAC even had a computerized case management system. Other unrestricted cases are admittedly on the system but were never transferred. Still others were originally transferred but were later reopened to work that is entirely appropriate under the regulations."

LASAC further added that at least one of these cases did not belong to LASAC, but another legal services program; LASAC served as co-counsel on the case. Some cases were settled as early as 1985-1986.

According to LASAC management, the program's case management system was computerized in 1989, thus any cases opened prior to 1989 would not appear in the computer system. Further LASAC's database only tracks services cases; cases in litigation have never been kept in the computerized system. Earlier in 1997, LASAC deleted from its archives all cases closed before 1990.

OIG Response

LASAC's response raises serious concerns about the reliability of its case management systems (see also finding 3 below) to identify and correctly report on both litigated and non-litigated cases handled by the program. Further, it is unclear as to why cases that were closed as early as 1985 and 1986, and another that was not LASAC's, were the subject of the transfer agreements between LASAC and the Impact Fund and the Public Advocates Fund. It also remains unclear as to why LASAC would reopen and work on cases that were previously transferred.

Finding 2 - LASAC retained physical possession of restricted case files that LASAC had previously represented were transferred to other organizations.

As part of transfer agreements executed to divest of restricted cases, 43 cases (restricted and unrestricted) were designated for transfer to other organizations. However, in some instances, LASAC retained physical possession of case files that LASAC previously represented were transferred to other organizations.

According to the Executive Director's representation in December 1996, and according to the Executive Director's assertions during field work, none of the transferred files remained at LASAC, nor did LASAC retain copies of the files. However, during the follow-up field work from April 30, 1997 to May 7, 1997, we found that LASAC had possession of 2 of the transferred cases, both of which were the restricted cases referred to above.

As a result, LASAC's representations and assertions that all prohibited and restricted cases had been divested by transfer to other organizations cannot be relied upon to determine whether or not LASAC had divested of prohibited and restricted cases.

Recommendation 2 - LASAC should ensure that it is not in possession of cases transferred as part of transfer agreements executed to divest of restricted cases.

Grantee Management Response

LASAC stated it "... did not retain physical possession of 3 case files and, in those in which it did maintain possession, such possession was necessary in order for LASAC to complete work on the collection of attorney's fees which was explicitly permitted by the appropriations law, LSC

guidance and LSC regulations..." Further LASAC stated that 2 of the 6 case files, identified in the draft report, were brought to LASAC for purposes of the audit.

OIG Response

The OIG accepts LASAC's assertion that 2 case files were brought to LASAC for purposes of the audit, and that 2 case files were necessary to complete work on attorney's fees. The OIG has adjusted the finding accordingly.

Finding 3 - In at least 5 of 51 cases sampled, LASAC's case management system incorrectly described the reason for case closure.

In at least 5 of 51 cases sampled, the reason for case closure appeared to have been coded incorrectly. For example, some of the cases closed by "brief service and advice" were coded as "court decision" or "negotiated settlement with litigation," or vice versa.

As a result, LASAC's case management system could not be relied upon for information on the reasons for case closure. Also, LASAC's case management system was not reliable for producing case statistical information required to be reported to LSC.

Recommendation 3 - LASAC should ensure that it provides adequate guidance to staff on correctly defining and coding the reasons for case closure. In addition, LASAC should ensure the accuracy of codings posted to the case management system and ensure the accuracy of case statistical information reported to LSC.

Grantee Management Response

LASAC stated that 5 of the 10 cases, identified in the draft report, were not incorrectly coded on the case management system because the error was detected and corrected by the intake worker during data input. The other 5 cases may have been incorrectly coded, but there were mitigating factors.

OIG Response

The OIG accepted LASAC's explanation for the 5 cases that were corrected during data input, and the finding has been adjusted accordingly. However, the mitigating factors LASAC provided for the other cases, inexperience of volunteer staff and the fact that codes were open to interpretation, confirm the need for better guidance on case coding. The OIG reiterates its recommendation that staff be provided adequate guidance in this area.

CONCLUSION 2

- We could not determine that LASAC did not continue representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law, and we express no opinion on this audit objective.

We could not determine that LASAC did not continue representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law because of the conditions identified in findings 4, 5, and 6.

Finding 4 - One LASAC attorney charged 11.25 hours after July 31, 1996 to a class action case that was transferred to another organization.

According to LASAC's timekeeping records, one LASAC attorney charged 11.25 hours to one class action case after July 31, 1996. We could not determine from LASAC's timekeeping and other records whether the hours charged to the case were spent performing allowable transition work or were spent performing prohibited activities. As a result, we could not determine that LASAC did not continue representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law.

Recommendation 4 - None.

Grantee Management Response

LASAC disagreed with the finding on the basis that the activities for which the time was expended related to non-adversarial monitoring of class action orders granting relief, which is permissible under the LSC regulations.

OIG Response

We still could not determine from LASAC's timekeeping and other records whether the hours charged were spent performing permissible or prohibited activities. LASAC provided no new evidence that the 11.25 hours were expended on permissible activities. However, LASAC provided evidence that 0.7 hours, charged to another class action and discussed in the draft audit report, were spent on permissible activities, and the finding has been adjusted accordingly.

Finding 5 - In 9 cases, documentation of citizenship attestation or alien eligibility was missing.

Client's attestation statements required under 45 C.F.R. Section 1626.5(a) were lacking in 5 of 101 case files sampled. In 4 cases, the alien client's eligibility under 45 C.F.R. Section 1626.5(b) was not adequately documented.

The absence of required documentation may lead to representation of a client not eligible for services under the new restrictions. As a result, we could not determine that LASAC did not continue representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law.

Recommendation 5 - LASAC should ensure that staff understand and adhere to the requirements for documentation of citizenship attestation or alien eligibility, and LASAC management should conduct periodic reviews of case files to ensure that these requirements are consistently met.

Grantee Management Response

LASAC agreed that there were some errors made in documenting citizens attestation or alien eligibility, and stated that documentation was later obtained indicating that the client was eligible. LASAC also asserted that in one case only brief service and advice was provided, which did not require documentation under the LSC regulations. In other cases LASAC asserted that the required documentation existed at the time of field work.

OIG Response

For 2 of the 11 cases included in the draft report, LASAC provided plausible explanations for the exceptions, and the finding has been adjusted accordingly. LASAC did not provide sufficient information for the one case for which it asserts that only brief service was provided. In the remaining 3 cases the required documentation was not in the files examined at the time of field work. The OIG reiterates its recommendation.

Finding 6 - LASAC's operational controls over case divestiture were not adequate to ensure that representation in prohibited and restricted cases was discontinued.

We reviewed and compared various documents and records to determine whether LASAC discontinued representation in prohibited and restricted cases. We were unable to determine whether such representation had been discontinued because some of the information contained in the documents and records was contradictory.

For example, even though the transfer agreements were executed as of December 1995, court documents evidencing change in counsel's affiliation for some of the transferred cases were not filed by July 31, 1996. In fact, for 7 cases, notices on the change in counsel's affiliation were filed from 26 to 240 days after the deadline of July 31, 1996. In another case, notice was filed 5 days after the July 31, 1996 deadline. Moreover, we found that LASAC did not ensure and could not demonstrate that clients were consistently notified of change in counsel's affiliation when attorneys who worked part-time for LASAC continued as counsel in cases transferred to other organizations for which these attorneys also worked part-time.

Further, on the address change notices that were filed, one attorney used a post office box address, listed a home telephone number, and did not identify an affiliation with any organization. LASAC could not demonstrate and we could not determine whether or not the clients in these cases were notified that their attorney was no longer affiliated with LASAC in their cases.

The transfer agreements did not provide reliable evidence that cases had been transferred for a number of reasons. Among those reasons were: LASAC retained physical possession of restricted case files that were represented as transferred (finding 2); attorneys continued charging time to transferred cases after execution of the transfer agreements (findings 4 and 10); and the transfer agreements included cases that were already closed prior to execution of the agreements.

LASAC's internal record keeping did not provide reliable evidence that cases had been transferred for additional reasons. For example, case management system codes were not reliable (findings 1 and 3) and time distribution records could not be relied upon (finding 13).

Because LASAC's records were contradictory or incomplete, we could not determine that LASAC did not continue representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law.

Recommendation 6 - LASAC should establish control procedures and documents to ensure that it can demonstrate compliance with applicable prohibitions and restrictions.

Grantee Management Response

LASAC disagreed with the finding as originally worded. The response stated that there is no requirement from LSC, in local court rules and case law that such documents be filed. According to LASAC, the California Compendium on Professional Responsibility, published by the State Bar of California states that the issue is not expressly defined by the law or by the Rules of Professional Conduct. The express requirement is that the clients should receive the names and addresses of the leaving attorneys. LASAC also stated that it took appropriate steps with regard to client notification, and there was no requirement under LSC policies or California law that clients be notified in writing.

OIG Response

The draft report contained 3 findings related to internal controls that have been combined to reflect more accurately the intent of our reporting. As originally drafted, those findings were (1) that court documents evidencing change in counsel's affiliation were not filed by the statutory deadline, and (2) LASAC did not ensure and could not demonstrate client notification of change in counsel's affiliation in cases that LASAC represented had been divested, and (3) the transfer agreements included cases that were closed prior to the execution of the agreements. We recognize LASAC's assertion that there are no clear criteria requiring LASAC to file court documents or client notices.

However, in order to ensure compliance with LSC prohibitions and restrictions, there is a reasonable expectation that LASAC would establish procedures to ensure that it divested effectively its responsibility for and association with the transferred cases. It is clear that in order to assure that no rulings in the case would be received by LASAC, the divestiture needed to be made a matter of court record. Thus, the absence of such documents, which could have clearly documented the divestiture of cases, contributed to our inability to conclude that LASAC had discontinued representation after April 26, 1996, with respect to the prohibited and/or restricted case services in violation of the law. The OIG reiterates its recommendation.

CONCLUSION 3

- We determined that LASAC did not adopt new policies and procedures to conform with the new law within a reasonable time frame, but LASAC transmitted pertinent guidelines and regulations issued by LSC to its staff.

Based on the condition identified in finding 7, we determined that LASAC did not adopt new policies and procedures to conform with the new law for the regulations we

reviewed, but LASAC transmitted pertinent guidelines and regulations issued by LSC to its staff.

Finding 7 - LASAC did not establish policies and procedures within a reasonable time frame for the six regulations reviewed.

As of the December 1996 field work, LASAC had not established formal policies and procedures as required by the six regulations reviewed as part of the performance audit. Absent the written policies, LASAC communicated the restrictions to the staff through memoranda transmitting guidelines and regulations issued by LSC. As of May 1997, LASAC took corrective action to establish the required policies and procedures.

Recommendation 7 - LASAC should ensure that the newly established policies and procedures are placed in operation and operating effectively, including ensuring that staff understand and adhere to them.

Grantee Management Response

LASAC disagreed with the initial finding on the basis that the regulations did not specify a deadline for establishing policies and procedures. LASAC asserts that it established policies and procedures in an appropriate time (December 20, 1996).

OIG Response

The OIG agrees that a deadline was not expressly established by the respective regulations and revised the finding, accordingly. However, the interim rules were published on August 13 and 29, 1996, respectively, and were effective on the date of publication. It was incumbent on LSC grantees to establish policies and procedures immediately. LASAC's establishment of policies and procedures approximately 4 months after publication of the regulation is not within a reasonable time frame. The OIG notes that a December 6, 1996 handwritten memorandum from the Executive Director to all LASAC staff regarding the audit confirms that policies and procedures were not established as of December 4, 1996.

CONCLUSION 4

- We could not determine that LASAC did not use funds to pay other organizations to handle prohibited or restricted cases, and we express no opinion on this audit objective.

We could not determine that LASAC did not use funds to pay other organizations to handle prohibited or restricted cases because of the conditions identified in findings 8 and 9.

Finding 8 - LASAC attorneys charged time on transferred permissible cases after LASAC transferred them as part of transfer agreements to divest of prohibited and restricted cases.

After July 31, 1996, LASAC attorneys charged 18 hours on 5 transferred permissible cases, after LASAC transferred them as part of transfer agreements to divest of prohibited and restricted cases. Thus, LASAC may have indirectly supported prohibited and restricted activities by assuming part of the overall workload of the transferee organizations.

Because LASAC may have provided indirect support to the other organizations by handling these permissible cases, and because the other organizations handled prohibited and restricted cases in addition to these transferred cases after July 31, 1996, we could not determine that LASAC did not use funds indirectly to pay other organizations, by providing in-kind support, to handle prohibited or restricted cases after July 31, 1996.

Therefore, we could not determine that LASAC did not use funds to support prohibited or restricted cases after July 31, 1996, and we express no opinion on this audit objective.

Recommendation 8 - LASAC should establish policies and procedures to ensure that LASAC's employees do not provide in-kind support to organizations to handle prohibited or restricted cases.

Grantee Management Response

LASAC asserted that work performed on these cases was permissible under the regulation, "... even if other organizations are to handle these cases under the terms of a transfer agreement..." LASAC also stated that non-LSC funds supported the work on these cases, and there is no regulatory prohibition on working on permissible cases as co-counsel with other organizations.

OIG Response

The report does not state that the activities, in and of themselves, were not permissible. Rather, the OIG's concern is that performance of uncompensated activities for the benefit of persons or organizations engaged in prohibited or restricted activities may have the effect of providing in-kind support for such activities. The OIG reiterates the recommendation.

Finding 9 - One LASAC part-time attorney used LASAC facilities after July 31, 1996 to receive mail and make photocopies for later use in that attorney's part-time work on transferred cases performed for another organization.

One of the part-time attorneys admitted receiving mail at LASAC on transferred cases and using LASAC's photocopier to copy materials on transferred cases before taking the material to another organization where the attorney also worked part-time after July 31, 1996.

Because LASAC's plant and equipment appear to have been used for the benefit of other organizations that handle prohibited or restricted cases after July 31, 1996 and LASAC was not compensated for this use by the other organizations that received the benefit, we could not determine that LASAC did not use funds indirectly to support other organizations that handled prohibited or restricted cases after July 31, 1996.

Recommendation 9 - LASAC should establish policies and procedures to ensure that LASAC's plant and equipment are not used for the benefit of other organizations without fair market value compensation from the other organizations in return for the benefit received.

Grantee Management Response

LASAC stated that it is involved in monitoring activities with respect to this case, which is permitted under the LSC regulations. LASAC also provided a copy of check for \$1.00, which was paid by the part-time attorney to LASAC as subsequent reimbursement.

OIG Response

Notwithstanding the reimbursement, we could not determine that LASAC did not use funds indirectly to support other organizations that handled prohibited or restricted cases after July 31, 1996.

CONCLUSION 5

- We could not determine that current employees, terminated employees, or consultants did not continue to work on restricted or prohibited cases and did not receive LSC funds for their services after restrictions and prohibitions took effect, and we express no opinion on this audit objective.

Because of the conditions identified in finding 10, we could not determine that current employees, terminated employees, or consultants did not continue to work on restricted or prohibited cases and did not receive LSC funds for their services after restrictions and prohibitions took effect.

Finding 10 - LASAC did not have management controls to ensure and could not demonstrate that LASAC employees did not work on restricted or prohibited cases while being paid with LSC funds for their services after restrictions and prohibitions took effect.

Based on all of the following facts and circumstances, we found that LASAC did not have management controls to ensure and could not demonstrate that LASAC employees did not work on restricted or prohibited cases while being paid with LSC funds for their services after restrictions and prohibitions took effect:

- Some LASAC part-time attorneys also worked part-time for other organizations that handled prohibited and restricted activities.
 - In two instances, LASAC attorneys formed new organizations for the purpose of handling prohibited and restricted cases. (See Background, Transfer Agreements.)
 - Some LASAC part-time attorneys served in a managerial capacity in part-time employment for other organizations that handled prohibited and restricted activities. (See Background, Transfer Agreements.)
 - LASAC part-time attorneys were not subject to fixed schedules for part-time hours worked. (See Background, Partial Separation Agreements.)

- The total number of part-time hours to be worked was flexible subject to mutual agreement of the parties. (See Background, Partial Separation Agreements.)
- LASAC's operational controls over case divestiture were not adequate to ensure that representation in prohibited and restricted cases was discontinued. (See finding 6.)
- One LASAC part-time attorney used LASAC facilities after July 31, 1996 to receive mail and make photocopies for later use in that attorney's part-time work on restricted activities performed for another organization. (See finding 9.)
- LASAC's case management system was not reliable. (See findings 1 and 3.)
- LASAC retained physical possession of 4 restricted case files after LASAC represented that these cases were divested by transfer to other organizations. (See finding 2.)
- LASAC attorneys charged 11.25 hours after July 31, 1996 to 2 class action cases that were transferred to other organizations. (See finding 4.)
- In 9 cases, documentation of citizenship attestation or alien eligibility was missing. (See finding 5.)
- LASAC did not establish policies and procedures within a reasonable time frame for the six regulations reviewed. (See finding 7.)
- LASAC's timekeeping records were not reliable. (See findings 11 and 12.)

Recommendation 10 - LASAC should establish management controls to ensure that LASAC employees do not work on restricted or prohibited cases while being paid with LSC funds for their services.

Grantee Management Response

LASAC disagreed with the findings, and reiterated its response which has been addressed in the individual findings.

OIG Response

The OIG response has been incorporated under the respective findings. The OIG cannot conclude on the audit objective for the reasons stated above.

CONCLUSION 6

- We were unable to determine from the timekeeping records that there was no continued involvement in restricted or prohibited cases, and we express no opinion on this audit objective.

We were unable to determine from the timekeeping records that there was no continued involvement in restricted or prohibited cases because of the conditions identified in findings 11 and 12.

Finding 11 - LASAC did not implement a timekeeping system by the date required by LSC regulations.

Pursuant to 45 C.F.R. Section 1635.3 (c), the timekeeping system was required to be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract from LSC, whichever was later. The effective date of the regulation was May 1, 1996, and the effective date of LASAC's grant was April 1, 1996. Thus, under Section 1635.3 (c) LASAC was required to implement the timekeeping system by June 1, 1996.

At the time of our December 1996 field work, LASAC had not fully implemented its timekeeping system. For a sample of 5 part-time attorneys, none had begun using the new timekeeping system as of June 1, 1996; 3 of these 5 employees still had not fully implemented the system as of November 1996. According to the Executive Director, LASAC experienced implementation problems with the new computerized system.

Because LASAC did not timely implement a timekeeping system as required by LSC regulation, LASAC's timekeeping records were not reliable. As a result, we were unable to determine from the timekeeping records that there was no continued involvement in restricted or prohibited cases, and we express no opinion on this audit objective.

Recommendation 11 - LASAC should monitor the timekeeping system on a periodic basis to ensure that employees are maintaining the timekeeping records in accordance with policies and procedures.

Grantee Management Response

LASAC agreed that its timekeeping system was not operating successfully by the required date, as it experienced system-related problems similar to those experienced by other legal services organizations. LASAC asserts that the problems have been resolved.

OIG Response

The OIG reiterates its recommendation.

Finding 12 - LASAC did not reconcile time distribution records, which show the distribution of hours worked to cases and activities, with time and attendance records used for payroll.

During our December 1996 field work, we found for a sample of 5 part-time attorneys that the time distribution records, which show the distribution of hours worked to cases and activities, did not reconcile to the time and attendance records used for payroll. As a result, LASAC's timekeeping records were not reliable.

As a part of our May 1997 field work, we compared time and attendance records with timekeeping records covering a four-month period for the same 5 attorneys. We compared the number of hours recorded in time and attendance records each day for each person to the number of hours recorded by the same person on the corresponding day in the time distribution records. During the 4 months, the 5 attorneys made a total of 198 entries in the time distribution and time and attendance records. Of those, 32 entries (16%) showed discrepancies in the amount of hours

worked. Error rates for each of the 4 months tested were: January - 19%, February - 10%, March - 21%, and April - 10%.

Because there remained in our sample error rates ranging from 10% to 21%, we found that LASAC's timekeeping records were still not reliable. As a result, we were unable to determine from the timekeeping records that there was no continued involvement in restricted or prohibited cases, and we express no opinion on this audit objective.

Recommendation 12 - LASAC should reconcile the time distribution records and the time and attendance records on a periodic basis. Any differences noted between the time distribution records and the time and attendance records should be reconciled and timely corrected (no later than the next reporting period is suggested).

Grantee Management Response

LASAC stated that there was no LSC requirement that time and attendance records be reconciled with the timekeeping system records required by 45 C.F.R. Part 1635.

OIG Response

Regulation 45 C.F.R. 1635.3 (b)(1) states "...[T]ime records must be created contemporaneously and account for time ... which comprise all of the efforts of the attorneys for which compensation is paid." LASAC's time records did not account for all the efforts of the attorneys for which compensation was paid because compensation was based on the time and attendance records, and the time distribution and time and attendance records did not match.

RECOMMENDATIONS TO LSC MANAGEMENT

We recommend that LSC management take appropriate action to address the findings in this report.

GRANTEE MANAGEMENT RESPONSE TO THE DRAFT AUDIT REPORT

LASAC's comments to each finding, where relevant, have been included in the discussion of that finding. The complete text of LASAC's response to the draft audit report is included as [Appendix I](#), except for Exhibits 1 through 19, which are omitted.

**LEGAL AID SOCIETY OF ALAMEDA COUNTY, RECIPIENT # 805160
RESPONSE TO THE LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL
REPORT ON AUDIT PROJECT 96-063, PERFORMANCE AUDIT
AUDIT PROJECT 96-064, FINANCIAL RELATED AUDIT**

SUMMARY OF RESPONSE

Over its long history, the Legal Aid Society of Alameda County's (LASAC) has always complied with the Legal Services Corporation (LSC) Act and the numerous regulations implementing the Act. We have continued to do so following the statutory and regulatory changes affecting legal services programs adopted last year. Our past Monitoring Reports have resulted consistently in findings of compliance with the Act and regulations, and we are confident that this history will continue.

In this response to the draft combined report regarding the performance and financial related audits of LASAC conducted by the LSC Office of Inspector General (OIG), LASAC will demonstrate that the OIG should conclude as follows:

A. Performance Audit

1. LASAC divested class actions, prisoner litigation, and restricted alien cases by July 31, 1996.
2. LASAC did not continue representation after April 26, 1996 on prohibited or restricted cases in violation of the law
3. LASAC adopted new policies and procedures to conform to the new law and communicated those policies and procedures to its staff

B. Financial Related Audit

1. LASAC did not use LSC funds to pay other organizations to handle prohibited or restricted cases.
2. Neither current employees, terminated employees, nor consultants worked on restricted or prohibited cases during the time they worked for LASAC, nor did they receive LSC funds for their services for work on restricted activities after the restrictions and prohibitions took effect.
3. LASAC time and attendance records and timekeeping records show no continued involvement in restricted or prohibited cases.

CRITICAL PROBLEMS WITH THE DRAFT REPORT

The OIG draft combined report includes five conclusions, allegedly supported by 14 findings. These conclusions and findings, however, raise substantial fairness problems, and many of them reflect fundamentally flawed assertions about LSC policies.

A. Inquiry into all LASAC funds

The draft report fundamentally changes the specific objectives for the "Financial Related Audit." The original basis for this audit as stated in the letter received by LASAC on November 22, 1996, and the basis for the original financial related audit as reported to the LSC Board, appropriately limited the inquiry to whether *LSC* funds were used by LASAC to pay for work on prohibited or restricted cases. The new inquiry has now enlarged that objective, without notice, to inquire into whether *any LASAC* funds, including non-LSC funds, were used to pay other organizations to handle prohibited or restricted cases. This change presents two problems:

1. Fundamental Fairness

It is fundamentally unfair to change the object of an OIG Special Audit without notice to the recipients subject to the audit and without notifying the LSC Board or LSC management about the change and the appropriateness of such a change. The change was imposed 10 months after the original notification of the audit and five months after the last site visit.

2. Inappropriateness of Inquiry

Perhaps more important, LSC has no basis to inquire into whether non-LSC funds were transferred or what they were used for, either at the time of transfer or now. As OIG surely knows, *non-LSC funds could be transferred prior to April 26, 1996 without any restrictions on the use of the funds transferred or the purpose for which the transferred funds could be used by the transferee.* That was the law at the time LASAC transferred. No law or regulation applicable to LASAC or LSC restricted in any way whether LASAC could transfer non-LSC funds to another entity or the purpose for which those funds could be used. It is, thus, entirely inappropriate for the OIG to suggest that LASAC's transfer of non-LSC funds somehow suggests continued involvement in prohibited or restricted cases on LASAC's part.

It was only between April 26, 1996 and March 14, 1997 that non-LSC funds transferred to another entity carried with them the restrictions on the use of such funds. See Interim Rule, 45 CFR 1610.6(b), 61 FR 41963 (August 13, 1996) and 45 CFR 1610.7(b), 61 FR 63749 (December 2, 1996). Before and after those dates, non-LSC funds could be transferred to another entity without any restrictions on their use other than those imposed by the funding source. Thus, since March 14, 1997, non-LSC funds can be transferred to another entity and do not carry with them the restrictions that apply to the use of such funds when they remain with a recipient. This was made clear in the Supplementary Information to the revised final rule, adopted on March 14, 1997 and promulgated on May 21, 1997, which stated: "There is no statutory prohibition that a transfer of non-LSC funds be subject to the LSC restrictions." 62 FR 27697 (May 21, 1997).

Thus, we respectfully request that the OIG final report:

- * focus solely on the original objective of determining whether LSC funds were transferred;
- * drop its inquiry into the transfer of non-LSC funds and use of these funds;
- * indicate specifically that it was legal for LASAC to transfer non-LSC funds to other entities, regardless of purpose.

B. Assertions of LSC Control Over Non-LSC Funds

Throughout, the draft report assumes that there are accounting requirements applicable to the transfer of non-LSC funds. For example, it asserts that LASAC overpaid entities to which it transferred non-LSC funds, or that LASAC did not engage in arms-length bargaining with such entities over the transfer of non-LSC funds. While we will demonstrate below that there is no factual basis for such assertions, the more fundamental point is that no LSC regulation, guideline, *Audit Guide* provision, or policy controls or regulates whether non-LSC funds are subject to accounting standards such as overpayment for services, arms-length bargaining, or similar criteria. Since LSC has no authority to regulate how non-LSC funds are spent or accounted for, there is no legitimate basis for the draft report's inquiry into, or its findings about, whether the non-LSC funds transferred were spent or transferred in a manner that failed to meet accounting standards.

Thus, we respectfully request that LSC delete in the final report's findings, and in the discussion following the findings, any reference to whether LASAC overpaid transferees or failed to

engage in arms-length bargaining with transferees who received non-LSC funds.

C. Timekeeping

The draft report makes a change in the third objective of the financial related audit which is both unfair and fundamentally wrong about the requirements which LASAC was required to meet. The original OIG letter informing LASAC of the audit described that objective as determining whether "*time and attendance records* indicated continued involvement in restricted or prohibited cases" after LASAC ceased official involvement with the cases (emphasis added). The report, however, described the third objective as determining whether "*timekeeping records* indicated continued involvement in restricted or prohibited cases" (emphasis added). This discrepancy, although appearing minor, is significant because "timekeeping" records presumably are those required by Part 1635 -- the recipient timekeeping system. "Time and attendance" records, in contrast, generally refer to those used for payroll and attendance purposes.

Besides the obvious unfairness of changing an audit objective 10 months after notification and five months after the second of two site visits, this change reflects a much more fundamental problem. The alleged discrepancies between the timekeeping system used by LASAC for payroll purposes and the system used for Part 1635 purposes are not relevant to any legitimate OIG inquiry, because there is no LSC requirement that the timekeeping system utilized for purposes of Part 1635 be consistent with that used for payroll purposes or for allocation of costs to particular cost objectives. The Supplementary Information to the final rule on timekeeping explicitly states that Part 1635 does not require recipients to allocate costs or payroll based on the timekeeping records used to comply with Part 1635. See 61 FR 14263 (April 1, 1996).

Therefore, we respectfully request that the OIG final report

- * use the original objective of determining whether "time and attendance records indicated continued involvement in restricted or prohibited cases" and
- * eliminate any findings that relate to discrepancies between timekeeping records under Part 1635 and payroll or cost allocations.

D. Imposing Requirements Not Included in LSC Policy

Much of the draft combined report consists of gratuitous statements regarding activities that were entirely permissible. OIG makes numerous allegations that LASAC failed to take steps which were simply not required during the time period covered by the audit.

1. Notifying courts and clients of transition from LASAC to other counsel

The report finds that LASAC failed to take certain steps during the transition, when it transferred cases to other counsel. Whatever the merits of such notification may be, nothing in any LSC communication to recipients about transition cases has suggested that these steps be taken, and no regulations or LSC instructions have suggested that they be taken. The first time any such "policy" appeared was in the commentary to Part. 1639, 62 FR 30766 (June 5, 1997). None of the LSC regulations adopted in August 1996 or in 1997 contained specific directions on how to transfer cases. Moreover, the program letters dated November 21, 1995; May 6, 1996; May 17, 1996, and July 11, 1996 did not include any instructions about notifying courts or clients about transfer or change in counsel.

Therefore, we respectfully request that LSC delete its findings, and any conclusions drawn therefrom, regarding the alleged failure of LASAC to notify courts and clients of the transition from LASAC to other counsel.

2. Implementing program policies

The report finds that LASAC failed to develop and implement program policies and assumes that such policies should have been implemented by the time the particular regulations became effective. However, this assumption was erroneous for two reasons:

* First, the August 1996 regulations that were in effect during most of the period covered by the Audit did not include any requirement that recipients implement policies by a date certain. All of those regulations contained the following or similar language. *"Each recipient shall adopt written policies and procedures to guide its staff in complying with this part."*

* Second, all of the August regulations were effective on the date published in the Federal Register, either August 13, 1996 or August 29, 1996. They were not

distributed to programs prior to that date by LSC. These were interim regulations and thus did not have the normal 30 day implementation period. Thus, it would have been legally and practically impossible for LASAC to adopt policies and procedures implementing the new restrictions and regulations by the effective date, because that was the same day they were published.

Therefore, we respectfully request that the final report delete any findings that LASAC did not implement policies and procedures consistent with the law.

The remainder of this response will follow the OIG draft combined report point by point.

BACKGROUND

The section subtitled "Background," appearing at pages 2-3, contains incorrect and/or misleading statements. First, the facts reported regarding the Transfer Agreement through which LASAC divested itself of restricted cases fail to indicate that the funds transferred were *non-LSC funds*. In each location where the OIG report mentions fund transfers, this correction should be incorporated.

Furthermore, the OIG report states that "LASAC elected to divest of the restricted cases through a transfer to four organizations..." This is incorrect. LASAC transferred the cases to a single organization: The Impact Fund. See agreement with The Impact Fund: Exhibit # 1.

In addition, the OIG report states (page 3) that "The Agreement provides flexibility to the attorneys to work more or less than 21 hours per week subject to mutual agreement of the parties. The Agreement does not provide for set schedules for part-time work hours." This statement is misleading to the extent that it implies that such an arrangement is particular to employees working part-time under the partial separation agreement. These employees, as well as other part-time LASAC employees, are bound by our Personnel Policy and Procedure Manual, which was adopted in 1985. The Manual provides for flexible part-time hours for numerous reasons: the demands on attorneys' time vary according to scheduling of court appearances, community meetings, etc.; intake hours must be covered, and the class schedules of students must be accommodated. Part-time

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employees must work at least 21 hours per week in order to receive health insurance coverage under LASAC's policy. See copy of relevant sections of LASAC Personnel Policy and Procedure Manual: Exhibit #2.

OBJECTIVES

The OIG draft combined report states (page 4) that "The specific objectives of the financial related audit were to determine whether [*inter alia*] LASAC used funds to pay other organizations to handle prohibited or restricted cases (emphasis added). As noted earlier, however, the original letter from the OIG to LASAC dated November 22, 1996 indicated that the basis for the original financial related audit was limited to an inquiry into whether LSC funds were used for prohibited activity or restricted cases. See copy of letter. Exhibit # 3. We object to this significant change in the audit objective, and to its imposition without notice.

The OIG report of September 30, 1997 states (page 4) that "The specific objectives of the financial related audit were to determine whether [*inter alia*] timekeeping records indicated continued involvement in restricted or prohibited activities. As noted earlier, the original letter from the OIG, dated November 22, 1996 does not describe the third audit objective as focusing on whether "time and attendance records indicated continued involvement in restricted or prohibited cases after LASAC ceased official involvement with the cases." See copy of letter. Exhibit # 3. We object to this significant change in the audit objective, and to its imposition without notice.

SUMMARY OF RESPONSE TO DRAFT AUDIT FINDINGS

Finding 1 - - In some instances, cases that were transferred to other organizations remained open on LASAC's case management system.

Response: There is no factual basis for this conclusion.

Finding 2 - - LASAC retained physical possession of six case files, four of which were restricted cases, that LASAC had previously represented were transferred to other organizations.

Response: LASAC did not retain physical possession of 3 case files and, in those in which it did maintain physical possession, such possession was necessary in order for LASAC to complete work on the collection of attorney's fees which was explicitly permitted by the appropriations law, LSC guidance and LSC regulations. See Program Letter 96-1 at page 12 and 45 CFR 1642.3(c)(1), 61 FR 45763 (August 29, 1996).

Finding 3 - - In 10 of 51 cases sampled, LASAC's case management system incorrectly described the reason for case closure.

Response: Five of the 10 cases were not incorrectly coded on the case management system. In the other five cases, there may have been incorrect coding, but there were mitigating factors that render the finding misleading and not sufficient to draw broad conclusions about LASAC's case management system.

Finding 4 - - LASAC attorneys charged 12 hours after July 31, 1996 to 2 class action cases that were transferred to other organizations.

Response: As documented below, any hours charged to these cases fell within the "safe harbor" provision of the LSC regulation on class actions. See 45 CFR 1617.2(b) which permitted non-adversarial monitoring of class action orders granting relief. 61 FR 41961 (August 13, 1996).

Finding 5 - - In 11 cases, documentation of citizenship attestation or alien eligibility was missing.

Response: There were errors made by LASAC in not documenting citizens attestation or alien eligibility. However, in several cases, only brief advice was provided and LSC did not require documentation in such cases [45 CFR 1626.5(f)]. In other cases, documentation was later obtained indicating the client was eligible. In only a few of the cases were the clients determined to be ineligible.

Finding 6 - - LASAC did not file court documents evidencing change in counsel's affiliation by the statutory deadline.

Response: LASAC properly transferred cases to other counsel. There was no LSC requirement nor requirement under California law or procedure that LASAC file court documents evidencing change in counsel's affiliation.

Finding 7 - - LASAC did not ensure and could not demonstrate client notification of change in counsel's affiliation in cases that LASAC divested.

Response: LASAC took all appropriate steps with regard to client notification. There was no requirement under LSC policies or California law that clients be notified in writing.

Finding 8 - - LASAC did not establish policies and procedures by the deadline required by the six regulations reviewed.

Response: LASAC did establish policies and procedures in an appropriate time. LSC provided no instructions to recipients setting a deadline by when recipient policies and procedures had to be implemented.

Finding 9 - - The transfer agreements under which LASAC paid other organizations to handle transferred cases included the transfer of cases that were closed prior to execution of the agreements.

Response: LASAC paid other organizations with non-LSC funds. How those funds were used and the circumstances of their use by other organizations is not a material matter and not with the control of LSC.

Finding 10 - - LASAC attorneys expended time on transferred unrestricted cases after LASAC paid other organizations to handle them as part of transfer agreements to divest of prohibited

and restricted cases.

Response: There is no LSC policy, regulation or law that prohibits a recipient from working on unrestricted cases as co-counsel with other organizations. Moreover, all costs for these cases were charged to non-LSC funds over which LSC has no accounting control.

Finding 11 - - One LASAC part-time attorney used LASAC facilities after July 31, 1996 to receive mail and make photocopies for later use in that attorney's part-time work on transferred cases performed for another organization.

Response: One part-time attorney engaged in permissible non-adversarial monitoring on a closed class action case and xeroxed documents costing no more than \$.60.

Finding 12 - - LASAC did not have management controls to ensure and could not demonstrate that LASAC employees did not work on restricted or prohibited cases while being paid with LSC funds of their services after restrictions and prohibitions took effect.

Response: LASAC had fully adequate management controls. There is nothing illegal about part-time work for organizations that handle prohibited or restricted activities. There is no provision in the appropriations acts, the LSC Act, the LSC regulations or other LSC policies which addresses, restricts or regulates the actions of LASAC employees when they work part-time for other organizations. LASAC does not regulate its part-time staff when they work for other organizations. In the absence of legal authority, LSC cannot premise any findings on whether LASAC staff engaged in restricted activities by focusing on whether they worked part-time for another organization. The issue is whether part-time staff worked on restricted matters during the time they worked for LASAC. LASAC has certified that no LASAC staff member worked on restricted matters. LSC has not provided any evidence that they did so.

Finding 13 - - LASAC did not implement a timekeeping system by the date required by LSC regulations.

Response: LASAC did implement a timekeeping system by May 31, 1996, but LASAC faced many operational problems in implementation. Today, LASAC has a fully operating and effective timekeeping system meeting the requirements of Part 1635.

Finding 14 - - LASAC did not reconcile time distribution records, which show the distribution of hours worked to cases and activities, with time and attendance records used for payroll.

Response: There is no LSC requirement that time and attendance records be reconciled with timekeeping system records required by 45 CFR 1635.

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

CONCLUSION 1 states that "We could not determine whether LASAC divested itself of class actions, prisoner litigation and restricted alien cases by the July 31, 1996 deadline as required by Section 508(b)(2) of Public Law 104-134, and we express no opinion on this audit objective."

This conclusion is unwarranted. The findings on which it is based are incorrect or do not support the conclusion, and thus the conclusion is invalid.

Finding 1 states that "In some instances, cases that were transferred to other organizations remained open on LASAC's case management system."

Although the OIG report failed to give the names of these cases, making a response to this finding virtually impossible, a list of 17 "transferred cases [that] remained open on LASAC's case management system" was finally provided by letter dated October 16, 1997: *Bass v. Anderson*, *Harris v. Madera County*, *Welch v. Anderson*, *Gresher v. Deukmejian*, Kirby Morgan, Sherman Jackson, Gary Gresher, Nozipio Wobogo, George Turner, Hazel Thomas, *Doe v. Calif. Department of Justice*, *Keyhea v. Rushen*, *Crespin v. Belshe*, *Miller v. Healy*, *Gamma v. Belshe*, *Jackson v. Rank*,

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and Vance v. County of Santa Cruz.

OIG is plainly wrong. Several of these cases are *not* on LASAC's case management system. Some of these in fact, *could not* have been on the system because they were closed before LASAC even *had* a computerized case management system. Other unrestricted cases are admittedly on the system but were never transferred. Still others were originally transferred but were later reopened to work that is entirely appropriate under LSC regulations.

Bass v Anderson - There is no indication that the case was left open in the LASAC case management system. See Exhibit #5.

Harris v Madera County - The case belonged to California Rural Legal Assistance. It was in LASAC's case management system under *Harris* and no mechanism with which to close it. See Exhibit # 6.

Welch v. Anderson - Case may have been left open. See Exhibit #7.

Gresher v Deukmejian - Case not open in LASAC's case management system. Case settled in 1985, before LASAC had a computer system. See Exhibit #8.

Kirby Morgan, Sherman Jackson, Gary Gresher, Nozipio Wobogo, George Turner, Hazel Thomas, were never in the LASAC's case management system as individual clients. *Doe v California Department of Justice* was never in the system. See Exhibit #8.

Keheya v Rushen - Case not in LASAC's case management system; this case settled in 1986. See Exhibit #8.

Crespin v Belshe - Case was not in LASAC's case management system; this case settled in 1986. See Exhibit #9.

Miller v Healy - See Exhibit #7.

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Gamma v Belshe - Case was left open for LASAC attorney's fees. Judgement was issued before July 31, 1997. See Exhibit #5A.

Jackson v Rank - Case not open in LASAC's case management system. Case settled in 1986- before LASAC had a computer system. See Exhibit #9.

Vance v County of Santa Cruz - is really *Vance v Oakland Housing Authority*. This case was not transferred, is not a prohibited case and is permissible to be open. See Exhibit #6.

OIG appears to be unfamiliar with how LASAC's computer management system is structured. The case management system became computerized in approximately 1989, and thus any cases opened prior to 1989 would not appear in the computer system. Furthermore, the database has been used only for services cases. Cases in litigation, due to their small volume, have never been kept in the computerized system. Finally, earlier in 1997, LASAC deleted from its archives, all cases closed before 1990. LSC regulations in effect from 1970 to 1996 allowed destruction of case files and records more than five years old. Hence, the case files could be destroyed and the information pertaining to certain cases would have been deleted from the computer's archives.

The 1997 LSC Grant Conditions now require that files be held for six years following the end of the grant period. Thus, even under the present LSC grant condition, these files and corresponding database could have been destroyed.

The status of the specific cases listed by OIG is as follows:

(a) *Bass v. Anderson* was settled early in 1996; a LASAC attorney inadvertently neglected to enter this fact into the computerized system. See time records of Jodie Berger, Exhibit # 4, and Declaration of Jodie Berger, Exhibit # 5.

(b) *Harris v. Madera County* was settled in 1995. It was co-counseled with California Rural Legal Assistance and was in that program's case management system. See Declaration of Michael Rawson, Exhibit # 6.

(c) *Welch v. Anderson* was settled in 1996. LASAC does not have a case file. Veronika Kot, the attorney who worked on this case has moved to Ames, Iowa. See Declaration of Veronika Kot, Exhibit #7.

(d) *Gresher v. Deukmejian* was never in LASAC's computerized case management system. The case was filed in 1979 and a final judgment, which did not grant class certification, was entered in 1985, four years before the establishment of LASAC's case management system in 1989. Attorneys fees were awarded in 1991. See Declaration of Peter Sheehan, Exhibit # 8.

(e), (f), (h), and (j) Kirby Morgan, Sherman Jackson, Nozipio Wobogo, and Hazel Thomas were included in the transfer agreement because of the possibility that they would be involved in future class action litigation. As far as LASAC staff know, such litigation was never filed. See Declaration of Peter Sheehan, Exhibit # 8.

(g) and (i) Gary Gresher and George Turner were individual clients who were plaintiffs in *Gresher v. Deukmejian* discussed under (d) above. See Declaration by Peter Sheehan, Exhibit # 8.

(k) *Doe v. Department of Justice*. Case was never in LASAC case management system in the past. See Declaration of Peter Sheehan, Exhibit # 8.

(l) *Keyhea v. Rushen* was filed over 22 years ago; a final judgment was entered in 1986. The case was not in LASAC's case management system. The only activity in this case has been non-adversarial monitoring. See Declaration of Peter Sheehan, Exhibit # 8.

(m) *Crespin v. Belshe* was not in LASAC's case management system. See Declaration of Steve Ronfeldt, Exhibit # 9.

(n) *Miller v. Healy* was not entered into LASAC's case management system until July 17, 1996, and then for timekeeping records only. It was closed on August 1, 1997.

LASAC does not have a case file for this case. Veronika Kot was the attorney who worked on this case. She has moved to Ames, Iowa. See time records of Veronika Kot. Exhibit #10.

(o) *Gamma v. Belshe* was not closed in LASAC's case management system. This case was open for monitoring and collection of attorneys fees. See Declaration of Jodie Berger. Exhibit 5A.

(p) *Jackson v. Rank* was not in the case management system. It was closed many years ago, prior to LASAC's present case management system. See Declaration of Steve Ronfeldt, Exhibit # 9.

(q) *Vance v. County of Santa Cruz* is an incorrect case name; the Defendant is the Oakland Housing Authority. Dorothy Vance, Case #94-0693, is an open case and was not transferred. See Declaration of Michael Rawson, Exhibit # 6.

Finding 2: "LASAC retained physical possession of 6 case files, 4 of which were restricted cases that LASAC had previously represented were transferred to other organizations."

Again, in order to respond, LASAC was forced to request the names of these cases, which OIG provided by letter dated October 16, 1997. According to this letter, the restricted cases referred to were *Gamma v. Belshe*, *Hooper v. Deukmejian*, *Tinnoco v. Belshe*, and *Rutan v. McMahon*, the unrestricted cases were *Greshner v. Deukmejian* and *Keyhea v. Rushen*.

After LASAC transferred the above cases to The Impact Fund in 1995. See Exhibit # 1, LASAC extended the time in which certain prohibited cases had to be out of LASAC's possession and permitted all legal services programs to continue work on otherwise restricted cases when the work involved only the collection of attorneys fees or monitoring, see Exhibit # 11.

Gamma v Belshe. A judgment was entered in this case on June 12, 1996. See Exhibit # 5A which contains Judgment and time sheets of Jodie Berger. The work on the case related to

distributed to programs prior to that date by L.S.C. These were interim regulations and thus did not have the normal 30 day implementation period. Thus, it would have been legally and practically impossible for LASAC to adopt policies and procedures implementing the new restrictions and regulations by the effective date, because that was the same day they were published.

Therefore, we respectfully request that the final report delete any findings that LASAC did not implement policies and procedures consistent with the law.

The remainder of this response will follow the OIG draft combined report point by point.

BACKGROUND

The section subtitled "Background," appearing at pages 2-3, contains incorrect and/or misleading statements. First, the facts reported regarding the Transfer Agreement through which LASAC divested itself of restricted cases fail to indicate that the funds transferred were *non-L.S.C. funds*. In each location where the OIG report mentions fund transfers, this correction should be incorporated.

Furthermore, the OIG report states that "LASAC elected to divest of the restricted cases through a transfer to four organizations..." This is incorrect. LASAC transferred the cases to a single organization: The Impact Fund. See agreement with The Impact Fund: Exhibit # 1.

In addition, the OIG report states (page 3) that "The Agreement provides flexibility to the attorneys to work more or less than 21 hours per week subject to mutual agreement of the parties. The Agreement does not provide for set schedules for part-time work hours." This statement is misleading to the extent that it implies that such an arrangement is particular to employees working part-time under the partial separation agreement. These employees, as well as other part-time LASAC employees, are bound by our Personnel Policy and Procedure Manual, which was adopted in 1985. The Manual provides for flexible part-time hours for numerous reasons: the demands on attorneys' time vary according to scheduling of court appearances, community meetings, etc., intake hours must be covered, and the class schedules of students must be accommodated. Part-time

The above five cases were incorrectly coded "counsel and advice" on the intake sheet by the attorneys, but were entered into the case management system as "brief service." See Exhibit # 13A. It is the general practice of LASAC's secretarial staff to correct codes that obviously have been entered in error when closing cases on the case management system. Thus, Finding 3 is incorrect and LASAC's case management system does correctly describe the reason for closure of these cases.

In Case # 96-0611, according to OIG, "LASAC prepared a pro per answer for the client. While there was no evidence in the file of any other service being provided, LASAC closed the case as a 'court decision' rather than 'brief service.'" The work done in this case included not only preparing an answer, but also preparing for trial; the client won her case in court. See case notes prepared by Liza Guitein, law clerk. Exhibit # 14. It is possible that the code was incorrect although in many instances the appropriate code is a matter of interpretation.

In cases # 96-0556 and # 96-0584, according to OIG, "although only brief service was evident from the case files, LASAC closed the case as 'court decision' rather than 'brief service.'" In the former, case # 96-0556, a motion for stay of eviction was prepared by a law clerk but was not approved by the judge. In the latter case, # 96-0584, LASAC's work, done by a law clerk, included preparation of an answer and preparation for trial. The client prevailed. In both instances the "court decision" code may be incorrect, but, again, the cases may illustrate situations in which reasonable people could disagree as to the proper code. See case notes prepared by law clerks who worked on these two cases, Exhibit 14.

In case # 96-0617, according to OIG, "although only brief service was evident from the case file, case was closed as 'negotiated settlement with litigation' rather than 'brief service.'" In this case, an answer was prepared by a law clerk, whose case notes indicate that, upon his advice, the client negotiated with the Housing Authority; the suit was dismissed, and her rent was accepted. This case does appear to have been coded incorrectly. The volunteer law clerk's confusion is understandable; a lawsuit was involved and a settlement was negotiated, albeit by the client rather than by LASAC. See Exhibit # 14.

In case # 96-0809, according to OIG, "although LASAC represented the client at a hearing,

prepared an answer for the client and performed other services totaling 8 91 hours, the case was closed as "counsel and advice." In fact, this case was incorrectly coded "counsel and advice" by the attorney but was entered into the computer by the secretarial staff as "CDW" because client won her hearing. The proper code, actually, was probably "brief service," since LASAC did not represent the client at her hearing. See Exhibit #14.

We must also, however, in responding to Finding 3, point to the larger context. The great majority of these cases were handled by volunteer law clerks recruited by LASAC in order to expand the legal services available to low-income residents of Alameda County. Not surprisingly, the turnover among volunteers is significant, and it is possible that they do not always complete forms correctly. Moreover, there is no "bright line" governing the proper code for many cases, nor has LSC provided specific guidance.

CONCLUSION 2 states that "We could not determine that LASAC did not continue representation after April 26, 1996, with respect to the prohibited and/or restricted case services in violation of the law, and we express no opinion on this audit objective."

This conclusion is unwarranted. The findings on which it is based are incorrect or do not support the conclusion, and thus the conclusion is invalid.

Finding 4: "LASAC attorneys charged 12 hours after July 31, 1996 to 2 class actions that were transferred to other organizations.

OIG goes on to state in the draft combined report that "[w]e could not determine from LASAC's timekeeping and other records whether the hours charged to the 2 cases were spent performing allowable transition work or were spent performing prohibited activities."

Once again it was necessary for LASAC to request more specific information. In its October 16 letter, OIG responded that "in Gamma v BELSHE, Jodie Berger worked 7 hours in August 1996. In Miller v Healy, Veronika Kot worked 11 hours in October 1996, and .25 hours in February 1997 for a total of 11.3 hours (rounded) "

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Had OIG really been interested in determining "whether the hours charged to the 2 cases was prohibited activity," they need only to review the case files, which would have shown final judgements and activities relating to monitoring the closed cases. These activities are permissible under LSC regulations. See Exhibit #4, 5, 5A, 6, 7, 8, 9, 10, 11, 12, 13, 14.

Finding #5 states that "in 11 cases, documentation of citizenship attestation or alien eligibility was missing." LASAC requested the 11 clients' names and/or case numbers, which were provided by OIG in its October 16 letter.

On October 16, 1997, the OIG responded to LASAC, as follows.

Regarding case #96-0032, OIG states that "The Alien Eligibility form was not signed or dated. While the boxes were checked indicating 'Permanent Resident - Alien Registration Receipt Card' (with additional annotations 'Refugee 1984; verification pending') there was no verification of the client status on file."

Regarding case #96-0031, LASAC has no verification of refugee status. This is an error on the part of LASAC.

Regarding case #96-0332, OIG states that "The file did not contain an Alien Eligibility form. While the file indicated that the client was an immigrant, the client's status was undocumented." There is no Alien Eligibility form in the files, and this was an error on LASAC's part. However, alien eligibility had been established by the Department of Social Services on December 7, 1995, and a copy of that document was in the file. LASAC subsequently obtained a signed Alien Eligibility form and photocopy of the client's resident alien card. See Exhibit #15.

Regarding case #96-0381, OIG states that "The Alien Eligibility form was not signed or dated. While the boxes were checked indicating 'permanent resident' - 'alien registration receipt card' (with additional annotations, 'verification pending') there was no verification of clients status on file." There was no verification of permanent status; this was an error on LASAC's part.

Regarding case #96-0620, OIG states that "The Alien Eligibility form was not signed or dated. The alien registration receipt card numbers were noted." It is true that this client's Alien Eligibility form was not signed. Alien registration receipt card numbers were obtained but copy of cards were not made. This was an error. LASAC recently obtained a copy of the client's resident alien card, social security card, and a signed alien eligibility form. See Exhibit # 15.

Regarding case #96-0118, OIG states that "The client was not a citizen but attested to citizenship on February 2, 1996. On March 21, 1996, the client signed and dated the alien eligibility form, checking boxes indicating that the client was a 'permanent resident' and married to a US citizen. There was no verification of the client's status on file." The "attestation of citizenship" was, in all likelihood, a misunderstanding, inasmuch as the client signed alien eligibility form the following month. This case involved a client who had problems receiving benefits because her ex-husband had destroyed her green card. Verification of her legal residency was obtained on June 4, 1996 and Alameda County awarded her benefits. See Exhibit # 15.

Regarding five additional cases, #96-0022, #96-0050, #96-0364, #96-0522, and #96-0640, OIG states that "the clients did not attest to citizenship." LASAC has determined the following with respect to these cases:

Case # 96-0022: Client never came to the office for this case/file of 01/09/96. A no show client at the time of the original intake process, but came to office two days later, intake sheet # 96-0041. Attestation of citizenship signed on 01/19/96. See Exhibit # 15.

Case # 96-0050: Attestation of citizenship was signed on January 18, 1996. See Exhibit # 15.

Case # 96-0364: this case consisted solely of telephone advice; the client never came into the office. LSC regulations do not require a written attestation for telephone advice. See Exhibit # 15.

Case # 96-0522: Attestation of citizenship has been signed. See Exhibit # 15

Case // 96-0640: this client came to the office, picked-up several forms related to being represented by LASAC, including the citizenship attestation, and left the office with them. When she returned, her citizenship form was missing. Proceeding with representation was an error on LASAC's part.

Finding 6 states, "LASAC did not file court documents evidencing change in counsel's affiliation by the statutory deadline."

There is no requirement, either from LSC, in local court rules, or in case law, that LASAC file such documents and, thus, this finding is irrelevant. The first time any such "policy" appeared was in the commentary to Part 1639, 62 FR 30766 (June 6, 1997). None of the LSC Regulations adopted in August, 1996, or in 1997 contained specific directions on how to transfer cases. Moreover, the program letter dated November 21, 1995, May 6, 1996 and July 11, 1996 did not include any instructions on notifying courts or clients about transfers or change in counsel. See Exhibit # 16.

The draft combined report goes on to state, under Finding 6, that "LASAC did not have a policy on the filing of these notices, and procedure was dictated in part by the individual attorney's interpretation of filing procedures." Again, this statement is entirely gratuitous, inasmuch as there is no requirement that LASAC have such a policy.

The *California Compendium on Professional Responsibility*, published by The State Bar of California states, on this subject, at page 3, "that issue is not expressly defined by the law or by the *Rules of Professional Conduct, California Compendium on Professional Responsibility.*" It goes on to state that "the clients should receive the names and address of the leaving attorneys. See Exhibit # 17. LASAC attorneys, in transferring cases, notified the court, filed substitution motions, and/or notified the clients in writing.

Finding 7 states, "LASAC did not ensure and could not demonstrate client notification of change in counsel's affiliation in cases that LASAC divested".

Again, this "finding" is nothing more than a gratuitous statement, because there is no

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requirement for such notification. case law, regulation, rule, statute or opinion that requires LASAC to notify clients of a change in counsel's affiliation.

Conclusion 3 states that, "We determined that LASAC did not adopt new policies and procedures to conform with the new law by the deadline required by the implementing regulations, but LASAC transmitted pertinent guidelines and regulations issued by LSC to its staff."

There were no LSC requirements regarding the timing of adoption of policies and procedures. Thus, this conclusion is meaningless.

Finding 8 states that "LASAC did not establish policies and procedures by the deadline required by the six regulations reviewed."

The August, 1996 regulations that were in effect during most of the period covered by the audit did not include *any* requirement that recipients implement policies *by a certain date*. They merely required programs to adopt written policies and procedures to guide staff. The August, 1996 regulations were effective on the date published in the Federal Register. It would have been legally and practically impossible for LASAC to adopt policies and procedures implementing the new restrictions and regulations by the effective date, because that was the same they were published.

The draft combined report goes on, under "Finding 8," to state that "As of May 1997, LASAC took corrective action to established the required policies and procedures." In fact, LASAC adopted such policies and procedures much earlier, in December of 1996. Thus, this statement is incorrect. See Exhibit # 18.

Conclusion 4 states that, "We could not determine that LASAC did not use funds to pay other organizations to handle prohibited or restricted cases and we express no opinion on this audit objective."

This statement does not distinguish between LSC and non-LSC funds. The only question appropriate for this audit is whether LSC funds were transferred to pay other organizations to handle

restricted cases. LASAC's 1996 Audit shows no payment of LSC funds to other organizations, and OIG auditors found no such transfer of LSC funds. The findings relied upon by OIG to support this conclusion are not relevant to any legitimate investigation by OIG

Finding 9 states that, "The transfer agreements under which LASAC paid other organizations to handle transferred cases included the transfer of cases that were closed prior to execution of the agreements.

The draft combined report goes on to state that, "Some cases that were designated in the transfer agreements were closed prior to execution of the agreement. Because some of the cases designated in the transfer agreement were closed before the agreements were executed, LASAC may have overpaid the other organizations for handling these cases designated in the transfer agreement.

"Because LASAC may have overpaid the other organizations for handling the cases designated in the transfer agreements, and because the other organizations handled prohibited and restricted cases in addition to the transferred cases after July 31, 1996, we could not determine that LASAC did not use funds indirectly to pay other organizations to handle prohibited or restricted cases after July 31, 1996."

This finding and its supporting statements are entirely inappropriate in the context of this audit. Whether LASAC overpaid other organizations for handling cases pursuant to transfer agreements is none of LSC's concern. There is no LSC regulation or policy that governs overpayments with non-LSC funds. Part 1630 does not apply to accounting and allocation issues with regard to non-LSC funds, nor does the audit guide. Transfer of non-LSC funds for any purpose is within LASAC's authority and is not within LSC control. OIG hypotheses about whether some other entity was "overpaid" have no place in the audit of LASAC. Even if such a fund transfer amounted to an indirect subsidy of another organization, as long as the transfer involved non-LSC funds, it is not inappropriate for purposes of this audit.

Finding 10 states that, "LASAC attorneys expended time on transferred unrestricted cases after LASAC paid other organizations to handle them as part of a transfer agreement to divest of

prohibited and unrestricted cases.”

Following Finding 10, the draft combined report goes on to state that “after July 31, 1996, LASAC attorneys charged 18 hours on 5 transferred unrestricted cases, after LASAC paid other organizations to handle them as part of a transfer agreement to divest of prohibited and restricted cases.”

Once again, it must be pointed out that the performance of this work, on what even OIG acknowledges are unrestricted cases, is entirely irrelevant to any legitimate purpose of this audit. Furthermore, the cases in question -- *Diaz v. County of Sutter*, *Gaeta v. City of Gilroy*, *Herrera v. City of Oxnard*, *Ramirez-Mendoza v. County of Santa Cruz*, and *Winterhawk v. City of Benicia* -- were all supported by funding sources other than LSC. These sources included the State Bar Trust Fund and the Rosenberg Foundation.

The narrative under Finding 10 proceeds as follows:

We could not determine that LASAC did not use funds indirectly to handle prohibited or restricted cases after July 31, 1996 because of the following three conditions: (1) LASAC's attorneys expended time after July 31, 1996 on transferred unrestricted cases after LASAC paid other organizations to handle these cases; (2) LASAC was not compensated for this time by the other organizations; and, (3) the other organizations handled prohibited and restricted cases after July 31, 1996.

In addition, before July 31, 1996, LASAC attorneys expended time on some transferred cases after LASAC paid other organizations to handle them as part of the transfer agreement executed in December, 1995. Because the cases were not transferred when the agreements were executed, but were transferred much later, LASAC may have paid the other organizations too much money for handling these cases.

Because LASAC may have paid other organizations too much for handling these cases and because the other organization handled prohibited and restricted cases in addition to these

transferred cases after July 31, 1996, we could not determine that LASAC did not use funds indirectly to pay other organizations, by providing in kind support to handle prohibited or restricted cases after July 31, 1996.

We could not determine that LASAC did not use funds to pay other organizations to handle prohibited or restricted cases before or after July 31, 1996, and we express no opinion on this audit.

Again, the purpose of these statements is mystifying; they are simply irrelevant. It is difficult to fathom the point OIG is trying to make, but there is no prohibition in any LSC regulation or policy on handling unrestricted cases, even if other organizations are to handle these cases under the terms of a transfer agreement. None of this involved restricted work, as OIG itself acknowledges. Moreover, work on the cases cited has been supported by non-LSC funds. Any theorizing about "indirect payments" or "overpayments" to other organizations is irrelevant and beyond the legitimate scope of this audit.

The funding used to support the case above are non-LSC funds that come from The Rosenberg Foundation, The State Bar of California and LASAC's non-LSC funds.

Finding 11 states that "One LASAC part-time attorney used LASAC facilities after July 31, 1996 to receive mail and make photocopies for later use in that attorneys' part-time work on transferred cases performed for another organization."

The narrative under Finding 11 goes on to state that:

One of the part-time attorneys admitted receiving mail at LASAC on transferred cases and using LASAC's photocopier to copy materials on transferred cases before taking the material to another organization where the attorney also worked part-time after July 31, 1996.

Because LASAC's plant and equipment appears to have been used for the benefit of another organizations that handles prohibited or restricted cases after July 31, 1996, and

LASAC was not compensated for this use by the other organization that receive the benefit, we could not determine that LASAC did not use funds directly or indirectly to support other organizations that handled prohibited or restricted cases after July 31, 1996.*

With regard to the issue of receiving mail, as the Declaration of Jodie Berger, Exhibit # 5 states, LASAC is still involved in monitoring activities in one closed case, which is permitted under LSC regulations. Mail about the monitoring of that case comes to LASAC, which is entirely appropriate.

With regard to photocopying, it is standard practice among legal services programs and other law offices to photocopy documents in the process of making referrals. However, in the interest of scrupulous adherence to proper procedures, LASAC has sought and received reimbursement from Jodie Berger for the photocopying in question. See Exhibit # 19.

Conclusion 5 states that "We could not determine that current employees, terminated employees, or consultants did not continue to work on restricted or prohibited cases and did not receive LSC funds for their services after restrictions and prohibitions took effect, and we express no opinion on this audit objective."

This finding is unwarranted. The finding on which it is based is incorrect and thus the conclusion is invalid.

Finding 12 states that, "LASAC did not have management controls to ensure and could not demonstrate that LASAC employees did not work on restricted cases while being paid with LSC funds." As support for this finding, OIG makes several allegations:

* "Some LASAC part-time attorneys also worked part-time for other organizations that handled prohibited and restricted activities."

This is true, well-known, and perfectly legal. There is no provision in the appropriations acts (PL. 194-134 and its progeny), the LSC Act, the LSC regulations, or other LSC policies, which

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addresses, restricts, or regulates the actions of LASAC employees when they work part-time for other organizations. LASAC does not regulate its part-time staff when they work for other organizations. In the context of this audit, the work LASAC part-time employees do for other organizations is irrelevant. The only issue OIG may legitimately address is whether, *while working for LASAC*, part-time staff have worked on restricted matters. They have not.

- "In two instances, LASAC attorneys formed new organizations for the purpose of handling prohibited and restricted cases. (See Background, Transfer Agreements.)"

There is nothing illegal about this action, nor was there anything illegal about it at the time the organizations were formed.

- "Some LASAC part-time attorneys served in a managerial capacity in part-time employment for other organizations that handled prohibited and restricted activities. (See Background, Transfer Agreements.)"

No LSC regulations or policies prohibit such managerial activities. LASAC has no right or power to control the outside practice of law of part-time staff. In fact, LSC regulations expressly *permit* part-time LASAC staff to have outside law practices or other jobs.

- "LASAC part-time attorneys were not subject to fixed schedules for part-time hours worked. (See Background, Partial Separation Agreements.)"

No LSC regulations or policies prohibit such an arrangement. Moreover, the statement is untrue. The partial separation agreement does not govern time and attendance at LASAC, but LASAC's policy and procedures manual does. All LASAC attorneys, including those working part-time, adhere to intake schedules that are determined by the office manager.

- "The total number of part-time hours to be worked was flexible subject to mutual agreement. (See Background, Partial Separation Agreements.)"

True, and irrelevant. No LSC regulations or policies prohibit flexible schedules.

- "LASAC did not ensure and could not demonstrate client notification of change in counsel's affiliation when attorneys who worked part-time for LASAC continued as counsel in cases transferred to other organizations for which these attorneys also worked part-time. (See finding 7.)"

True, and irrelevant. There is no requirement from LSC, the California State Bar, or any other source that this be done.

- "One LASAC part-time attorney used LASAC facilities after July 31, 1996 to receive mail and make photocopies for later use in the attorney's part-time work on restricted activities performed for another organization. (See finding 11.)"

LASAC's response to this allegation is set forth above. To reiterate, the receipt of mail was proper, inasmuch as it was related to permissible monitoring activities. OIG's focus on a single instance of photocopying is rather petty; nonetheless, in the interest of scrupulous adherence to proper procedures, LASAC has sought and received reimbursement for the photocopying. See Exhibit # 19.

* "LASAC's case management system was not reliable. (See Findings 1 and 3.)"

The basis for LASAC's disagreement with this statement is set forth above, in the discussion of Findings 1 and 3. Moreover, even if the statement were true, it would not justify Conclusion 5.

* "LASAC retained physical possession of four restricted case files after LASAC represented that these cases were divested by transfer to other organizations. (See finding 2.)"

LASAC's response is set forth above in its response to finding 2. As noted there, the cases were open for collection of attorneys fees and for monitoring activities that are permitted by the LSC

regulations and procedures.

"LASAC attorneys charged 12 hours after July 31, 1996 to two class action cases that were transferred to other organizations. (See finding 4.)"

LASAC's response is set forth above in the discussion of finding 4. The activities undertaken in these cases are permissible under The Legal Services Corporations Regulations and Legal Services Program Letter 96-1, page 6.

* "In 11 cases, documentation of citizenship or alien eligibility was missing. (See finding 5.)"

LASAC's response is set forth above in the discussion of finding 5. Of the 11 cases lacking citizenship attestations, LASAC already had, or has obtained, nine.

* "LASAC did not file documents evidencing change in counsel's affiliation by the statutory deadline. (See finding 6.)"

True and irrelevant. There was no requirement to do so.

* "LASAC did not establish policies and procedures by the deadline required by the new regulations pertaining to prohibited and restricted activities. (See finding 8.)"

As noted above, *there was no ISC regulatory deadline*. The claim is incorrect factually and legally.

* "LASAC's timekeeping records were not reliable. (See findings 13 and 14.)"

LASAC agrees. A recounting of the computer problems related to timekeeping records is set forth below, in the discussion responding to findings 13 and 14.

Overall, the allegations offered in support of finding 12 reflect very minor problems. These allegations do not support Conclusion 5.

Conclusion 6 states that, "We were unable to determine from the timekeeping records that there was no continued involvement in restricted or prohibited cases and we express no opinion on this matter."

This conclusion is unwarranted. The findings in which it is based are incorrect, misleading, or irrelevant, and thus the conclusion is invalid.

Finding 13 states that "LASAC did not implement a timekeeping system by the date required by LSC regulations."

First, it is unclear whether this finding refers to computer timekeeping records or to daily time and attendance records. In any event, LASAC disagrees that it did not "implement" a timekeeping system by the date required by LSC. It is true, however, that the system was not successfully operating by that date. We have continually sought ways to rectify the problems with the system -- problems that have been experienced by many other legal services programs as well. We are reluctant to move to a new system because of the resources already invested in the current system. LASAC's problems with their computer timekeeping system have been resolved.

LASAC states that LASAC did not continue involvement in restricted or prohibited activities which violated LSC Regulations and policies irrespective of whether the OIG auditors were unable to make a determination from LASAC's timekeeping records.

Finding 14 states that, "LASAC did not reconcile time distribution records, which show the distribution of hours worked to cases and activities, with time and attendance records used for payroll."

There is no LSC requirement that time and attendance records be reconciled with timekeeping system records. Neither Part 1635 nor any other LSC regulation, audit guide, or policy contains such

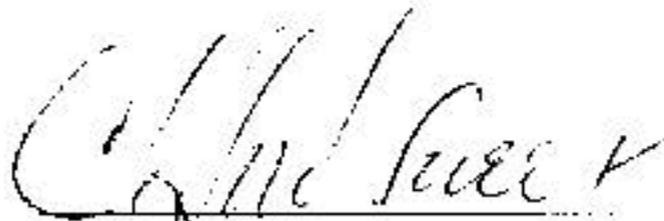
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a requirement. For this reason, the subsequent narrative discussion under finding 14 is irrelevant.

THE END OF COMMENTS on the Factual Corrections, Conclusions and Findings.

Exhibits to these comments are in a separate document.

Dated: November 12, 1997



Clifford Sweet

Executive Attorney

Legal Aid Society of Alameda County - Recipient #805160