

LEGAL SERVICES CORPORATION

OFFICE OF INSPECTOR GENERAL

**COMPLIANCE WITH SELECTED REGULATIONS
PERFORMANCE AUDIT**

Grantee: **Legal Aid Bureau, Incorporated**
 Recipient No. 321016

Final Audit Report No. AU96-063G

September 1997
LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL

**COMPLIANCE WITH SELECTED REGULATIONS
PERFORMANCE AUDIT
PROJECT NO. 96-063**

GRANTEE: Legal Aid Bureau, Incorporated (321016)
Baltimore, Maryland

INTRODUCTION

In Public Law 104-134¹, 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 alternative organizations. This report presents the results of the performance audit of Legal Aid Bureau, Incorporated (LAB).

BACKGROUND

LAB received \$2,941,741 in Fiscal Year 1996. LAB's main office is located in Baltimore, Maryland, and there are eleven branch office locations. As of the date of fieldwork, LAB employed, in addition to the Executive Director, approximately 83 attorneys, 55 paralegals, and 78 other staff. In June 1996, LAB reported 7 class action suits (five of which were also prisoner litigation suits), 34 prisoner litigation suits (exclusive of class actions), and 3 alien representation cases, a total of 44 cases to be divested by July 31, 1996.

¹ 110 Stat. 1321 (1996)

OBJECTIVES

The specific objectives of the performance audit were to determine whether LAB 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.

SCOPE

The audit was conducted at the main office in Baltimore, Maryland and one branch office in Prince George's County, Maryland from December 16-18, 1996. Audit procedures 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

Relevant to the stated objectives we reviewed cases and other matters existing prior and subsequent to April 26, 1996 through December 15, 1996. We did not review cases or other matters subsequent to the last date of fieldwork, except as it pertained to our follow-up of issues addressed in this report.

METHODOLOGY

The OIG conducted the performance audit of LAB in accordance with generally accepted government auditing standards. Audit procedures 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;

- 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.

FINDINGS AND RECOMMENDATIONS

With regard to the above-stated objectives, we provide the following findings and conclusions.

- We found no evidence that LAB did not divest 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, except as stated below.

FINDING 1 — LAB did not timely divest one alien case, but there were extenuating circumstances pertaining to the special immigration status of juveniles in long-term foster care.

In one of the three reported alien cases which involved juveniles, LAB did not divest of the case in a timely manner, but there were extenuating circumstances. In this case, LAB continued to represent the client under the assumption that the representation was permissible once an application to adjust the client's status was filed prior to April 26, 1996. However, 45 C.F.R Section 1626.4(b) allows representation of an alien, who has a pending application to adjust status, in only two limited circumstances: where the client is a citizen's unmarried child under age 21, or where the client is a spouse of a citizen. In this case, the client did not meet either criteria. LAB expended a total of 3.92 hours on this case after 7/31/96, which included legal representation.

For this case, an application to adjust the client's status to that of permanent resident was filed prior to 1996 restrictions, pursuant to §153 of the Immigration Act of 1990 (Public Law 101-649). The client's status was adjusted to permanent resident based on the criteria of 8 U.S.C. §1101 (a) (27)(J)(1991), which included, but was not limited to: 1) the child is unmarried; 2) the court has found the child eligible for long-term foster care; and 3) it is not in the child's best interest to return to the country of origin. According to LAB, the status was adjusted after April, 1997, but the actual date is unknown.

RECOMMENDATION

LSC management should further review the regulations on alien eligibility to consider recognizing the special immigration status afforded children in long-term foster care.

LAB management agreed with this finding.

- We found no evidence that LAB continued representation after April 26, 1996 with respect to the prohibited and/or restricted case services in violation of the law. However, we found the following reportable conditions.

FINDING 2 — LSC regulations do not accommodate citizenship attestation for certain court-appointed cases.

LAB receives clients through court appointment for certain types of cases (for example, guardian ad litem² and juveniles) for which citizenship attestation cannot be obtained. LSC regulation 45 C.F.R Part 1626.5(a) states “[a] citizen seeking representation shall attest in writing in a form approved by the Corporation to the fact of his or her United States citizenship.” The regulation describes citizenship verification requirements for use when citizenship is in doubt. However, it does not include alternative methods for obtaining citizenship attestation from infants or other persons who are physically or mentally incapable of affirming their citizenship status.

In the 43 case files reviewed, the OIG found 3 instances where LAB was unable to obtain the required citizenship attestation. In one case, the LAB attorney attempted but was unable to obtain a signature from a patient in a mental health facility. In a second case, the client was a child. The third case involved a guardianship of an adult who had been deemed mentally incompetent.

RECOMMENDATION

LSC should evaluate the current regulation and determine whether revisions are necessary to accommodate services to clients who lack the physical or mental capability to provide citizenship attestation. In the absence of regulatory revision, LSC should instruct grantees how to comply with Part 1626.5(a) when the client is incapable of attesting to citizenship.

LAB management agreed with this finding.

FINDING 3 —In two instances LAB did not verify the eligibility of clients who were not citizens.

The review of LAB files disclosed two instances in which LAB accepted attestation of permanent residency without verifying the status of the clients as eligible aliens. Two additional

²Per *Black's Law Dictionary*, fifth edition: “...a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent, a suit to which he is a party, and such guardian is considered an officer of the court to represent the interests of the infant or incompetent in the litigation.”

cases contained no citizenship attestation or verification. Under LSC regulation 45 C.F.R 1626.5 only citizens may attest to their citizenship. Aliens seeking representation "...shall submit appropriate documents to verify eligibility...." Allowing alien attestations also contradicted LAB's documented policies, which stated: "All prospective clients who are not United States citizens shall demonstrate their eligibility for legal services as provided in Section 1626.5 of the Corporation's regulations."

RECOMMENDATION

LAB management should ensure that staff understand and follow LAB's policy to require prospective clients who are not citizens to demonstrate their eligibility for legal services.

LAB management affirmed that its policies and procedures are effective to ensure compliance with the documentation requirements of 45 C.F.R Part 1626, and added that the exceptions noted were probably due to an oversight.

FINDING 4 -- LSC regulations governing prisoner litigation do not address juveniles with criminal charges where the determination to be tried as an adult is pending.

During the course of the audit, an issue was brought to our attention concerning a juvenile, also a ward of the State, who was represented by LAB for matters related to the child's welfare. The juvenile was charged with a crime, and was detained in an adult facility. LAB made efforts to divest of the case pursuant to 45 C.F.R. Section 1637.4. Because of the client's juvenile status, and the uncertainty as to whether the child would be tried as an adult, the judge would not rule on LAB's motion to withdraw as counsel until the status of the criminal case was ascertained. The matter was ultimately resolved as the client was released on his own recognizance before a formal hearing to determine whether he would have been tried as an adult.

The issues surrounding juveniles incarcerated or brought on criminal charges are not specifically addressed in the regulations. The only reference to juveniles in 45 C.F.R Part 1637 is in the supplementary information, which clarifies the meaning of "incarcerated" and states:

"... The term would also not include juvenile offenders who have not been charged as adults because charges against juveniles are generally considered to be civil in nature."

RECOMMENDATION

LSC management should review the existing regulation, and provide further guidance to recipients on how compliance is to be achieved in situations where juvenile offenders are incarcerated on criminal charges and it is not yet clear whether or not the juvenile will be charged as an adult.

LAB management agreed with this finding.

- LAB established policies and procedures as required by the respective regulations and communicated those policies and procedures to its staff.

GRANTEE MANAGEMENT COMMENTS TO THE DRAFT AUDIT REPORTS

LAB's comments to each finding have been included in the discussion of that finding. The complete text of LAB's responses to the first and second draft audit reports are included as Appendix I and II, respectively.

APPENDIX I

APPENDIX II

LEGAL AID BUREAU, INCORPORATED

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March 5, 1997



Mr. Albert B. Puglia
Acting Assistant Inspector General
for Program Integrity
Legal Services Corporation
750 1st Street, N.E., 10th Floor
Washington, D.C. 20002-4250

re: Audit Project 96-063; Legal Aid Bureau, Inc., 321016

Dear Mr. Puglia:

I am in receipt of the draft audit report finding no indication of noncompliance as to the six regulations focused upon in the audit. Our response is as follows to the Findings:

We are in agreement with Finding 1. As to Finding 2, we are confident that the four cases found where LAB either accepted attestation of permanent residency without verification or had no citizenship attestation or verification were the result of oversight. (Case names and numbers have not been provided so individual circumstances cannot be addressed.) It is published LAB policy to obtain either citizenship attestation or permanent residency verification for each client. All staff doing intake are trained to obtain this documentation. Office managers opening cases and supervisors doing initial case review and assignment have been instructed to doublecheck each file to ensure compliance.

We would like to commend the staff assigned to audit the Legal Aid Bureau, Charmaine Romear and David de la Tour, for their professionalism and their efforts to keep disruption of the work of our office to a minimum while conducting a thorough audit.

Sincerely,

Wilhelm H. Joseph, Jr.
Executive Director

cc: John Tull, Director
LSC Office of Program Operations

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By Facsimile to
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August 15, 1997

Alexis M. Stowe
Assistant Inspector General
For Audits
Legal Services Corporation
750 1st Street, NE, 10th Floor
Washington, D.C. 20002-4250

re: Performance Audit Project 96-063

Dear Ms. Stowe:

We are in receipt of the 2nd draft audit report dated August 7, 1997. An extension of one day to provide a response was granted on August 14, 1997, by Mary Ellen McBride.

We are in agreement with Finding 1 and the accompanying Recommendation to LSC management. We are confident both of the likelihood of these types of immigration petitions being granted and of the fact that these children fall within the purview of the types of persons that Congress did not intend to exclude from representation.

We are in agreement with the first two paragraphs of Finding 2. Because the "43 case files reviewed" in paragraph three are not identified, we are unable to confirm or to deny the accuracy of the findings but agree that the Legal Aid Bureau is unable to obtain citizenship attestations from juveniles or from adults who are physically or mentally incapable of affirming their citizenship status.

As to Finding 3, we are confident that the two cases found where the Legal Aid Bureau accepted attestation of permanent residency without verification were the result of oversight. (Case names and numbers have not been provided so individual circumstances cannot be addressed.) We are in agreement with

Alexis M. Sloane
August 15, 1997
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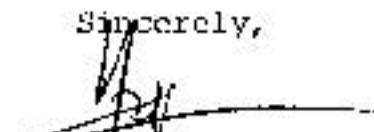
the rest of the finding and the summary of our response to the first draft audit report.

We are in agreement with Finding 4 and its Recommendation. We support LSC adopting policies which would permit continued representation of a juvenile in a juvenile proceeding even while the juvenile is incarcerated for an adult crime. Our representation of these children is through court proceedings designed to ensure their welfare and protect them from parental abuse or neglect. Juvenile courts routinely maintain their in loco parentis role over children in these circumstances because of the uncertainty of the outcome of the adult criminal proceedings and the recognition that these children will continue to need the court's guidance if released from the adult facility prior to the age of 21, when the court's jurisdiction automatically terminates. We do not believe that these are the types of cases that Congress intended to remove from the assistance of LSC-funded programs. We are concerned about the effect of the requirement of seeking withdrawal and the impression of abandonment of the child it produces on the juvenile and on the relationship between our program and the Juvenile Court.

As to the "other areas requiring further review," I wish to clarify that I did not intend to "request[ed] clarification as to whether a violation [of LSC regulations as to welfare reform or lobbying activities] occurred if the employee is on his/her personal time." While I acknowledge that there was a conversation on this matter, we believe that the LSC regulations are clear as to this issue. Further, it is our belief that the final regulations are sufficiently clear to allow appropriate judgments to be made about staff involvement with matters governed under 45 C.F.R. Parts 1612 and 1639.

Once again, we commend the staff assigned to the audit, Charmaine Romear and David de la Tour, for their professionalism.

Sincerely,


Wilhelm H. Joseph, Jr.
Executive Director

cc: John Tuli, Director
LSC Office of Program Operations