

Office of Inspector General

COMPLIANCE WITH SELECTED REGULATIONS PERFORMANCE AUDIT

Grantee: Legal Assistance Foundation of Chicago

Recipient No. 514020

Final Audit Report No. AU96-063B

December 1997

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 the performance audit of Legal Assistance Foundation of Chicago (LAFC).

BACKGROUND

LAFC received \$4,599,771 in Fiscal Year 1996. LAFC's main office is located in Chicago, Illinois, and there are six branch office locations. As of the date of field work, LAFC employed, in addition to the Executive Director, approximately 55 attorneys, 35 paralegals, and 49 other staff. In June 1996, LAFC reported 37 class action suits, 3 prisoner litigation suits, and 176 alien representation cases, a total of 216 cases to be divested by July 31, 1996. As of August 1, 1996, LAFC reported 3 prohibited class action suits and 5 prohibited alien representation cases that had

not been divested by the July 31 deadline. The recipient was required to follow a corrective action plan, which LSC management monitored, and all of these reported cases were divested or resolved before the end of 1996. As of August 13, 1996, LSC Regulation 45 CFR 1617.3 prohibited recipients "from initiating or participating in any class action." Section 1617.2 defined initiation or participation in a class action as any involvement at any stage of a class action prior to an order granting relief. However, that section specifically excepted non-adversarial monitoring of an order granting relief. LAFC retained some class action cases relying on that exception.

OBJECTIVES

The specific objectives of the performance audit were to determine whether LAFC 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 Chicago, Illinois from December 9-11, 1996, and January 27-30, 1997 and included one branch office. 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 January 30, 1996. We did not review cases or other matters subsequent to the last date of fieldwork, except as they pertained to our follow-up of issues addressed in this report.

METHODOLOGY

The OIG conducted the performance audit of LAFC 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.

CONCLUSIONS, FINDINGS AND RECOMMENDATIONS

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

CONCLUSION 1

- Except for cases reported to the LSC by the grantee, which are described in the Background section of this report, we found no evidence that LAFC did not divest of prohibited class action, prisoner litigation, and restricted alien cases by the July 31, 1996, deadline imposed by section 508(b)(2) of Public Law 104-134 as implemented by LSC Regulation 45 CFR 1617.

CONCLUSION 2

- LAFC continued representation in prohibited cases after August 1, 1996.

FINDING 1 -- LAFC continued representation in two class action suits (*Bell and Woods, et. al. v. Commercial Credit Loans, Inc.* and *Wesco Insurance Company and Hill et. al. v. Erickson*, hereafter referred to as *Bell* and *Hill*, respectively).

LAFC represented the plaintiffs in the *Bell* case, a case involving, among other things, premiums the plaintiffs had paid for insurance for involuntary unemployment. On July 29, 1996, an order for preliminary approval of the class settlement was entered. The settlement agreement estimated the size of the class as 8,150 persons and established floor and ceiling amounts of \$557,536 and \$681,584, respectively. In a "Joint Motion to Approve Revised Notice and Stipulation," filed on October 16, 1996, and granted two days later, the number of potential class members was raised to 11,689. The motion also raised the floor and ceiling amounts so that each person who submitted a participation form would receive no less than \$83.63. Our audit revealed that the program's attorneys had spent 75 hours on this case after July 31, 1996.

LAFC also represented the plaintiffs in the *Hill* case, a class action on behalf of pregnant teenagers and teenage parents who were wards of the state, alleging that the Department of

Children and Family Services (DCFS) was unnecessarily separating teenaged parents from their children through inappropriate placements of these wards. A consent decree was filed for this case on January 3, 1994. On October 3, 1996, LAFC filed the "Plaintiffs' Statement of the Status of the Two-Year Report." The plaintiffs' statement maintained that the defendant was not going to provide enough information to evaluate whether the objectives of the decree were being met and that the DCFS had missed many of the deadlines established in the decree. An attachment to the plaintiffs' statement set forth at least 17 assertions of non-compliance. The "Defendant's Status Report to the Court" was filed a week after the plaintiffs' statement. It stated that the plaintiffs questions were answered, the report required by the decree was not intended to be a statistical study, and the specific numerical data of the nature referenced by the plaintiffs was neither obtained nor required. The defendant's statement also contained an observation that the plaintiffs' counsel appeared to be questioning the reliability of a report that " does not take the form they have suggested " and " which is yet unseen." LAFC filed a motion to withdraw from the case on December 3, 1996, which was granted two days later. Our audit revealed that the program's attorneys spent 23.5 hours working on this case after July 31, 1996.

As described in the Background section of this report, LAFC was unable to divest of 3 class action suits by the July 31 deadline and retained some additional class action cases under the exception permitted by 45 CFR 1617 for non-adversarial monitoring. Although we found no evidence that the activities associated with the *Bell* and *Hill* class actions were "adversarial" in nature at the July 1996 deadline, we believe subsequent events set forth above indicate that each of those two cases became adversarial in nature some time after August 1, 1996.

Recommendation 1 -- We recommend that LSC management take appropriate action.

Recommendation 2 -- We also recommend that LSC management implement a program of periodic reporting by recipients on the status of class action suits in which recipients are involved in non-adversarial activities in order to facilitate enforcement of 45 CFR 1617. These reports should include, but not necessarily be limited to, lists of open class actions and signed certifications that no adversarial activities have occurred with regard to the cases listed.

GRANTEE MANAGEMENT COMMENTS ON FINDING 1

In responses to both draft reports, LAFC disagreed with Finding 1.

Bell

Regarding the *Bell* case, LAFC stated in its response to the first draft report (Appendix I) that the defendants learned that the class was larger than originally anticipated, that the parties "engaged in a problem solving effort," and that discussions ultimately resulted in a joint motion and stipulation to cover the larger number of class members. LAFC asserted that these actions were non-adversarial. In response to the second draft report (Appendix II), LAFC reiterated its assertion and provided a copy of a letter from opposing counsel stating his agreement that the discussions were non-adversarial in nature.

Hill

In the *Hill* case, LAFC's response to the first draft report stated that LAFC submitted a document entitled "Plaintiff's Statement of the Status of the Two-Year Report," which LAFC asserted was informational only, advanced no legal arguments, requested no relief, and cited no authority. The response stated that LAFC considered the activity to be non-adversarial. The response to the second draft report reiterated LAFC's position.

OIG RESPONSE

We continue to believe that these two cases became adversarial after July 31, 1996. In *Bell*, we believe that a discussion concerning the dollar amount of the settlement between parties with opposing interests is, by its nature, adversarial. For the *Hill* case, on the basis that the two sides presented opposing viewpoints in their respective status reports, we believe that the case had also become adversarial.

CONCLUSION 3

- Except as noted below, LAFC established policies and procedures as required by the respective regulations and communicated those policies and procedures to its staff.

FINDING 2 -- In 8 of the 19 cases we reviewed for compliance with requirements for obtaining client attestations of citizenship, the required attestation was not documented. LSC regulation 45 CFR 1626.6 requires recipients to "require all applicants for legal assistance who claim to be citizens to attest in writing ." LAFC management attributed the absence of attestations to the procedure used primarily in one office. The program has implemented new procedures, including the use of a compliance checklist, to prompt staff to ensure compliance with 45 CFR 1626.6 and other regulations. The checklist also provides assurance to supervisors reviewing the case files that requirements have been met.

Recommendation 3 -- None. The OIG believes that the corrective action already taken provides reasonable assurance that the regulatory requirements of 45 CFR 1626.6 will be met. Therefore, no further corrective action is necessary.

GRANTEE MANAGEMENT COMMENTS ON FINDING 2

With regard to Finding 2, the response to the first draft report stated that LAFC had changed its procedures to ensure that the required citizenship forms would be signed on the first visit of the client and that clients would not be seen until the documentation was secured.

OIG RESPONSE

None.

GRANTEE MANAGEMENT COMMENTS ON DRAFT REPORTS

The complete texts of LAFC management's responses to both draft reports appear in [Appendices I and II](#).

MANAGEMENT LETTER

We have issued a separate letter to LAFC management concerning an immaterial finding resulting from this audit.



LEGAL ASSISTANCE FOUNDATION OF CHICAGO

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Writer's Direct Number:

Sheldon H. Goodman
Executive Director

March 26, 1997

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Edouard R. Quatrevaux
Inspector General
LEGAL SERVICES CORPORATION
750 First Street, NE 10th Fl.
Washington, DC 20002-4250

Re: Response to Legal Services Corporation
Office of Inspector General Compliance
With Selected Regulations
Performance Audit Project No. 96-063
Grantee: Legal Assistance Foundation
of Chicago - 514020

Dear Mr. Quatrevaux:

The Legal Assistance Foundation of Chicago worked very hard to comply with all LSC laws and regulations and therefore appreciates the overall conclusions that with minor exceptions "LAF's demonstrated substantial compliance with all tested regulations..."

We disagree, however, with Finding 1 that we engaged in adversarial activities in two class actions after July 31, 1996 in violation of 45 CFR Part 1617.

The OIG report concludes that in two class actions, Bell v. Commercial Credit, and Hill v. Erickson, LAF's activities turned from non-adversarial to adversarial after July 31, 1996.

In Bell v. Commercial Credit, the parties agreed to a settlement in a consumer class action in July 1996. In September/October, 1996, one of the defendants learned that the number of the people in the class was greater than originally understood by the parties. With this new information, the parties engaged in a problem solving effort that was non-adversarial. After discussion, the parties agreed to a joint motion and stipulation to cover the larger number of class members. We believe these discussions between the parties fell within the non-adversarial monitoring language of the class action regulation.

Edouard R. Quatrevaux
March 26, 1997
Page Two

Hill v. Erickson was a class action filed in 1988 on behalf of some 900 pregnant teen-agers and teen-age parents who were wards of the state. The complaint

alleged that the Department of Children and Family Services ("DCFS") was unnecessarily separating teen parents from their children through inappropriate placements of these wards. On January 3, 1994, following a fairness hearing, a settlement agreement was entered by the court. Pursuant to the settlement, training of DCFS workers was revised and DCFS began to restructure its services to teen-age parents. LAFC lawyers monitored the DCFS actions following the entry of the settlement agreement.

The settlement agreement required a two year report to be prepared by a DCFS consultant and filed with the court regarding the status of DCFS's actions as required by the settlement agreement ("Two-year report"). On October 3, 1996, LAFC submitted "Plaintiffs' Statement of the Status of the Two-Year Report". This document was informational only. No legal arguments were advanced. No relief was requested. No citations to authority were made. The document simply provided factual information to the court regarding the status of the two year report. No motions were made by either side regarding the two-year report and LAFC took no other actions regarding this matter. LAFC considered this activity to be non-adversarial monitoring of the settlement agreement.

Shortly thereafter, on December 5, 1996, LAFC withdrew as counsel for the plaintiffs, and substitute counsel was granted leave to enter the action on behalf of the class of plaintiffs. LAFC stands by its view that its actions in this case were consistent with all LSC requirements and amounted to nothing more than non-adversarial monitoring of a settlement agreement.

* * *

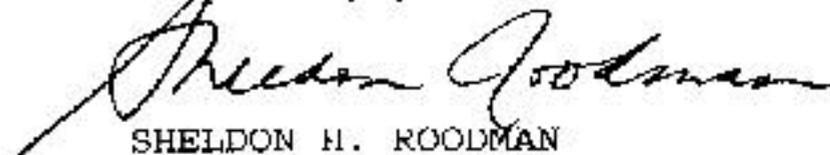
With regard to Finding 2 that "required client attestation of citizenship were not obtained in some cases," we have now reviewed our procedures for securing

Edouard R. Quatrevaux
March 26, 1997
Page Three

client attestations. We have changed our procedures to ensure that the required citizenship forms are signed on the first visit of the client, and clients are not seen until this documentation is secured.

We hope this information is helpful to the OIG, and LSC. If you have any questions, please do not hesitate to call.

Very truly yours,



SHELDON H. RODMAN

SHR:tn:egh



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Sheldon H. Roadman
Executive Director

December 8, 1997

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Alexis M. Stowe
Asst Inspector General
for Audit
Legal Services Corporation
750 First Street, NE
Washington, DC 20002

Dear Ms. Stowe:

In response to your letter dated November 25, 1997, and the 2nd Draft of the Performance Audit and Financial Audit, I have the following comments:

1. With regard to the Draft Performance Audit, there is a typo on page 2 in the last paragraph. It should be January 30, 1997, instead of January 30, 1996.
2. We continue to believe that our activities in the Bell and Hill cases were permissible under various LSC class action regulations that had been promulgated.

With regard to the Bell case, there was not an adversarial discussion concerning the dollar amount of the settlement as you state on page 5. Instead, the parties had already agreed to the amount each member of the class would receive and when it was determined there were more members of the class than previously understood, the amount of the settlement increased proportionately. Attached is a letter from the lawyer for the defendants which states as follows:

You have requested that I confirm that our discussions regarding the Joint Motion to Approve Revised Notice and Stipulation, filed on October 15, 1996, in the above-captioned lawsuit, were non-adversarial in nature. I agree. As we stated in the Joint Motion, "[r]aising of the floor and ceiling of the Fund corresponds to the underlying formula embodied in the

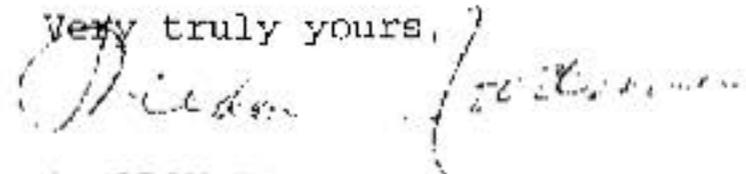
Alexis M. Stowe DTG
December 8, 1997
Page Two

Settlement Agreement between Plaintiffs and Wesco." (Motion, at 2) I believe this statement appearing in the Joint Motion itself, illustrates that our discussions were non-adversarial and that the Court, in granting the Joint Motion, confirms that conclusion.

In the Hill case, we filed "Plaintiffs' Statement on the Status of the Status of the Two-Year Report on October 3, 1996. Our report was merely to inform the Court whether the provisions of the consent decree were being met. We did not view this document as adversarial. We withdrew from the case on December 3, 1996. Our good faith interpretation of the regulation does not seem worthy of further review, especially in light of our withdrawal on December 3, 1996.

We believe that LSC management should not take any corrective action with regard to these two cases.

Very truly yours,


SHELDON RODMAN

SHR:egh

Attachment

VARGA BERGER LEDSKY & HAYES

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JONATHAN N. LEDSKY
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December 5, 1997

VIA TELECOPIER

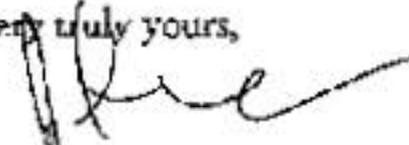
Vivian R. Hessel
Legal Assistance Foundation of Chicago
343 South Dearborn Street
Chicago, Illinois 60607

Re: Bell and Woods v. Commercial Credit Loans, Inc. and Wesco Insurance Co.
No. 93 CH 5943

Dear Vivian:

You have requested that I confirm that our discussions regarding the Joint Motion to Approve Revised Notice and Stipulation, filed on October 16, 1996, in the above-captioned lawsuit, were non-adversarial in nature. I agree. As we stated in the Joint Motion, "[r]aising of the floor and ceiling of the Fund corresponds to the underlying formula embodied in the Settlement Agreement between Plaintiffs and Wesco." (Motion, at 2). I believe this statement, appearing in the Joint Motion itself, illustrates that our discussions were non-adversarial and that the Court, in granting the Joint Motion, confirms that conclusion.

Very truly yours,


Jonathan N. Ledsky

JNL/dlu
lesse:woods@jnl