

**LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL**

REVIEW OF CASE STATISTICAL REPORTS

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

Report No. AU99-018

September 1999

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EXECUTIVE SUMMARY

The Legal Aid Bureau of Maryland, (grantee) denied the Office of Inspector General (OIG) access to information and as a result, the OIG was precluded from completing the planned audit. Asserting attorney–client privilege, the grantee staff refused to provide any non-public information to verify the type of legal services provided to clients in our sample and we were unable to determine if any legal services were provided. The provision of legal service is a prerequisite for reporting a case.

As a result of the grantee’s denial of access to information, this report covers only the audit work performed at the grantee’s Baltimore headquarters office. The grantee’s 1998 Grant Activity Report overstated the number of cases closed during the year and cases remaining open at year-end for the Baltimore office. The grantee reported 6,195 closed cases in the Baltimore office, but our testing indicated that only an estimated 3,499 cases should have been reported. Therefore, the reported closed cases were overstated by approximately 43.5 percent. The reported 4,197 open cases were overstated by an estimated 1,803 or 43 percent. The primary cause of the problems with both closed and open cases was the grantee’s failure to promptly close cases when legal services were no longer provided.

These errors remained even though the grantee revised its 1998 Grant Activity Report to correct overstatements of closed and open cases. After the OIG informed the grantee that an audit would be performed, but prior to the start of the audit fieldwork, the grantee submitted a revised 1998 Grant Activity Report that reduced closed cases by 5.7 percent and open cases by 45.5 percent program-wide. The grantee’s attempt to correct the Grant Activity Report was not successful.

The grantee’s management should establish additional controls that ensure accurate case statistical information is collected and reported. Recommendations to establish such controls and to correct the above problems are on page 7.

BACKGROUND

Legal Aid Bureau, Inc. is a nonprofit Maryland corporation providing legal services to indigent individuals who meet established eligibility guidelines. The grantee has a headquarters office in Baltimore and 11 branch offices throughout Maryland. Its staff includes approximately 92 attorneys, 63 paralegals, and 69 other staff who provide administrative support services. In 1998, the grantee received funding totaling over \$11 million. Approximately 27 percent, or \$3 million, came from LSC in the form of a Basic Field and a Migrant Farmworker grant.

The grantee is required to prepare and submit an annual Grant Activity Report to LSC on key aspects of its workload. The report includes statistics for basic field services, Migrant Farmworker services and Private Attorney Involvement programs funded with LSC funds, including the number of open and closed cases, types of cases, and the reasons for closing cases. For calendar year 1998, the grantee originally reported 18,286 closed cases and 14,090 open cases. A revised 1998 Grant Activity Report was submitted that reported 17,238 closed cases and 7,674 open cases.

The grantee tracks client cases primarily through an automated case management system "Clients for Windows," which is the source of the information provided in the Grant Activity Report.

OBJECTIVES, SCOPE, AND METHODOLOGY

The primary objective of this review was to determine whether the grantee provided LSC with accurate case statistical data in its revised 1998 Grant Activity Report. The OIG planned to audit the grantee's two largest offices, the Baltimore headquarters office and the Riverdale branch office. These offices handled approximately 49 percent of the grantee's total closed cases and 71 percent of the total open cases.

The OIG performed the audit fieldwork from May 24 through May 25, 1999 at the grantee's main office in Baltimore. Due to denial of access to information based on attorney-client privilege claims made by grantee management during the review of legal problem codes, the scope of our audit became limited. This report was prepared based on the work completed in the Baltimore office.

The OIG obtained and examined the grantee's 1998 grant proposals to LSC and its 1997 and 1998 grant activity reports. The OIG reviewed staff manuals, client intake systems and practices, case processing and closing procedures, and selected grantee written policies and procedures. During the on-site visit, the OIG interviewed and collected information from the grantee's deputy director, managing attorneys, staff attorneys, paralegals, intake staff and other support staff.

The OIG also obtained and reviewed the data in the grantee's automated case management system to determine if the case statistical data reported to LSC in the Grant Activity Report was consistent with information in client case files and in compliance with applicable LSC reporting requirements. The OIG randomly selected 170 open and closed client cases for detailed review. This selection was made from the case populations in the grantee's two largest offices, Baltimore and Riverdale. Sixty-five open and 65 closed cases were selected from the Baltimore office and 20 open and 20 closed cases were selected from the Riverdale office. We were unable to completely test our sample of cases because the grantee denied access to information. Our conclusions were therefore based upon the limited testing conducted on the case files located in the Baltimore office. The Baltimore office handled approximately 36 percent of total closed cases and 54 percent of the total open cases reported to LSC.

We performed this audit in accordance with *Government Auditing Standards* (1994 revision) established by the Comptroller General of the United States and under authority of the Inspector General Act of 1978, as amended and Public Law 105-277, incorporating by reference Public Law 104-134, §509(g).

RESULTS OF AUDIT
CASE SERVICE REPORTING

The grantee's revised 1998 Grant Activity Report included significant overstatements in the Baltimore office's closed and open cases. Most of the overstatements occurred because the grantee failed to promptly close cases in the automated case management system.

Case Service Reporting Requirements

LSC requires grantees to submit an annual Grant Activity Report summarizing the previous year's legal services activity wholly or partially supported with LSC funds. The information in the report includes total number of cases worked on, types of legal issues, number of open and closed cases and the reasons cases were closed. The report also includes information on Migrant Farmworker and Private Attorney Involvement cases. The Case Service Reporting Handbook and Grant Activity Report instructions provide reporting criteria for cases. Reported cases must be for eligible clients and within the recipient's priorities. Eligibility is based on citizenship or eligible alien status and income and asset determinations and must be documented.

Grantee's 1998 Grant Activity Report

The grantee submitted its 1998 Grant Activity Report by March 1,1999 as LSC requires. After being notified of the pending OIG audit of its case statistical data, the grantee submitted a revised 1998 Grant Activity Report that reported a 5.7 percent reduction in closed cases and a 45.5 percent reduction in open cases. Grantee staff told auditors that the original report included closed cases that had been closed prior to 1998 and open cases that had been closed. The following chart shows the total case reported in the original and revised reports.

	<u>Closed</u>	<u>Open</u>
Original Grant Activity Report	18,286	14,090
Revised Grant Activity Report	<u>17,238</u>	<u>7,674</u>
Reduction in Total Cases	1,048	6,416
Percent Reduction	5.7%	45.5%

Denial of Information

The grantee asserted attorney-client privilege in denying the OIG auditors access to information in the case files on the type of legal services provided to clients. The auditors asked the attorneys responsible for cases to confirm the validity of the legal problem code. The attorneys stated that the requested information would be provided only in cases in which the information previously had been made public. The grantee's staff also declined to explain the type of services provided for "referred after assessment" cases. Without the requested information, auditors could not determine if legal services had been provided and, therefore, if the cases qualified to be reported. The auditors did not ask for the case files to be turned over to them or to review all documents in the file. The request was simply for a verification of the type of legal service provided. Nine other grantees have been audited and all provided the information the auditors requested to verify that legal services were provided.

Examination of Reported Cases

The grantee overstated the number of closed and open cases for the Baltimore office. We estimated that the reported 6,195 closed cases were overstated by 2,696 (43.5 percent) and the 4,197 open cases were overstated by 1,803 (43 percent). The following chart shows the estimated overstatements.

	<u>Closed</u>	<u>Open</u>
Total Baltimore Cases	6,195	4,197
Overstated Cases	2,696	1,803
Percent Overstated	43.5%	43%

The estimated overstatements are based on a review of a sample of 65 closed and 65 open cases reported for the Baltimore office. Most of the overstatements were caused by the grantee's failure to promptly close cases after legal services were provided. We estimated that 2,601 closed and 1,614 open cases should not have been reported because of untimely closures. Overstatements also occurred because legal services were not provided to some clients and some cases were duplicates. The following chart shows the causes of the estimated overstated cases.

	<u>Closed</u>	<u>Open</u>
Untimely closure	2601	1,614
Legal Services Not Provided	95	125
Duplicate Cases		64

Total Estimated Overstatements**2696****1803**

We were not able to verify that legal services were provided to all clients represented in our 65 sample cases. In one case we did determine that no legal services were provided to the client. If legal services were not provided to other clients represented by our sample cases, additional overstatements may have occurred.

Errors in Closed Cases

Our review of a random sample of 65 closed client case files disclosed 27 cases where the provision of legal services had been completed prior to 1998. These cases should have been closed and reported in prior years when the legal services had been provided. We estimated that 2,601 cases should have been closed and reported prior to 1998. In addition, the grantee incorrectly reported an estimated 95 cases for clients who were not provided legal services. In total, the grantee overstated closed cases for the Baltimore office by an estimated 2,696 cases.

Errors in Open Cases

Our review of a random sample of 65 open client case files disclosed 25 cases that were no longer being serviced. Most of these cases should have been closed prior to 1998. Based on these errors, we estimated that the grantee incorrectly reported 1,614 cases as remaining open at the end of 1998. In addition, we estimated that the grantee incorrectly reported another 189 cases as remaining open at year end. These were either cases in which no legal services were provided or were duplicate cases (i.e. the same case was reported more than once). The estimated total overstatement of open cases was 1,803.

Supervisory Controls Lacking

The root causes of the reporting problems in the Baltimore office were the failure of attorneys and paralegals to promptly close cases when legal services were completed and a lack of supervisory controls over the case closings and preparation of the Grant Activity Report. Managers and supervisors did not exercise sufficient management oversight to ensure cases were promptly closed. The Grant Activity Report was not reviewed for correctness prior to its submission to LSC.

CONCLUSIONS

Because the grantee denied access to information, our report findings are based on limited work at the Baltimore office. However, that work indicates that the grantee needs to improve the accuracy of the case statistics reported in the Grant Activity Report. Even after being revised downward, the 1998 report contained significant overstatements in both closed and open cases reported for the Baltimore office. The problems were systemic and, therefore, likely to occur in the statistics reported for other offices. These case reporting problems reflect the absence of adequate management controls over attorneys and paralegals responsible for closing cases and over the case management system. The grantee needs to establish management controls to ensure that cases are promptly closed when the provision of legal services has been completed and to ensure that the Grant Activity Report correctly reports closed and open cases.

RECOMMENDATIONS

The OIG recommends that grantee management:

1. Implement procedures to ensure supervisory review over the preparation and accuracy of the Grant Activity Report.
2. Implement procedures requiring supervisors to review closed cases periodically to ensure that data in the case management system is consistent with data in case files.
3. Implement procedures requiring the periodic review of open cases in the case management database to ensure that only active cases remain open.
4. Implement procedures to ensure that cases are appropriately closed in the case management database when the provision of legal services has been completed.

SUMMARY OF GRANTEE COMMENTS and OIG DECISIONS

Summary of Grantee's Comments

The grantee's comments disagreed with the draft report's conclusions and stated that the draft audit report was "... faulty and misleading in a number of ways." The grantee asserted that the OIG was not denied access to information and misrepresented the over reporting of cases.

The grantee's comments are in Appendix II.

OIG Decision

The grantee's comments were not constructive and did not provide any new information. We concluded that factual changes to the report were not warranted. No evidence was provided to support the grantee's assertion that the report was faulty and misleading. More important, the grantee provided no data that indicated the Baltimore office reported the correct number of closed and open cases for 1998.

Grantee's specific comments and OIG decisions

Grantee: Denial of access to information

The grantee's comments stated that the OIG had accused LAB of denying access to information but had provided no explanation of how that alleged denial prevented completion of the planned audit. According to the grantee, the OIG was not denied access to any documentation regarding eligibility for services. LAB advised OIG staff that, under Maryland law, LAB could not reveal the problem codes of named clients who had not approved the release of information about the substance of their cases to a third party. The grantee stated that its staff declined to verify the problem code or to tell the OIG the subject matter of only three cases.

OIG Decision

As part of our audit methodology, we ask case handlers or grantee management to confirm the problem and closure codes for each of our sample cases. We then ask to review documentation from the case file that can be used to verify the codes. This process enables the audit staff to assess the validity of the grantee's assertions on the types of problems clients have and the level of legal services provided. Verification of problem and closure codes also provides assurance that legal services were provided. The provision of legal services is a prerequisite to reporting a case, and the grantee denied access to information needed to determine if legal services were provided. This denial of information precluded completion of the planned audit.

The report does not state that there were restrictions on access to eligibility information. Rather, the OIG was denied access to information needed to confirm that clients were provided legal services.

When audit field work started, the grantee informed the auditors that the problem codes for named clients could not be revealed without the client's approval. However, prior to the start of the audit, the grantee provided the problem codes for all named clients of the Baltimore and Prince George's County offices. As discussed below, the grantee confirmed the problem codes for 50 of 130 Baltimore office clients in our sample. Citing prohibitions imposed by Maryland law, the grantee declined to confirm or provide documentation for the legal problems of the remaining 80 clients.

Grantees may refuse to disclose to the OIG information properly protected by the attorney-client privilege. The grantee declined to confirm the legal problem code for named clients and asserted the information was protected by attorney-client privilege. However, as discussed in the American Bar Association publication, *The Attorney-Client Privilege and the Work Product Doctrine*, the information is not covered by attorney-client privilege. The cited publication states that an attorney ordinarily may not refuse to disclose a client's identity and that "the privilege does not extend to the general nature of the legal services the attorney was retained to perform and the terms of his engagement."(pages 47 & 48). Therefore, we concluded that the requested documentation verifying the legal problems of the grantee's clients is not information to which the privilege attaches.

In making a claim of privilege, it is not sufficient for the grantee merely to make a broad, unspecific assertion of privilege. The grantee must demonstrate that all the elements of the privilege are present. *The Attorney-Client Privilege and the Work Product Doctrine*, states that to assert privilege the attorney must demonstrate that there was a "communication . . . between privileged persons . . . in confidence . . . for the purpose of seeking, obtaining, or providing legal assistance for the client ... and ... the privilege must be affirmatively raised and cannot have been waived." (pages 29 & 35). This last is of critical importance here, because even if the privilege did apply (which it does not), the grantee already disclosed to the OIG the information that the OIG sought to verify. Thus, any privilege would have been waived.

In addition, Maryland law does not apply to questions of privilege when the OIG requests information to which it has access under the Inspector General Act of 1978, as amended, the Legal Services Corporation Act of 1974, as amended, and/or LSC's appropriations act. Issues under these Federal laws are decided in Federal Court. Questions of privilege in Federal court are determined under Federal common law, rather than the law governing privilege in the varying states. (Rule 501, Federal Rules of Evidence)

The OIG was not able to confirm the problem code, and therefore, that legal services were provided for 80 of 130 sample clients serviced by the Baltimore office. The grantee's comment that its staff declined to verify the problem code or subject

matter for only three cases is misleading. At the start of audit fieldwork, the grantee informed the audit staff that legal problem codes could be confirmed only for cases in which the information previously had been made public. The grantee limited access to such information and the audit staff could not verify the problem codes for the first three sample cases that involved information that had not been made public. The audit staff then asked grantee management to confirm the problem code for those cases in which the required information had been made public. The problem codes for 50 of the 130 sample cases were confirmed. In addition, the grantee's staff declined to explain the nature of the services provided for cases classified as Referred After Legal Assessment. The audit staff could not determine why these cases were accepted by the grantee and subsequently referred to another legal services provider. Our sample of 65 closed cases included 4 that were classified as Referred After Legal Assessment.

Grantee: Over Reporting Of Cases

The grantee stated that the estimated 2,601 untimely closed cases appeared to result from an alleged 27 out of 65 closed client files reviewed where the provision of legal services had been completed prior to 1998. According to the grantee, the OIG did not provide any basis for its determination that these cases should have been closed and reported in prior years.

As to open cases, the grantee stated that the OIG did not provide any basis for its determination that 25 sample open cases were no longer being serviced.

According to the grantee, the statutes, regulations, Case Service Reporting Handbook, Grant Activity Report instructions and other documents provided to LSC grantees for use in 1998 did not include any requirement or even any guidance as to the required timing of closure of cases or any restriction from reporting cases in the 1998 Grant Activity Report where provision of legal services had been completed prior to 1998 or which were no longer being serviced.

The OIG estimated that 95 closed and 125 open cases should not have been reported to LSC because legal services had not been provided to the client. The comments stated that the alleged failure to provide legal services in one case (out of a total of 130 cases examined) has been used erroneously in estimating overstatements for both closed and open cases, and that the circumstances of the case may have necessitated leaving it open in 1998. Further, according to the grantee, the OIG did not provide any data on how many duplicate cases were found in the sample of open cases.

OIG Decisions

Our review of 65 closed cases disclosed 27 cases where the provision of legal services had been completed prior to 1998. Grantee management and/or the responsible case handlers confirmed during audit fieldwork that these 27 cases should have been reported as closed prior to 1998.

We reviewed 65 open cases and determined that 25 cases were no longer being serviced. Grantee management and/or the responsible case handlers confirmed that these 25 cases should not have been reported as open at the end of 1998. They stated that these cases should have been closed prior to 1998.

The grantee was incorrect in asserting that requirements and guidance on reporting cases were lacking. On November 24, 1998 LSC issued Program Letter 98-8 and revised the CSR Handbook. The revised Handbook states that "Programs shall ensure the timely closing of cases so that case service reports submitted to LSC contain current and accurate information about both open and closed cases for the grant year (January 1 through December 31)." This provision applied to 1998 data.

Both the original and revised handbooks clearly indicated that case data is collected on an annual basis. The Case Service Report is intended to collect annual statistics and not cumulative statistics on prior year services. Otherwise annual statistics would be meaningless. Moreover, good case management dictates that cases be closed when legal services are no longer provided.

Our review disclosed that legal services were not provided to the client for one closed case and two open cases. The attorneys responsible for the three cases confirmed during audit field work that legal services were not provided.

Grantee management confirmed during the audit that one open case in the sample reviewed was a duplicate, i.e., this case was reported more than once.

Grantee Comments on Recommendations

The comments stated that the OIG's recommendations have been implemented and agreed that the recommendations will strengthen the grantee's capacity for accurately reporting case statistical data.

OIG Decision

The grantee provided some information indicating that the recommendations were being implemented. The grantee should prepare a corrective action plan for implementing the recommendations, including dates for completion of corrective action, and submit it to the OIG within 30 days of the date of this report.

APPENDIX II

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July 19, 1999

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re: OIG's draft Review of Case Statistical Reports dated June 25, 1999

Dear Mr. Quatrevaux:

The Legal Aid Bureau (LAB) is in receipt of the Office of Inspector General's (OIG) draft "Review of Case Statistical Reports" which was received by our office on June 28, 1999. We requested, and were given, an extension of time until today to submit our response. LAB acknowledges the professional and courteous manner in which the onsite audit team conducted itself and appreciates the recommendations provided. However, we are profoundly perplexed by OIG's failure to complete the audit as originally planned and outraged by the groundless and out of context findings and outright misrepresentation regarding overreporting of case work.

Summary

LAB is a law firm of attorneys and others dedicated to ensuring access to justice for all. As individuals who have, in many cases, committed themselves to lives of working long hours in low-paying jobs to serve the poor and disenfranchised, our allocation of scarce resources reflects the priority we place on direct services while striving to balance the need for adequate management and support activities. We are outraged by the misrepresentations and groundless conclusions contained in the draft report, and we request that it be redrafted to reflect a meaningful review of LAB's work on behalf of its clients in 1998 and resubmitted to LAB for review and comment prior to finalization.

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The report is faulty and misleading in a number of ways:

1. OIG uses standards for timing and reporting of case closures that have no basis in law or policy.
2. OIG apparently uses one finding that "no legal services were provided" to a client in one closed case out of 130 closed and open cases to conclude that there was overreporting due to "legal services not provided" in 1.6% of closed cases and 2.9% of open cases.
3. OIG makes findings of overreporting based upon alleged "duplicate" cases when OIG staff did not review any cases for duplicates because, it told LAB staff on the basis of its analysis before the actual site visit, the numbers were not statistically significant.
4. OIG groundlessly concludes that so-called "untimely" case closures and alleged "duplicate" cases are the basis for finding "overreporting" of cases in the 1998 Grant Activity Report.
5. OIG irresponsibly accuses LAB of denying OIG access to information yet provides no explanation of how that alleged denial prevented it from completing its planned audit.

Background

LAB learned by telephone from Anthony Ramirez in March, 1999, that OIG would be conducting an audit of its 1998 Grant Activity Report sometime in May, 1999. In April, 1999, LAB advised OIG that it would be submitting to LSC a revised Grant Activity Report in order to improve the accuracy of its 1998 reporting data and requested guidance on whether the audit would be conducted based upon the original or the revised Grant Activity Report. LAB was advised that the audit would be based upon the revised report. LAB received a letter from OIG specifying information to be provided prior to the audit scheduled for May 24 – June 4, 1999. On May 14, 1999, LAB provided OIG with a diskette containing the database used in generating the revised 1998 Grant Activity Report, the revised report itself, and other documents requested by OIG. Such information mistakenly included problem codes identifying the subject of client communications with attorneys, which information had not been approved explicitly or implicitly by the client for release to a third party, as well as certain notes contained in individual case records recording the substance of privileged communications with clients.

OIG Site Visit and Allegations of Denial of Access

On May 24, 1999, LAB's Executive Director, Deputy Director and Director of Litigation met with OIG staff for an "entry conference." The tenor of that meeting was

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businesslike, cordial and professional. As set forth in the enclosed letter dated May 27, 1999, (Attachment A) describing in greater detail the circumstances of OIG's interaction with LAB staff on May 24 and May 25, 1999, LAB's Deputy Director advised OIG at that meeting of the discovered problem with the confidential information in the provided database and requested its return. LAB advised OIG staff that under Maryland law, LAB could not reveal to OIG the problem codes of named clients who had not approved, explicitly or implicitly, information about the substance of their cases be released to a third party. OIG staff did not advise LAB at that time that this would be considered by OIG to be a "denial of access to information" and stated only that the request for the return of the database should be put in writing. This written request was delivered to OIG staff at LAB on May 25, 1999. (Attachment B).

On May 24, 1999, and May 25, 1999, LAB's Director of Litigation, Deputy Director and other staff, answered questions by OIG about and showed OIG copies of requested documents from individual case files. OIG was not denied access to any documentation regarding eligibility for services. In only three cases, where the client had not approved disclosure of the subject matter of the case, LAB staff declined to verify the problem code for the case or to tell OIG the subject matter of advice given to the client. In those cases, LAB staff did advise OIG of the status of the case, confirmed consultation on a legal issue and described what action was taken, e.g., referral to a private attorney or other legal services organization for assistance.

At no time during those two days, in which all 130 requested files from the Baltimore City office were reviewed with OIG, was LAB advised that failure to reveal this information was considered a "denial of access." In fact, on more than one occasion in informal exchange with the audit team, the executive staff was told that everything was going fine. It was not until 4:45 p.m. on May 25, 1999, after the file reviews for Baltimore City had been completed and plans had been made for OIG to return on May 26, 1999, for final interviews before going to the Riverdale office for the file reviews planned there, that LAB was orally informed by OIG staff members that they would not be returning to LAB on May 26th because they had been "recalled to Washington" due to "denial of access." When asked to specify the denial of access, OIG staff responded that LAB's failure to verify problem codes and the subject matter of certain advice was probably what was being considered the denial of access. However, LAB was also told that the matter was now in the hands of higher management who would provide further direction. LAB received no further communication from OIG, either orally or in writing, until June 4, 1999, when LAB received a letter advising it that the audit would not be completed due to "denial of access", that LAB's request for return of the confidential

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database was denied and that the report would be based upon the portion of the audit that had been completed.¹

OIG's Findings: Alleged Overreporting

OIG's report faults LAB for "overstatements" of closed and open cases in its 1998 Grant Activity Report. Specifically, it bases its estimates of "percent overstated" of approximately 43% on three factors – "grantee's failure to promptly close cases after legal services were provided (also referred to as "untimely closures"), "legal services were not provided to clients," and "duplicates." LAB disputes the accuracy of the numbers of alleged "overstated" cases. Even if the numbers cited were correct, OIG provides absolutely no statutory, regulatory or other basis for concluding that these results would produce an overstatement of cases in the Grant Activity Report.

OIG's description of the case service reporting requirements states, correctly, that grantees must provide information about the previous year's "legal services activity wholly or partially supported with I,SC funds" and that "[r]eported cases must be for eligible clients and within the recipient's priorities. Eligibility is based on citizenship or eligible alien status and income and asset determinations and must be documented." Nowhere in OIG's description of case service reporting requirements and, more importantly, nowhere in the statutes, regulations, Case Service Reporting Handbook, Grant Activity Report instructions or in any other document provided to I,SC grantees for use in 1998 or in prior years is there any requirement or even any guidance as to the required timing of closure of cases² or any restriction from reporting cases in the 1998 (or any prior) Grant Activity Report where "provision of legal services had been completed prior to 1998" or which "were no longer being serviced." Yet these are the criteria used by OIG in determining that an estimated 2,601 cases out of 6,195 cases "should have been closed and reported prior to 1998" and that an estimated 1,614 cases out of 4,197 cases were incorrectly reported as remaining open at the end of 1998.

¹ During the intervening week, LAB was subject to the preparation for a comprehensive audit and a site visit lasting five days by the General Accounting Office of the Grant Activity Report for 1997. GAO completed its audit, during which significantly less client-identifying information was provided, with no problem and no concerns raised about "denial of access." GAO achieved this result by agreeing to redact client names from the database after running the sampling programs and by providing onsite auditors with only case numbers and not client names, which it agreed was unnecessary for a valid audit.

² There are no requirements governing the practice of law in Maryland nor is there any generally accepted professional standard that suggests a specific amount of time by which a case should be "closed." There are many factors which could require a case remaining open for extended periods of time with no action recorded in the file, for example, waiting for possible further action by an opposing party which is not governed by specific rules as to timing or waiting for the scheduling of a hearing or provision of information relevant to further action being taken in a case.

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The estimation of 2,601 untimely closed cases appears to result from an alleged 27 out of 65 closed client files reviewed where the provision of legal services had been completed prior to 1998. OIG does not provide any basis for its determination that those cases should have been closed and reported as closed in prior years. In any number of these cases, the last activity being in 1997 may not have allowed the case to be closed in 1997. For example, the last activity may have been toward the end of 1997, when a decision was received from a hearing in the case. However, the circumstances of the case may have necessitated leaving it open in 1998, to insure compliance with court orders by the opposing party, the running of appellate or other post-judgment relief periods, receipt of benefits or the enforcement of a judgment.

As to open cases, OIG states that its sampling of 65 open client cases "disclosed 25 cases that were not longer being serviced. Most of these cases should have been closed prior to 1998." OIG does not provide any basis for its determination that those case "were no longer being serviced" (nor a definition of what "no longer being serviced" means) nor specifies how many should have been closed. Given the relatively small number of cases sampled, it is clearly significant how many properly remained open in 1998.

Finally, and most importantly, it is wrong and misleading to suggest that these cases did not constitute legitimate work on behalf of LAB's eligible clients by finding that the cases should, in effect, never have been reported as closed in a Grant Activity Report because they were, allegedly, not reported "on time." These "findings" provide the basis for 96.5% of the alleged 43.5% "overreporting" of closed cases for 1998 and 89.5% of the alleged 43% "overreporting" of open cases for 1998. Without inclusion of these cases as incorrectly reported, the percentage of "overstated" cases (using OIG's own criteria) would be 1.6% and 4.5%, respectively.

The remaining alleged "overreporting" of closed cases is based upon a finding that in an estimated 95 out of 6,195 closed cases "legal services were not provided." 66% of the remaining 4.5% "overreporting" of open cases appears to be based upon "findings" that in an estimated 125 out of 4,197 open cases "legal services were not provided." The only reference to specific cases as to this issue is that "[i]n one case [OIG] did determine that no legal services were provided to the client."³ OIG does not specify if that was a closed or an open case nor on what basis that "determination" was made. It appears, however,

³ OIG also states, apparently based upon its claim of "denial of access" that it was "not able to verify that legal services were provided to all clients represented in our 65 sample cases" and that "[i]f legal services were not provided to other clients represented by our sample cases, additional overstatements may have occurred." It is simply illogical to suggest that the alleged "denial of access" to client-specific, confidential information prevented OIG from verifying that legal services were provided. In fact, LAB did verify in each case whether legal services had been provided. It only refused to provide the specific advice provided to the client and to verify the problem code in those very few cases where the problem had not been revealed to anyone outside the protections of the attorney-client privilege.

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that alleged failure to provide legal services in one case (out of a total of 130 cases examined) has been used erroneously in estimating overstatements for both closed and open cases.

Finally, the remaining "overreporting" of open cases is attributed to alleged "duplicate" cases. OIG does not provide any data on how many duplicate cases were found in the sample of 65 open cases. Its only reference to this issue is in its "definition" of duplicate cases as "i.e. the same case was reported more than once." To LAB's knowledge, OIG did not sample any open or closed cases for duplicates. OIG requested and was provided with a list of all cases reported in the 1998 Grant Activity Report for which the same client's name and problem code appeared more than once. When OIG provided LAB with its lists of the cases to be sampled, it advised LAB that the number of "duplicates" was not statistically significant and, therefore, that OIG was not requesting that any of those cases be pulled for review. Without an individual case review, there is no way to determine if a case was truly reported twice. For example, two different individuals with the same name may have been assisted in the same year with the same type of problem. Alternatively, a client may have come in twice during one year with problems falling under the same problem code, such as problem code 63, "private landlord tenant" with completely different cases with different landlords.⁴ Any finding of duplicates without review or discussion of individual cases is nothing more than irresponsible speculation.

Recommendations

OIG has recommended that LAB implement procedures to ensure supervisory review over the preparation and accuracy of the Grant Activity Report, to require supervisors to review all cases periodically to ensure that data in the case management system is consistent with data in case files and only active cases remain open and to ensure that cases are appropriately closed in the database when the provision of legal services has been completed. LAB appreciates these useful recommendations and assures OIG that all have been implemented and will continue to be enforced.

LAB explained in detail to OIG at the entry conference that in years leading up to 1998, there were many problems with the case management systems. Between December, 1995, and July, 1997, LAB operated four different case management systems (three computerized, one manual) due to computer difficulties and the lack of availability to LAB, until 1997, of a case management system designed for legal services programs.

⁴ In GAO's audit of LAB's 1997 Grant Activity Report, GAO requested sampling of 90 cases where there were at least two (and sometimes more) occasions where a client's name with the same problem code appeared in the database as having an open case sometime in 1997. In at least 99.4% of these cases, upon review of the casefile, GAO found that the cases were not duplicates, and thus properly reported, due to such factors as different dates of birth, different opposing parties, or different court cases between the same parties which were separated by a reasonable period of time.

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After the current system, Kemp's Caseworks Clients for Windows (CFW) came on-line in July, 1997, there was an enormous amount of case closure and other data repair that had to be done because it had not been possible to do the work under the old systems.

Since 1997, LAB staff has worked diligently to bring the database into conformity with the actual condition of the program's cases and to implement systems to ensure that case data input is done timely and in compliance with LSC and LAB's other funding sources' requirements. Complicating this process has been the fact that since 1996, there have been numerous statutory, regulatory and policy changes applicable to LSC-funded programs so that reporting requirements have both changed and become much more numerous and complicated from those under which programs had operated for many years. In particular, CSR definitions and case reporting requirements have changed and, now, will change again for 1999, requiring numerous adjustments. Working with over 200 paid (and many more volunteer) staff members and handling over 30,000 requests for service each year, developing and enforcing standardized case management is a challenge which LAB has addressed diligently and professionally with very limited resources while ensuring that the top priority for resource allocation is direct service to clients. What is important to recognize - and what has been completely ignored - is that LAB has provided and continues to provide services to an enormous number of clients who would otherwise have been denied access to our legal system. There is no suggestion in the audit that clients were harmed in any way due to LAB's statistical recording of file status. Additionally, when over four and one-half months of numerous staff members' time and energy has had to be directed to responding to four different case audits by four different agencies (three of them funded by federal tax dollars), time to continue to refine case management and other procedures is severely limited. However, it is a challenge to which LAB has responded fully and responsibly. LAB assures OIG that it has already implemented the procedures set forth in OIG's recommendations.

The steps LAB has taken to remediate concerns with our database and accurate reporting capability include:

1. As previously described the first major step to improving the system came with the purchase and implementation of CFW in July, 1997.
2. As quickly as possible after CFW's implementation, management created and distributed to staff a handbook on the use of the system and the proper coding of cases, including when to treat an intake as a case and when to reject the person due to ineligibility for services or for services less than that that would be considered a case under LSC standards at the time.
3. LAB placed top priority on inputting the data that had not yet been entered into the system, including the two and one-half months of intakes from May to July, 1997, when

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there was no computerized case management system available and the cases which were originally input in the pre-1996 System 34 which had been closed manually but could not be closed on computer during the period from January, 1996 until July, 1997.

4. Since 1997, it has been emphasized with staff, from orientation through monthly case reports and discussions with supervisors, the importance of prompt closing of cases. Supervisors have been provided with lists of cases which appear to have been open a significant length of time and asked to make sure that cases are closed promptly and to document cases that are legitimately still open. At the end of 1998, supervisors and office managers were instructed to bring case lists current by the end of January, 1999, when data would be collected for the 1998 case reports.
5. Since individual office instruction on the use of CIW and proper case closing coding was done in July and August, 1997, IAB has had a number of subsequent trainings on the proper use of the system: in October, 1997, a half-day training for office managers, who are normally responsible for file closure; in March, 1998, a full-day training for office managers, supervisors and intake workers; and in August, 1998, implementation of a flow chart to try to insure more standardized processes for case intake, rejection and closing.
6. In May, 1998, LSC Program Letter 98-3 was immediately distributed to all supervisors and a significant portion of the early June, 1998, supervisors meeting was spent reviewing the handbook.
7. In December, 1998, LSC Program Letter 98-8 was immediately distributed to all staff and reviewed at the January and February, 1999, supervisors meetings. Its distribution coincided with the purchase of Kemp's Clients for Windows 2000, an upgrade of the original Clients for Windows. All staff have been provided explicit direction on the changes in the handbook, especially those related to ensuring that individual cases are not reported more than once and that mere referrals not be counted as cases.
8. The Deputy Director has reviewed and continues to review by computer, by reports from supervisors, and, where necessary, by file, all cases that remained open from prior years, in order to ensure that the only cases that are open are those that are active.
9. All cases not assigned to current staff have been closed or, where appropriate, changed to the name of the current staff member handling the cases. Office managers and supervisors have been made aware that cases must be reassigned immediately upon the departure of the staff member responsible for the case.

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10. All cases not assigned for ongoing representation must be closed immediately. Staff are to send closing letters and to close all cases within thirty days of final action on a case.

11. Supervisors are to review all new intakes not less than weekly to ensure proper coding, assignment, and where appropriate, closing.

12. Before opening a new case at an intake, client records must be checked for possible open cases for that client or cases closed within the same year. Only after determining that a case is truly a new case for a client will a new case be opened. New cases which are duplicates will be rejected so as not to be included in CSR counts.

13. All offices will be sent a copy of all cases currently showing as open and are required to provide the central office with a status update. This will ensure a completely updated and accurate database for all future reporting.

14. A half day training on all of these issues was held for Baltimore City intake staff, office managers and supervisors in May and will be held for all staff within the next month.

15. LAB is working with a computer programmer to simplify and speed up the data collection process so that a current, statewide database can be compiled on no less than a weekly basis so that the management information staff, law and technology coordinator and Deputy Director can regularly review the status of cases to ensure accuracy in reporting.

16. LAB is working to connect all offices through a wide area network which will allow simultaneous transmission and updating of data statewide.

Conclusion

OIG has no sound basis to say that LAB overreported at all in its 1998 Grant Activity Report. Importantly, OIG does not even suggest that LAB provided services to or reported to LSC cases for anyone who was ineligible or whose case did not fit within LAB's priorities, the only criteria (other than being funded at least in part by LSC funds) in force for reporting of cases for 1998. During the audit, OIG reviewed for, but does not mention in its report, any problems associated with eligibility for the 130 cases sampled. The asserted estimated overreporting is based upon nonexistent criteria, cases not even reviewed and inaccurate conclusions. OIG's allegations of denial of access are irresponsible, untrue and perplexing. OIG has not and cannot demonstrate how its failure to obtain confidential information about several of LAB's clients could have had any possible impact on its ability to complete the audit. LAB has already implemented OIG's

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recommendations and agrees that they will strengthen LAB's capacity for accurate case reporting. However, it is also important that auditing of LSC-grantees be accurate and employ sound methodology and standards.

Sincerely,

Wilhelm H. Joseph, Jr.
Executive Director

Enc.

Memorandum

To: Legal Services Corporation

From: Rhonda Lipkin, Deputy Director, Legal Aid Bureau, Inc.

Re: OIG Audit Summary

Date: May 27, 1999

OIG's request for information to be sent prior to the audit asked for printouts including the following case information:

Clients' first and last names
Case numbers
Date Opened
Date Closed
Office
Problem Code
Case Handler

In response, I spoke with Anthony Ramirez and explained that the report would contain over twenty thousand cases and that I was concerned about having to provide it in paper format. He agreed that we could submit the information in electronic form.

On May 13, 1999, we provided OIG with a database containing all computerized data, including problem codes, about cases closed in 1998 and pending at the end of 1998. At the time, I had not thought about the attorney-client privilege issue as it relates to providing both the client name and problem code. I mistakenly failed to delete from the database information not requested specifically by OIG. The database therefore included such items as client date of birth, address and even notes about the client's case.

On Monday, May 24, 1999, Wilhelm Joseph, Hannah Lieberman and I had an entry conference with Anthony Ramirez and Michael Griffith from OIG and a consultant CPA. Mr. Ramirez explained that the cases would be reviewed by their staff in pairs and expressed a preference for cases being presented by the actual casehandler although he

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said it was not required and could be done by a supervisor. In response to my question about how the reviews would be handled, Mr. Ramirez stated that "it was up to us" but that programs would usually/often have the caschandler hold the file and show the auditor the document in question, e.g., citizenship form, financial eligibility worksheet. At no time were we told that the auditor would expect to handle and browse through client files.

At the end of the meeting, I told Mr. Ramirez that I had mistakenly sent privileged information, including problem codes, and that I was requesting the return of that information from OIG. He asked me to put my request in writing.

During the two days that the auditors were in the office, I personally met a number of times with Mr. Ramirez and reviewed approximately 20 cases with Mr. Griffith and the consultant. During that entire time, no concern was ever raised to me that problem codes (which the auditors already had) had not been verified or that we had not permitted them to review the files directly. During my review of cases, I was not asked about problem codes, I was not asked to allow the auditors to look at the files directly, and I was not asked to provide any specific information about advice given or about any other work on the case.

At a short meeting on the second afternoon, Mr. Griffith stated that after review of the 130 files, the areas where there appeared to be issues were on timeliness of file closure, some number of cases without citizenship forms (probably less than ten) and a couple of cases that should have been rejected rather than counted as cases. No other concerns were raised.

The first time that I heard about a problem with the auditors not being allowed to review the case files or being given specific information about the advice or referrals given was when Mr. Ramirez and Mr. Griffith came to tell me that they had been "recalled" to Washington because of issues about "access."

What follows is Hannah Lieberman's account of her interactions with the auditors in the OIG audit of client files conducted on May 24 and 25, 1999:

Opening/Closing Dates

For each file involved, the auditors were shown the opening and, where applicable, closing dates on the intake form and/or file folder. The only issue that emerged with respect to opening dates was that one file had been transferred from Baltimore City to the County office and had, for our internal purposes, a new open date for the Baltimore County office.

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The auditors consistently inquired about cases which were closed to "Advice" but which remained open for a significant amount of time (generally well over a year). They asked me to assess whether I thought the file had been closed in a timely manner and, if not, when it should have been closed. In a significant number of the cases, I told them that the closing was not timely and gave them the year in which I thought the file should reasonably have been closed. They did not ask for independent verification of my assessment.

Financial Eligibility Data and Citizenship Forms

The auditors personally reviewed the financial eligibility information and citizenship forms. I do not believe they had any concerns regarding financial eligibility. Each file contained financial information and there were no instances in which the auditors questioned the eligibility determination.

A few files were missing citizenship forms. With respect to a couple, I was able to inform the auditors that the client had received public benefits for which an undocumented person would not have been eligible. Each intake form for these files did include a checkoff of "citizenship". My understanding is that Rhonda has explained to them changes LAB has made to its system to insure that staff obtain signed citizenship forms for immediate referrals provided to in-person applicants for services.

Closing Code Verification

I verified the accuracy of the closing code for each file. Three files which were reviewed while I was present were closed to "C": referred after legal assessment. With regard to one of those cases, I was asked to tell the auditor what advice we had provided to the client. I declined to relay specific information, but told the auditor that the form reflected that we had discussed the client's individual circumstances with him and, on the basis of the information acquired, had determined that the client should seek assistance from the private bar. In one of the three cases, the intake reflected that we clearly provided legal advice on several issues and then referred the client to another resource to handle at least one issue. I do not have information with respect to any one of the three cases which would indicate that any of the clients' problems were aired in a public forum and therefore would be appropriate for me to discuss more specifically with the auditors.

There were two instances in which I indicated that I thought the closing code could have been different. One case was closed to "agency decision" when the decision had been issued before the client came to the Bureau. We provided the client with advice in light of the decision received. Therefore, it seemed to me that "advice" was a more accurate designation in that case. The other, I believe, was closed to "negotiation without litigation" when I thought it should have been closed to "agency decision".

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Problem Codes

For any files in which the nature of the client's problem was aired in a public forum, I verified the accuracy of the problem code provided for the case. I was not asked to provide the auditors with any corroborating documentation, such as court judgments or administrative agency decisions, nor did I offer them such documents. With respect to cases in which the file did not reflect that the client's problem was aired in a public forum, I did not provide the problem code. I explained that revealing such information would breach the attorney-client privilege and the ethical obligation I had to maintain the confidences of our clients. I explained that the ethical rules applicable to lawyers required us to maintain the confidentiality of such information under all circumstances, but also gave them examples, similar to those which Wilhelm had described at our earlier meeting with the auditors, of how such disclosure, particularly in domestic cases where domestic violence and related issues are present, could harm a client. The auditor indicated that he understood my position and would have to discuss the matter with his superiors. We agreed that, for the present, he would not inquire about problem code. Instead, I would volunteer the code if such disclosure were appropriate in the particular case.

cc: Warren S. Oliveri, Jr., Esq.
President, Board of Directors, Legal Aid Bureau, Inc.

Wilhelm H. Joseph, Jr., Esq.
Executive Director, Legal Aid Bureau, Inc.

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MEMORANDUM

To: Anthony Ramirez, OIG
From: Rhonda Lipkin
Re: Request to Redact Certain Information Provided
Date: May 25, 1999

On May 13, 1999, the Legal Aid Bureau provided OIG with the database used to generate its revised 1998 Grant Activity Report. The Bureau is requesting that OIG redact all but the following information provided to OIG:

- Case number
- Client last name
- Client first name
- Office number
- Date Closed
- Reason Closed
- Staff Member
- Case type

We are making this request because we believe that the other information, particularly any individual identifying information (problem code, address, phone number, race, sex, birthdate, and summary (notes)) is confidential and protected by the attorney client privilege. In the State of Maryland, that privilege may only be waived by the client, not by the attorney. I was in error in failing to delete it from the database prior to sending it to you. In fact, you did not request any of the other data in the database, other than those fields set forth above, except for the problem code.

With regards to the problem code, we believe that this information clearly falls within the attorney client privilege and, coupled with the clients' names, could potentially endanger the safety as well as privacy of our clients. (Of course, we have provided and will

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Mr. Anthony Ramirez
Office of Inspector General
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continue to provide the problem code during the case reviews where the client's problem has been aired previously in a public forum.) As I explained yesterday, there have been discussions concerning this issue with LSC and GAO, and we would ask that OIG take the same approach as GAO. GAO has agreed that as to requests for information on pending and closed cases, the problem codes are not needed. As to requests for information on duplicates, GAO agreed to allow the programs to create their own problem codes to substitute for those of LSC just so long as the process results in the ability to identify clients who had cases open for the same problem types in the same year.

I recognize that this request is somewhat after the fact as you have already run reports with the information we are requesting be redacted. However, I would ask that we be allowed to remedy this error on our part by your returning to us the database provided, deleting copies of that database from any computers on which it had been loaded, and destroying all documents with the privileged information on them. I will provide you with a new database and any print outs you would like.

On behalf of our clients, I look forward to your favorable response to this request.