

LEGAL SERVICES CORPORATION

OFFICE OF INSPECTOR GENERAL

Report to the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary Regarding Activities of California Rural Legal Assistance, Inc.

September 14, 2006

Executive Summary

This Interim Report contains the findings to date of the Office of Inspector General (OIG) of the Legal Services Corporation (LSC) resulting from an investigation into allegations from a confidential source lodged against California Rural Legal Assistance (CRLA), an LSC grantee. The allegations were referred to the OIG for investigation by the Chairman of the House Judiciary Committee's Subcommittee on Commercial and Administrative Law and by Congressman Devin Nunes (CA 21). The complaint alleges that CRLA focuses its resources on impact work, to the detriment of basic services work, and farmworker and Latino issues, to the detriment of the urban and non-Latino populations in CRLA's service area. The complaint also alleges specific violations of restricted activities imposed upon LSC grantees and directly resulting from CRLA's desire to engage in impact work.

The OIG developed evidence from multiple sources and conducted its own research on CRLA activities. The OIG finds substantial evidence that CRLA has violated federal law by:

- soliciting clients;
- working a fee generating case;
- requesting attorney fees;
- associating CRLA with political activities.

The OIG, however, could not complete its investigation at this time due to CRLA's failure to provide the OIG certain requested information as required by federal law and LSC grant requirements. In addition, the OIG has encountered difficulties in trying to determine whether other activities comply with federal law because of inadequate LSC timekeeping requirements

The OIG also uncovered several additional CRLA practices, including conducting significant work without a client, that appear to be impact oriented -- raising serious concerns about CRLA's deviation from Congress' intended purpose in enacting the 1996 reforms, to refocus LSC grantees on the provision of basic legal services to indigent persons seeking assistance -- but that may or may not violate specific provisions of federal law:

- potential lobbying activities;
- monitoring employers and public agencies;
- the filing of amicus briefs in its institutional capacity;
- filing cases on behalf of the "general public" under California's unfair competition law;
- CRLA's timekeeping and case management practices at least create the condition in which representing ineligible aliens is possible without detection.

The OIG is concerned that in addition to diverting scarce resources away from the provision of services from those who request assistance, much of this clientless work may lead to specific violations of the LSC regulations, such as solicitation. The OIG requires additional information from CRLA to make final determinations of the appropriateness of these activities.

Finally, the OIG has only begun to examine whether CRLA disproportionately focuses its resources on farmworker and Latino work, and if so, whether such practice is inappropriate for an LSC grantee. The OIG, therefore, is not prepared to make any findings regarding this allegation at this time.

Note

The OIG has found substantial evidence to establish the findings contained herein. This report, however, is not a comprehensive review of the confidential source's allegations or ensuing concerns. Though the OIG submitted a document and data request to CRLA on March 16, 2006, the grantee, as of this report, has failed to provide some requested materials and refused the OIG access to other materials. We are awaiting the additional responsive materials from CRLA and thrice referred CRLA's failure to comply with the OIG's requests for information to LSC management for action. LSC management has had several contacts with CRLA in an effort to induce the grantee to comply and is now considering appropriate action to ensure CRLA's compliance.

Based on the information and documentation provided by the confidential source and LSC; original OIG research; other evidence gathered during the course of our investigation and the materials that the OIG has been able to acquire from CRLA, the OIG finds substantial evidence that CRLA is in violation of several provisions of the LSC Act, the 1996 Appropriations Act and LSC regulations.

Additional evidence raises serious concerns that CRLA may be violating other provisions of federal law. In order to further determine CRLA's compliance status the OIG requires all materials thus far requested from CRLA and is working on a supplemental data request for CRLA that will likely bear on the investigation. The OIG also anticipates the need to conduct additional interviews of CRLA staff, including employees not previously interviewed. We had hoped to have completed some of these additional interviews before issuing any report, interviews that would have included CRLA senior management, thereby affording CRLA the opportunity to address some issues raised in this report. Such interviews cannot take place, however, before the OIG obtains the documents and data requested from CRLA, but which CRLA has either failed to or refused to provide.

Finally, the OIG planned to request records from CRLA in hopes that we would be able to determine the amount of human resources, i.e. time, CRLA expended on alleged activities and whether LSC funds were used to support CRLA's involvement in such activities. The OIG understands, however, that LSC's timekeeping requirements do not require grantees to disaggregate their funding for payroll purposes. That is to say, under the regulation, there is no identifiable nexus between the expenditure of employee time and the funding source against which the employee's time is charged. Rather, employees are paid from the grantees' aggregated grant funds. In the case of CRLA, employee positions are designated as funded by a particular grant(s), however, the employee's work is not limited to the type of work for which the particular grant was awarded. LSC requirements provide no way of actually deriving from grantees' time keeping records, either from the case management systems or the payroll systems how grant funds are actually being spent, or ensuring grant funds are not being

diverted to subsidize non-grant related activity. At best, imprecise record keeping of this sort forecloses opportunities to promote programmatic efficiencies and to hold grantee's accountable for results; at worse, it cloaks the detection of fraudulent or abusive expenditure of tax dollars.

For these reasons, the OIG reiterates that though the OIG has obtained substantial evidence to support some findings of noncompliance with the LSC Act, the 1996 Appropriations Act and LSC regulations; and other evidence suggesting additional noncompliance by CRLA, the findings contained in this report are not comprehensive.

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I. Summary of the Complaint

In late September 2005, Congress forwarded a complaint from a Confidential Source (CS) dated August 31, 2005 to the Office of Inspector General (OIG) of the Legal Services Corporation (LSC). The complaint alleges California Rural Legal Assistance, Inc. (CRLA), an LSC grantee, is focused on advancing the organization's own social and political agenda, resulting in a decline in the provision of basic legal services to prospective clients who walk into the CRLA offices requiring service. Additionally, the complaint alleges that CRLA focuses a disproportionate amount of resources on farmworker and Latino issues. Based on the personal knowledge of the CS, the complaint provides several examples of activities supporting this alleged practice and also alleges some specific instances of noncompliance with LSC Regulations resulting from CRLA's desire to promote its own agenda.

The CS offered her motivation for coming forward; she stated that she believes many eligible citizens in the large urban populations in CRLA's service areas are not being served by CRLA and that this is in large part due to CRLA's focus on impact work, its practice of affirmatively seeking clients for the litigation of cases in which CRLA senior management wishes to be involved, and its involvement in cases in which clients are already represented by other counsel. The CS, a Latina herself, also stated that CRLA's work is focused disproportionately on impact cases involving Latino issues to the detriment of other populations within CRLA's service area, for example the Hmong population and the African-American population, and to the detriment of the critical legal needs of individual clients.

The CS stated that CRLA pressures employees to engage in "impact work," rather than "service work." Based on personal knowledge of the CRLA Case Handling and Procedures Manual, the CS described "impact work" as that which "is designed to produce benefits for a large number of persons and can include litigation, legislation and community education. It can be law reform (changing the law to benefit clients and others) as well as law enforcement (enforcing the law to benefit clients and others)." According to the CS, service work is "the day-to-day legal assistance provided to individual eligible clients," and CRLA's Case Handling and Procedures Manual defines "service work" as work that primarily benefits an individual client and is not brought to establish a broader rule of law or to enforce laws that would benefit a larger number or clients.

The CS identified an example of managements' pressure on employees to perform impact work. She stated that Cynthia Rice, the CRLA Director of Litigation, Advocacy and Training (DLAT)¹ responsible for the Modesto office,

¹ The DLATs report directly to the CRLA Executive Director. Each DLAT has program-wide operational duties and responsibilities and is responsible for CRLA-wide policy and advocacy in designated substantive areas. Additionally, with the Deputy Director, the DLATs provide supervision to all the CRLA branch offices.

told the Modesto office staff on more than one occasion that the Modesto office was not doing enough impact work and was expected by CRLA management to increase the amount of impact work performed. According to the CS, DLAT Rice stated that the Modesto office “could and should do more impact work.”

The CS described a list of activities undertaken by CRLA to illustrate CRLA’s lack of focus on basic legal needs in favor of impact work, some of which may violate LSC restrictions. The CS listed the following: CRLA staff involvement in cases in which CRLA did not have a client and CRLA staff performing work in these cases on behalf of individuals who may or may not qualify for CRLA services and are already represented by other counsel; CRLA searching for a client in order to become counsel of record in cases already being brought by other counsel; a CRLA-wide effort undertaken without a client to comment to city and county officials regarding housing development plans; CRLA Executive Director, DLAT and staff travel to Mexico for the purpose of providing training; and a lack of accountability of Community Worker’s time (particularly those working on migrant farmworker issues). In addition, the CS stated her belief that the working environment at CRLA Modesto fostered the provision of legal assistance to undocumented persons. The CS stated that she personally provided legal services to undocumented aliens on CRLA time, she is aware that other staff in the Modesto office did so as well, and the former Directing Attorney of the office was aware that undocumented persons were being served. The CS stated that the client intake and other procedures in place during her tenure allowed for this to take place.

The OIG undertook to review several of these allegations in order to determine whether they could be substantiated. Most of our work thus far has focused on the following allegations: CRLA staff involvement in cases in which CRLA did not have a client and CRLA staff performing work in these cases on behalf of individuals already represented by other counsel; CRLA searching for a client in order to become counsel of record in cases already being brought by other counsel; and a CRLA-wide effort undertaken without a client to comment to city and county officials regarding housing development plans. The CS provided the OIG with some specific information supporting these allegations and we have requested information from CRLA to undertake a comprehensive review of the allegations.

II. OIG Process

The OIG investigated the overarching complaint that CRLA focuses its scarce resources on impact work in furtherance of farmworker and Latino issues to the detriment of both basic services work and other client populations within CRLA's service area, and each of the specific allegations of noncompliance with LSC restrictions generally resulting from CRLA's alleged pursuit of its institutional agenda.

After reviewing the information sent in by the CS, the OIG, including the Inspector General, began by interviewing the CS.² First, the OIG interviewed the CS by telephone and preliminarily determined that the CS was likely credible. Because the CS's information indicated that CRLA may have engaged in activities violative of the LSC restrictions, we arranged an in person interview with the CS. We spent approximately one and one-half days with the CS, gathering additional and clarifying information. We determined the CS was credible. The CS provided the OIG with a sworn statement indicating that the information contained therein is true and accurate to the best of the CS's knowledge.

The OIG conducted background research on a broad range of CRLA's activities. The OIG researched publicly available sources on the Internet as well as information available at LSC headquarters, such as CRLA's funding application, to ascertain whether CRLA activities indicate a preference by CRLA's to engage in "impact cases" and those that benefit a particular segment of California's population and that limit CRLA's ability to support "services cases."

The OIG conducted extensive interviews with CRLA employees. The OIG interviewed several employees at CRLA's Modesto office, including attorneys, community workers and other support staff.

Finally, the OIG requested that CRLA produce relevant documents and data. Although CRLA refused to provide key documents and data,³ the OIG reviewed the material provided for relevant facts to support or refute the allegations, to attempt to discern how CRLA expends its scarce resources and to determine whether CRLA's activities comply with the LSC restrictions.

² The Inspector General was involved personally and substantially in the initial stages of the review, due to the serious nature of the issues raised by the CS's allegations.

³ See supra p. iii.

III. Findings to Date

For some of the allegations, the OIG found substantial evidence to support findings of noncompliance with the LSC Act,⁴ the 1996 Appropriations Act,⁵ and LSC Regulations.⁶

A. CRLA Prioritizes Impact Work Over Services Work Which Results in Specific Violations of LSC Regulations.

The OIG found information indicating CRLA's preference for impact work. The OIG also found substantial evidence to support specific violations of the LSC Act, LSC's 1996 Appropriations Act and LSC regulations that appear to be driven by the desire to engage in impact work.

At the outset, it is important to note that a grantee bringing a case on behalf of a particular client that may also have broader reaching effects, thus making it an "impact" case, does not violate the LSC regulations. However, a grantee that expends its limited precious resources prioritizing such cases in order to push an impact agenda causes some concern regarding the implementation of the 1996 reforms, which appear to have been intended to refocus legal services delivery on the day-to-day legal problems of the poor rather than on activism and impact oriented work perceived to be the focus prior to 1996.

An informative discussion of Congressional intent regarding the 1996 reforms may be found in LSC's Brief to the U.S. Supreme Court in the Velazquez case.⁷ In Part B of the brief, under the heading, *Congress Decides to Continue Funding the LSC Program As Long As the Program Focuses on Basic Legal Services*, LSC wrote (internal footnotes omitted):

Despite these restrictions, some members of Congress came to believe that LSC was under the influence of "liberal activists who favor a militant agenda." 141 Cong. Rec. S14,592 (Sept. 29, 1995). See also Pet. App. (99-603) at 48a-49a. In the mid-1990s, some of these representatives attempted to eliminate LSC entirely.

In 1996, rather than cease funding for LSC, Congress enacted compromise legislation that imposed new restrictions designed to refocus LSC on its central mission: "to ensure that funding is used to provide the traditional legal services that are most needed by poor people." 141 Cong. Rec. S14,605 (Sept. 29, 1995) (Sen.

⁴ Legal Services Act, 42 U.S.C. §§ 2996-2996(l).

⁵ Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L.101-134, 110 Stat. 1321 (1996).

⁶ LSC Regulations, 45 C.F.R. §§ 1600-1644.

⁷ LSC v. Velazquez, In the Supreme Court of the United States, Brief for Petitioner Legal Services Corporation, pp. 2-5.

Stevens). See also S14,590 ("These restrictions provide the necessary guidance to take Legal Services back to its primary mission." (Sen. Kassebaum)); 142 Cong. Rec. H8178 (July 23, 1996) ("the purposes which we all endorsed [were] to meet the day-to-day legal problems of the poor.") (Rep. Fox); H8180 ("They are supposed to be doing the ham and eggs work for poor people.") (Rep. Hunter); 142 Cong. Rec. H8189 (July 23, 1996) (emphasizing "bread-and-butter services") (Rep. Torkildsen); 141 Cong. Rec. S18,160 (Dec. 7, 1995) (emphasizing "such routine legal matters as consumer problems, housing issues, domestic and family cases, and . . . public benefits") (Sen. Sarbanes).

The new restrictions, which were incorporated in the 1996 Omnibus Appropriations Act, Pub. L. No. 104-134, 110 Stat. 1321 (the "1996 Act"), [] were designed to prevent federal funds from subsidizing, for example, class action litigation or cases in which attorneys' fees are sought; representations of certain aliens or incarcerated persons; or certain lobbying and advocacy activities. 1996 Act § § 504(a)(2)-(4), (7), (11), (13), (15), and (18).

The congressional debates make clear that the 1996 compromise legislation was intended to save LSC and preserve its original focus and mission. As Senator Domenici, one of the principal architects of the legislation, stated: "While some may not like these restrictions, they are necessary to . . . protect LSC from the negative perceptions of those who wish to see its termination." 142 Cong. Rec. S1963 (Mar. 13, 1996). See also 141 Cong. Rec. S14,607 (Sep. 29, 1995) ("Many of these restrictions are necessary to ensure that the program as a whole is supported and funded.") (Sen. Lautenberg); S14,612 ("Some restrictions are necessary to ensure support for the program. . . . The [compromise] . . . would correct the harsh injustice of the committee bill and enable [LSC] to continue its important work.") (Sen. Kennedy).

With this in mind, the OIG undertook the following review of CRLA's basic-field grant application for LSC's Service Area CA-31, internal CRLA documents provided by CRLA, the CS and other sources, anecdotal evidence from the CS and other witnesses regarding the work culture of CRLA, internal CRLA communications⁸, two sample cases, CRLA's involvement in California's Housing Elements and other lobbying type activities. The review clearly reveals CRLA's propensity to engage in "impact" work and the ensuing problems stemming from

⁸ None of the internal CRLA communications received by the OIG contain attorney client information. The provider of the materials redacted any information protected as confidential attorney client information before turning the materials over the OIG.

behavior more akin to activism than providing basic legal services to the indigent.⁹

1. Internal Documents and Culture Illustrate CRLA's Preference for Impact Work Over Providing Basic Legal Services.

In addition to the CS's statement that CRLA management pressures staff to engage in more "impact" work, internal CRLA documents reveal CRLA management's desire for the organization to prioritize "impact" work. CRLA's Case Handling and Office Procedures Manual states:

It is CRLA's goal to have all of its case handlers spend at least 50% of their time working on impact cases and projects. "Impact" work is designed to produce benefits for a large number of persons. It is work that should provide real as opposed to "paper" victories for our clients and others. "Impact" work can include litigation, legislation and community education. It can be law reform (changing the law to benefit clients and others), as well as law enforcement (enforcing the laws to benefit clients and others). Impact work normally involves one of CRLA's areas of emphases.

"Service" work primarily benefits an individual client; it is not brought to establish a broader rule of law or to enforce laws that would benefit a large number of clients. There may be instances, however, where individual cases become "impact" cases. For example, an individual case which targets a particular defendant engaged in illegal practices which affect a substantial number of persons might become an "impact" case.^[10]

Additionally, CRLA internal documents provided by CRLA and the CS indicate that in substantive priority areas, such as housing, education, and environmental justice, CRLA plans a litigation and advocacy strategy based on CRLA desired goals and outcomes, and not necessarily in response to client initiated contact. For example, a memorandum from DLAT Jacobs and Darryel Nucua, Co-Chairs for CRLA's Housing Task Force¹¹ (Housing Elements Priorities Memo), explains that CRLA adopted goals and objectives in the area of housing, including "...increasing the use of pro per packets in order to allow more attention to

⁹ This concentration on "impact" work and lack of focus on basic legal services is particularly disturbing in light of LSC's recently released "Justice Gap Report." According the Justice Gap Report, LSC grantees generally self-reported turning away of half of all eligible clients who seek services for lack of financial resources. LSC management has agreed not to release the specific data provided by each grantee, however CRLA's self-reporting is consistent with the national average.

¹⁰ CRLA Case Handling and Office Procedures Manual, Volume 1, Section IV.E., p. 7.

¹¹ The last six years of CRLA's Case Statistical Reporting data (from 2000 through 2005) indicates that roughly half of all of CRLA's cases are Housing related. Note: LSC is currently undertaking to revamp its definition of "case" for LSC reporting purposes.

impact work...”¹² Another memorandum presented and discussed at CRLA’s 2003 Asilomar Priorities Setting Conference from Salinas Office Director Mike Mueter and Migrant Unit Advocates explains how CRLA’s DLAT structure “has done a very good job of increasing CRLA’s impact litigation around Labor and Housing issues.”¹³ The memorandum expresses the view that “[CRLA needs] to strengthen the planning, selection, and targeting of all of [CRLA’s] advocacy, including impact litigation, to insure that [CRLA’s] limited resources are used in the most strategic manner possible.” The memorandum goes on to complain, however, “[w]e share the general feeling that little or no institutional support is provided for the myriad [of migrant unit] tasks *other than impact litigation* that field offices engage in on a daily basis, including case referrals, brief service, individual services cases, community education and outreach, comite [committee] development, personal and staff development, and private attorney recruitment.”¹⁴ These are but a few examples illustrating CRLA management’s preference for “impact” work contained in CRLA’s basic structure and planning within both Basic Field and the Migrant units.

2. CRLA’s Preference for and the Deleterious Effects of Engaging in Impact Work Are Illustrated by CRLA’s Involvement in Two Example Cases.

The following two cases exemplify how forcing the organization to focus on “impact” litigation can lead grantees afool of the LSC regulations and the intent of the 1996 reform legislation.¹⁵

¹² Memorandum to 2003 Priority Setting Conference from Ilene J. Jacobs & Darryel Nacua, re: Housing Priorities, June 2, 2003, p. 1.

¹³ Memorandum to Jose Padilla, CRLA Board of Directors, CRLA Staff from Mike Meuter and Migrant Unit advocates, re: Migrant Unit Report and Recommendations for 2003 Priorities Conference, October 17, 2003, p. 3.

¹⁴ *Id.* (emphasis added).

¹⁵ The CS also described a third illustrative case, but has not been able to obtain sufficient information to include CRLA’s involvement in the discussion. The facts of the case raise concern that many of the issues surrounding focus on engaging in impact work, discussed herein, will likely arise in this case. Thus far, the OIG has learned the following:

The CS indicated that CRLA undertook a case involving claims made against the Ceres, CA, Police Department for civil rights violations in relation to gang sweeps following a gang related shooting of a police officer. The OIG obtained internal CRLA communications indicating that shortly after the shooting, in late January 2005, Executive Director Padilla instructed the same new CRLA attorney working the CCC v. Modesto case to “...obtain a client and investigate the pattern of law enforcement here and run it by [DLAT Rice] and Jack Daniel and maybe LCCR counsel.” Two weeks later, on February 10, 2005, the ACLU issued a press release entitled “Civil Rights Groups Seek Police Records Following Widespread Sweeps in Ceres” that states “[t]he ACLU-NC, CRLA, LCCR and the Stanislaus County ACLU Chapter will continue to monitor the situation.” Statement of ACLU of Northern California, “Civil Rights Groups Seek Police Records Following Widespread Sweeps in Ceres,” February 10, 2005. Apparently no action was taken regarding the matter until August 2005, see Modesto Bee, Aug. 5, 2005, p. A-1, “10 file claims in Ceres post-shooting gang sweeps.” Additionally, according to the CS, two of the ten complainants represented by CRLA are CRLA employees, one is the wife of one of the complainant employees, and one is the cousin of another employee. The article indicates that

a. CCC v. Modesto Illustrates CRLA's Engagement in Impact Litigation.

The CS identified a particular lawsuit CRLA's Modesto Office is pursuing at the direction of top level CRLA management as an example of CRLA's preference for expending its resources on "impact cases." CRLA became involved in this case even though it did not have a client in the case and CRLA staff performed work in this case on behalf of individuals already represented by other counsel. Additionally, CRLA allegedly expended significant time searching for a client in order to join the list of counsel of record.

This case, *CCC v. Modesto*,¹⁶ addresses the disparate provision of municipal services, such as street lights and sewer hook-up, by the City of Modesto to people who live in pockets of county land unincorporated by the city though the area is surrounded by or is on the periphery of the city's limits. The CS explained that the disparate services issue first came to the attention of the Modesto Office in the Spring of 2003 when at a conference, a CRLA staff attorney met a woman who was a resident of an area within the City of Modesto known as Robertson Road. According to the CS, the community in the Robertson Road area was well organized and for many years had been seeking to become annexed to the City and connected to the City sewer. The CS stated that she discussed this issue with CRLA DLATs Ilene Jacobs, responsible CRLA-wide for the substantive area of housing issues, and Cynthia Rice, responsible for the Modesto office. Neither

the claimants are represented by CRLA and further corroborates the CS's assertion that two of the claimants are indeed CRLA employees and indicates that another complainant may also be related to one of the complainant employees. *Id.*

Similarly, the OIG recently learned of a fourth such case. A knowledgeable witness explained that CRLA Management is particularly interested in pursuing impact cases involving issues affecting the Latino community. As an example, the witness described an instance in which CRLA Management was uninterested in a mobile home park case impacting residents in three different mobile home parks owned by a single corporation until DLAT Rice learned that one park contained predominantly Hispanic residents, which meant there was a language issue instead of just an older Americans issue. The witness explained that the case originally came to the Modesto Seniors Unit because many of the clients were Seniors. The witness stated that there were no Hispanic clients at first; only Seniors came into the Modesto Office seeking assistance. The witness stated that CRLA learned from the Seniors clients who sought assistance that one park is mostly Hispanic.

The witness stated that the original attorney handling the case left and another took over. The witness further indicated that DLAT Rice directed the new attorney to work the case under one senior client and to keep the case open so that CRLA could find Hispanic clients. The witness also stated that at the time of the witness' interview the new attorney was looking for co-counsel in the case because some of the clients are ineligible for CRLA services.

¹⁶ The Comm. Concerning Cmty. Improvement v. City of Modesto, No. CIV-F-04-6121 REC DBL (E.D. Cal. Filed Aug. 18, 2004) [hereinafter *CCC v. Modesto*].

expressed interest in pursuing the issue and, in any event, CRLA did not have a qualified client to pursue the issue.

The CS stated that in the Fall of 2003 the Lawyers' Committee for Civil Rights (LCCR) and their co-counsel, the San Francisco firm Heller Ehrman, White & McAuliffe, contacted CRLA Modesto and asked for assistance with "leg work" in connection with possible disparate services litigation. Although earlier, CRLA management had not expressed interest in the disparate services issue, the CS indicated that CRLA management became interested once LCCR became involved in the issue. In fact, according to the CS, management did not want LCCR litigating the disparate services issue in CRLA's service area without also being involved. Email traffic obtained by the OIG indicates that DLAT Rice plainly stated in the Spring of 2004 "...I don't [want] the Lawyer's Committee litigating in our service area on these issues without our participation."

According to the CS, though CRLA did not have a client with an interest in the case, a statement of facts from a client, a retainer agreement with a client or a co-counsel agreement with LCCR and/or Heller Ehrman, the CS stated that DLATs Jacobs and Rice and several members of the Modesto Office staff, including the CS, spent a significant amount of time performing work in furtherance of the litigation. Also during the pre-filing phase the CS informed DLATs Jacobs and Rice several times that working on the CCC v. Modesto case was consuming a great deal of her time, taking away from her ability to attend to her significant number of "services cases," that she did not want to continue working on the case, and that she did not think involvement in the case was consistent with the LSC regulations.¹⁷

The CS described CRLA's pre-filing work performed in furtherance of the CCC v. Modesto case including that of DLAT Rice, DLAT Jacobs and staff in the Modesto Office, the majority of which occurred from the Spring of 2004 through the filing of the case in August 2004. According to the CS, DLATs Rice and Jacobs participated in strategy and planning conference calls and emails with LCCR and Heller Ehrman, performed research and, in the case of DLAT Rice, attained CRLA's status as co-counsel in the litigation though CRLA did not have

¹⁷ The CS provided two examples of how time spent on impact work affects the critical needs of individual clients. First, the CS told of a Greek client who lost her house due to fraud and malfeasance by a title company. This client, finding no one to assist her, had filed her own suit. She came to CRLA in what the CS described as desperate circumstances, not even having working bathroom facilities in her home. Next, the CS described the circumstances of a second client, also requesting assistance in keeping her home. According to the CS, this client was being wrongfully evicted from a mobile home she had paid for in full. When she came into the CRLA office wearing a swastika on a necklace some CRLA staff, repulsed by this, did not want to assist her; she was given cursory assistance and was left to represent herself (pro se) at trial. The CS describes meeting this client when she returned to CRLA after losing her home, now requesting assistance with an affirmative action against the mobile home park owner. Although needing extended service (or full representation) from CRLA, the press of the CCC v. Modesto case and other impact work allowed the CS to provide only limited assistance to these clients proceeding pro se.

a vested client. The CS and six others in the Modesto Office spent time “investigat[ing] and research[ing]; review[ing] past CRLA annexation work, dating back to 1989; perform[ing] time-intensive fact checking of the assertions contained in draft(s) of the complaint; perform[ing] legal research; assist[ing] LCCR in identifying community groups to meet with on case related issues and attend[ing] meetings to discuss with those groups possible involvement in the litigation; and tr[ying] to find a client for CRLA to represent in the case.” According to the CS, CRLA essentially served as local counsel in the case but, with the exception of the search for a client, the Modesto staff performed this work on behalf of plaintiffs already represented by other counsel in the case.

The CS explained that CRLA procedures require attorneys to file Litigation Action Plans (LAP), to be approved by CRLA’s DLATs and Deputy Director Luis Jamarillo,¹⁸ prior to filing a case. At the direction of DLAT Rice the CS prepared an LAP for a former CRLA client who had already been rejected as a plaintiff by LCCR and Heller Ehrman, and later that same day the DLATs approved the LAP. The CS estimated that from the time that CRLA received a copy of a draft complaint on July 14, 2004, until the complaint was filed on August 18, 2004, she alone spent five hours a day working on the case.¹⁹ This does not account for the time spent before July 14, 2004, or for time spent by other CRLA staff or the DLATs.

The CS stated that due to pressure from CRLA management the Modesto Office staff expended a significant amount of time and energy trying to locate an appropriate and eligible client for CRLA to represent in the litigation. According to the CS, in an effort to locate such a client, she and other Modesto Office staff “attempted to contact former CRLA clients represented in the old CRLA annexation work, [] discussed with counsel in the litigation (e.g., LCCR; Heller Ehrman) whether they could refer someone to [CRLA], and [] contacted individuals then represented by other counsel in the case (with counsel’s permission).” The CS describes the search for a client as follows:

In June 2004, we thought we had identified a client appropriate for the litigation but LCCR did not want this person as a plaintiff (the person may have lived in the wrong neighborhood or LCCR may already have had a representative from that neighborhood as a client in the litigation). We later thought we had identified another appropriate client but this client was rejected because we discovered that he did not live in the correct neighborhood; he was

¹⁸ Mr. Jaramillo was recently on a leave of absence from CRLA and working at LSC headquarters as Special Counsel to the LSC President. He was on a three-month contract, starting in November 2005, which during the OIG investigation, was extended through May 8, 2006. LSC management indicated that Mr. Jaramillo was “walled off” from the CRLA matter and did not have any involvement in discussions concerning the OIG investigation during his tenure as Special Counsel to the LSC President.

¹⁹ Five hours per business day between July 14 and August 18 amounts to approximately 130 attorney hours, or more than three full work weeks.

merely a representative of a group of neighborhood residents. In August 2004, on the eve of litigation, it appeared that only one of the individuals already slated to be plaintiffs in the litigation (and already represented by other pro-bono counsel) would qualify for CRLA services. [A Community Worker] went to the client's house for the purpose of completing the intake but returned without complete information and reported that she did not believe the client was being truthful. [] I subsequently went to this person's house for the purpose of completing the intake and at that time we became aware of information which indicated this person was unlikely to be financially eligible. When I brought this to the attention of DLATs Rice and Jacobs and questioned the prospective client's credibility, I was chastised for engaging in further inquiry as to eligibility and told that I should base the eligibility determination solely on the information provided by the client. This individual therefore remained our client for the litigation at that time. Ultimately, we found another client eligible for CRLA representation. Again there were problems as I was informed this client was about to experience a material change of circumstances. I expressed to DLATs Jacobs and Rice and Executive Director Jose Padilla that the client would not qualify in the future without an eligibility waiver. I further expressed that it appeared an eligibility waiver would not be appropriate under LSC regulation 45 CFR Part 1611 and CRLA's case handling manual guidelines because other counsel was available to this client at no cost. I am informed and believe a waiver request was submitted to Mr. Padilla and was granted.

The CS stated that during the search for an eligible client for CRLA to represent in the litigation she recorded the time she spent working on the case in different client files. She also stated that prior to having a client, she charged the time she spent working on the CCC v. Modesto case to a former CRLA client transferred to her from another staff attorney in 2002; this client's case was left open for the purpose of charging miscellaneous work related to housing issues and for which advocates did not have a specific client (all purpose housing client). According to the CS, she never met with the client and had only limited contact with the client by telephone and letter. She stated that she charged time to a new file opened on behalf of a separate former CRLA client to whom CRLA had earlier provided brief services regarding the disparate provision of municipal services. The CS stated that client was later rejected as a plaintiff in the litigation. The CS further stated that she charged time to another client who already had an open file with CRLA for an unrelated issue.

The OIG substantiated the CS's allegations that CRLA undertook work in connection with the case, CCC v. Modesto, without having a client involved in the case. The OIG also substantiated that CRLA staff expended significant time and

energy trying to find a client for CRLA to represent in connection with the case, including soliciting former CRLA clients and individuals who were already represented by other counsel, in violation of the LSC restriction prohibiting solicitation of clients.²⁰ Finally, the OIG confirmed that CRLA senior management was aware of, and at times, directed this activity.

b. The McBride Case Provides an Example of CRLA's Participation in Impact Litigation Originating in a Branch Office Other Than Modesto.

A separate witness confirmed the CS's allegation that CRLA management pressures staff to take impact cases, affecting the amount of individual client representation (service cases) CRLA attorneys can provide. The witness also stated that it is not unusual for CRLA to solicit clients for cases in which CRLA wants to be involved but in which an eligible client had not sought assistance from CRLA. The witness described the general practice of solicitation she witnessed. She stated that CRLA management sometimes learned of an issue in which management wanted CRLA to become involved when individuals ineligible for service contacted CRLA for service. In order for CRLA to become involved, CRLA management would direct the office to send staff out to find an eligible client for CRLA to represent in the matter. Management also would themselves, or would direct staff, shop the case around to try to find other counsel to represent the ineligible persons (and to act as co-counsel once CRLA found a client). According to this witness, similar steps would be taken when CRLA simply learned of an issue it wanted to litigate, though no client had requested service.²¹

When asked to provide an example of this practice, the witness described a case implicating the same concerns raised by CRLA's involvement in the CCC v. Modesto case, the McBride case. McBride is an education discrimination case filed against the Modesto City Schools. CRLA sent a demand letter to the schools insisting that the schools allow a group of eighth graders to graduate despite not passing a mandatory test on the Constitution given only in English. When the schools did not give in to the demand letter, CRLA filed for a Temporary Restraining Order (TRO) that would affect all similarly situated students within the Modesto School District and within the jurisdiction of the presiding court. The OIG was unable to obtain details as extensive as those obtained for the CCC v. Modesto case; however, the McBride case illustrates the

²⁰ The OIG thus far has been unable to ascertain how much time was spent. Although CRLA states otherwise, the time records associated with the case that CRLA provided appear to be incomplete based on information obtained from the CS. This may be due to the practices CRLA is alleged to use when working without a client, such as charging time to an all-purpose client or charging time to a matter rather than a client's case. See discussion supra Part .

²¹ See discussion of CRLA's involvement in the Ceres case supra note 15.

same working without a client and solicitation practices by CRLA as does the former case.²²

CRLA's Modesto Office first learned of the matter that later became the McBride case when a private attorney contacted CRLA to take the education case. Clients sought assistance from the private attorney, but they could not pay her. Though she was unsure whether the clients were eligible for LSC services, the private attorney sent the clients to CRLA and told CRLA that they should be involved in the case.

A Modesto Office attorney sent DLAT Rice an email about the matter who, in turn, contacted former DLAT Jack Daniel, currently the Directing Attorney of CRLA's Fresno Office and head of CRLA's Education Task Force. Rice learned that Daniel was already co-counseling the case in Fresno with Protection And Advocacy Inc. (P&A), apparently without a client.

Daniel and P&A performed substantial work on the case prior Daniel's acquisition of a client in the case. An internal communication indicates that before June 6, 2005 Daniel and P&A sent the demand letter and performed the research and writing necessary to file a complaint in court and request a TRO. Drafted documents appear to include declarations, *guardian ad litem*s, a civil cover sheet, summons and acknowledgements, the TRO cover sheet, the complaint, and the proposed order.

On June 6, 2005, two days before the complaint was filed, Daniel asked employees in the Modesto Office to help him find a client on whose behalf he could file the complaint. Ignacio Musina, the basic field Community Worker in the Modesto Office agreed to assist Daniel. Daniel instructed Musina to go out and find a client(s) for the litigation. Daniel explained the case to the Modesto Office staff, described the ideal plaintiff and then requested assistance in soliciting a "clean" client. An internal communication from Daniel requests that "...someone from Modesto call folks on this list and see if 1. they want to be plaintiffs 2. if so, find out the following: is student barred from graduating[,] why?[,] that is was it slowly [sic] because they flunked the constitution test or were there other things going on[,] is student proficient in English?" The internal communication also says, "I know [t]his is last minute and apology – of [sic] you can't help, I understand – just let me know and we will get folks from Fresno to do this. I appreciate any help I can get."

²² A press release obtained by the OIG appears to indicate that CRLA's involvement in the McBride case is similar to, if not in conjunction with, a more high profile effort to change the administration of exams by California schools in English. The press release indicates that CRLA represented parents and students intervening in a "Landmark Lawsuit Regarding Unfair Testing of English Learners in California Public Schools." Statement of California Rural Legal Assistance, "Landmark Lawsuit Regarding Unfair Testing of English Learners in California Public Schools," June 7, 2005.

Internal communications indicate that Musina interviewed all clients already represented in the case by P&A. Of the P&A clients contacted, the one client the Modesto Office determined to be eligible required an income eligibility waiver from CRLA Executive Director Padilla. During a DLAT meeting (at which Deputy Director Jaramillo also was present) Padilla approved the income eligibility waiver for the attorney working the case over the telephone.

The OIG substantiated the witness's account of CRLA's involvement in the McBride case. The OIG obtained supporting internal communications from Daniel to the Modesto Office. Musina confirmed that he worked on the case with an attorney from P&A.²³ He stated that he got a list of names of clients with phone numbers to follow-up on.²⁴ Documents the OIG received from CRLA also support this recount of how CRLA came to be involved in this case.

c. CRLA's Desire to Participate in Impact Litigation Causes CRLA to Violate LSC Restrictions.

Again, litigating a case that may impact a large segment of the population is not automatically problematic. However, with a grantee so focused on attacking issues, and not on providing services to clients seeking assistance, an institutional climate may arise in which the grantee expends its resources on issues in which it does not have an interested client, and must, therefore solicit appropriate clients for representation in the case and become involved in restricted cases.

i. CRLA Performs Work Without a Client.

It may be somewhat surprising that the question of whether CRLA may perform work on a case prior to it having a client in the case does not present a simple answer. Although on its face such efforts appear inconsistent with the premise on which funding is supplied, that it will be used to provide legal assistance to eligible clients, LSC provides no explicit requirement that litigation work be performed only when a grantee has an identifiable client.²⁵

²³ Memorandum of Interview with Ignacio Musina, Community Worker, CRLA Modesto (December 21, 2005).

²⁴ Id.

²⁵ In addition to the overall purpose of establishing LSC, several restrictions and requirements touch on the notion. See LSC Act, supra note 4, § 2996b(a) (discussing overall purpose: LSC established "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance); see also id. at § 2996 (discussing congressional findings and declaration of purpose). See LSC Act, supra note 4, § 2996f(a)(2), LSC Regulations, supra note 6, Part 1611 (discussing *financial eligibility*: before providing legal assistance, grantees must determine that an individual is financially eligible for services); 1996 Appropriations Act, supra note 5, § 504(a)(9), LSC Act, supra note 4, § 2996f(a)(2)(C)(1), and LSC's Regulations, supra note 6, Part 1620 (discussing *priorities*: grantees may devote time and resources only to those cases or matters the grantee has determined to be within its priorities after appraising the needs of its eligible client population); 1996 Appropriations Act, supra note 5, § 504(a)(10)(A) and LSC Regulations, supra note 6, Part 1635 (discussing

Leaving aside the question of whether CRLA should have performed work without a client, in doing so CRLA's performance of work on behalf of those *already represented by other counsel* certainly appears problematic. In the CCC v. Modesto case, these individuals were likely not eligible for LSC funded service, given the apparent difficulty CRLA had in attempting to find one to qualify for service. The work could be viewed as subsidizing the activities of other organizations in violation of Part 1610 of LSC Regulations; and the work raises concerns regarding the efficient and effective use of the scarce resources available to provide services to clients.

CRLA undertook work in connection with the CCC v. Modesto case, although it did not have a client in the litigation. In addition to the CS's own statement to this effect, the CS provided documentation in the form of email communications supporting the efforts CRLA performed in furtherance of the litigation. These emails support the CS account of CRLA's efforts in relation to the litigation. From personal knowledge, a second witness, though admittedly ignorant about much of CRLA's earliest efforts, corroborated later portions of the CS's account. Finally, records received from CRLA are consistent with the CS's statement of events.

The emails further demonstrate that most of the CCC v. Modesto work was done with the full knowledge of CRLA senior management. Two of CRLA's DLATs actively participated in researching issues and drafting the complaint. Later versions of the complaint were also copied to the Executive Director and Deputy Executive Director. The DLATs asked for and received updates on the status of the case including that CRLA staff was assisting in locating community organizations for co-counsel to represent; that CRLA staff was interviewing persons represented by other counsel in the case for factual investigation on behalf of other counsel; that CRLA staff was organizing and participating in meetings with co-counsel and community groups. The emails show that DLATs instructed the CS to continue supporting the other firms working on the case despite not having a client and to draft an LAP for the case using a former client, which CRLA's DLATs and Deputy Executive Director approved only hours after

timekeeping: grantees must maintain records of time spent on each case, matter or supporting activity in which the grantee is engaged); 1996 Appropriations Act, supra note 5, § 504(a)(8) and LSC Regulations, supra note 6, Part 1636 (discussing *client identity and statement of facts*: grantee must identify its client in complaints filed or in pre-complaint negotiations and must maintain a statement of facts forming the basis for the complaint); LSC Regulations, supra note 6, Part 1611 (discussing *retainer agreement*: grantees must execute retainer agreements with clients in extended service cases, although not where only brief service or only advice is given); 1996 Appropriations Act, supra note 5, § 504(a)(1)-(6) and LSC Regulations, supra note 6, Part 1612 (discussing *lobbying prohibited*); LSC Act, supra note 4, §§ 2996f(a)(6), (b)(4), (b)(6), & (b)(7) and LSC Regulations, supra note 6, Parts 1608 & 1612 (discussing political activity, organizing activity and demonstrations limited).

receiving it. Finally, the emails show the request for and receipt of an income eligibility waiver from CRLA's Executive Director Jose Padilla.

With regard to the McBride case, internal communications indicate that Fresno Directing Attorney Daniel had already performed all of the necessary pre-filing work when he contacted the Modesto Office for assistance in finding a client on whose behalf to file the case. Interestingly, CRLA timekeeping records for the case indicate that Daniel spent 64.4 hours working under client file number 05-0199427 and charged against LSC funds. The Modesto client's intake appears to be dated May 16, 2005, well before Daniel contacted the Modesto Office for assistance in soliciting a client. If Daniel already had a client, why did he need the Modesto Office to find a client for him? If Daniel could not file the case under the name of client number 05-0199427, why did Daniel charge his time to this client?²⁶ CRLA filed the claim two days following Daniel's initial contact with the Modesto Office for assistance. Daniel's timekeeping indicates he that he did not spend any time on the case on June 6th or 7th, though the email traffic indicates otherwise. According to Daniel's timekeeping records he spent only six hours on the case after contacting the Modesto Office, all of which occurred on June 8th, 2005, 4.5 of which he spent traveling to the hearing and 1.5 of which he spent at the hearing. Two attorneys within the Modesto office spent a total of 22.25 hours on the case, all of which occurred after Daniel contacted the Modesto Office. CRLA provided no timekeeping for Musina, the Modesto Office Community Worker who clearly spent time searching for a client.

The performance of the pre-filing work in conjunction with other counsel in CCC v. Modesto and again in McBride, in the absence of a client raises concerns as to the potential subsidization of another organization that engages in restricted activities and represents potentially ineligible clients.²⁷ Additionally, absent a client, the work raises concerns regarding the efficient and effective use of the scarce resources available to provide services to clients. Finally, the timekeeping questions raise issues as to the accuracy of CRLA's timekeeping practices and, therefore, the integrity of a basic accountability tool.

²⁶ See discussion of LSC's timekeeping requirements in the introductory Note of this report, *supra* pp. iii-iv. Also of interest, the client number under which Daniel kept his time does not appear in the database provided by CRLA containing all CRLA client numbers for clients from January 1, 2003 to October 31, 2005.

²⁷ Other counsel, including P&A and LCCR, engage in work that LSC grantees are prohibited from undertaking, such as class action cases and legislative advocacy. LSC grantees may associate with other organizations that engage in such prohibited activities, but may not use LSC funds to subsidize such organizations. See LSC Regulations, *supra* note 6, § 1610.8(a)(2). For example, Daniel timekeeping records indicate that he used LSC funds to support his work on the McBride case when CRLA did not have an interested client. This appears to violate the prohibition on subsidizing an organization engaging in restricted activities; *Id.*

ii. CRLA Solicits Clients.

CRLA's activity in furtherance of finding a client for CRLA to represent in connection with CCC v. Modesto and McBride clearly violates the restriction in LSC's 1996 appropriations act prohibiting grantee attorneys from "accept[ing] employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action."²⁸

The McBride case presents an obvious instance of solicitation. In addition to a witness' recount of how CRLA became involved in McBride, email communications clearly show a Directing Attorney instructing Modesto staff members to solicit clients for a case in which he had already performed the necessary pre-litigation work. Internal communications indicate that a Modesto Community Worker did, in fact, solicit a client for CRLA to represent in the litigation. This instance also indicates that this practice is not isolated within the Modesto Office.

The OIG substantiated that CRLA staff expended significant time and energy trying to find a client for CRLA to represent in connection with the CCC v. Modesto case. Information received from other staff and copies of email communications support the CS's statement to this effect. These sources support the following solicitation activities: CRLA contacted former CRLA clients or current clients being represented on other matters to determine whether they would be interested in pursuing the litigation; CRLA discussed with other counsel in the litigation whether they could refer one of their clients to CRLA; and CRLA contacted individuals then represented by other counsel in the case (with counsel's permission).

CRLA expended significant time trying to qualify these individuals as eligible for CRLA-service and was only able to qualify a single client on the eve of case filing. Staff spent time pursuing one prospective client who was not eager to speak with CRLA because the individual was already represented by counsel and had been advised by that counsel not to sign anything from anyone else. CRLA requested that the counsel contact the client and assure the client that the client could speak to CRLA. CRLA staff expended time attempting to verify the income of this prospective client, whose credibility was questioned due to the fact that information provided had proved inaccurate. The client CRLA ultimately obtained originally appeared to be ineligible. CRLA staff spent time tracking down this person to gain additional information that might allow the person to qualify for CRLA services. On the evening before the case was filed, CRLA concluded that this person was eligible for services with an eligibility waiver, as his income was scheduled to change in approximately two weeks time.

²⁸ Pub. L. 104-134, § 504(18), see also LSC Regulations, supra note 6, Part 1638.

Internal communications further demonstrate that most of this work was done with the full knowledge of, and at times under the direction of CRLA senior management, as does the statement of a second witness. The emails substantiate that one of the DLATs involved in the case knew on July 16, 2004 that CRLA staff was actively seeking a client to represent in connection with the case. On August 3, 2004, CRLA staff asked for guidance in light of the lack of a client and the DLAT asked the staff member if there was not some “housing element comment client” available to support factual investigation of the case.²⁹ Internal communications show a flurry of activity in the days leading up to filing, with CRLA attempting to find a client among the plaintiffs already represented by other counsel. A DLAT directed staff to review the other plaintiffs in the case (persons already represented by co-counsel) and to try to qualify them as CRLA clients, that is, conduct an intake and obtain a statement of facts and retainer agreement from them. When the CS informed a DLAT of the questionable credibility of the above referenced prospective client’s eligibility information, the DLAT asked the CS whether the client qualified based on the information previously provided and told her that CRLA should take their clients at face value and that inquiries attempting to verify eligibility are not justified absent hard evidence. When a client finally was signed, on the eve of filing the case, the CS advised a DLAT that this client would become ineligible for service two weeks hence; the DLAT directed the CS to submit an income eligibility waiver to the CRLA Executive Director so that CRLA could continue the representation.

These two cases illustrate CRLA’s propensity for involvement in certain cases regardless of whether or not CRLA has an interested client. In fact, one knowledgeable witness stated that CRLA becomes involved in cases without a client and, therefore, must solicit a client(s), most commonly because CRLA becomes interested in an issue and chooses to pursue involvement in the issue via lawsuit despite not having an interested client and less because outside counsel contacts CRLA to become involved, like the Modesto and McBride cases. The two cases also illustrate that this practice of desiring to be involved in a case, working in furtherance of the case despite the lack of a client and then soliciting an appropriate client for the litigation is neither a simple anomaly, attributable to one rogue attorney or rogue branch office, nor an occurrence of which CRLA’s upper management was ignorant.

iii. CRLA Inappropriately Worked a Fee Generating Case.

The CCC v. Modesto case is a fee generating case for LSC purposes, to which none of the enumerated exceptions making participation permissible apply. CRLA’s involvement in the case, therefore, violates LSC Regulations.

²⁹ This supports the CS’s assertion that CRLA maintains “all-purpose” clients in various issue areas in order to charge time worked on cases in which CRLA has no client. See supra p. 11.

Part 1609 of the LSC Regulations implements Section 1007(b) (1) of the LSC Act and generally prohibits grantees from providing legal assistance in fee generating cases. LSC's stated purpose for the restriction is "[t]o ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation."³⁰ Fee generating cases are defined as "any case or matter, which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party."³¹ Section 1609.3 provides exceptions limited to cases in which no private attorney or lawyer referral service will accept the case or emergency cases in which time does not permit referral.³²

An internal communication from DLAT Rice indicates that "from CRLA's perspective ... this is a non-fee generating case as [the co-counsel] are eliminating all requests for monetary relief and it is injunctive relief only..." The CCC v. Modesto co-counsel agreement between the myriad of private and not-for-profit law firms indicates that CRLA will not request attorneys' fees in the case.

Neither of CRLA's attempts to separate itself from the attorneys' fees that the CCC v. Modesto case could reasonably be expected to generate is relevant to the determination of whether the case is fee generating for LSC purposes. That CRLA's co-counsel is opting not to request monetary relief, hence will not collect a contingency fee from the plaintiffs, does not render the case one in which monetary relief is not possible and from which an attorney in private practice reasonably may be expected to collect a fee. In fact, CRLA's statement "[the co-counsel] are eliminating all requests for monetary relief" suggests that monetary relief may have been available in this case. Similarly, a request for attorneys' fees would not be included in a prayer for relief unless the requesting party had a basis for asserting that the party was entitled to such fees upon a successful outcome in the case. The complaint filed on August 18, 2004 includes a claim for attorneys' fees by the other firms working the case,³³ which signifies that this case is, indeed, a fee generating case. Finally, as evidenced by the fact all clients were previously represented by other counsel, including private law firms, long before CRLA became involved in the case, neither exception can reasonably apply to this case. For LSC purposes, the CCC v. Modesto case is a fee generating case and CRLA's involvement in the case violates Part 1609 of LSC Regulations.

³⁰ LSC Regulations, *supra* note 6, § 1609.1.

³¹ LSC Regulations, *supra* note 6, § 1609.2 (a).

³² LSC Regulations, *supra* note 6, § 1609.3.

³³ See *CCC v. Modesto*, *supra*, note 16.

iv. CRLA Inappropriately Requested Attorneys Fees.

Part 1642 of the LSC Regulations prohibits grantees from “claim[ing], or collect[ing] and retain[ing of] attorneys’ fees”³⁴ and provides no exceptions. As indicated in the previous section, the prayer for relief in CCC v. Modesto includes a claim for attorneys’ fees. Again, CLRA’s attempt to disassociate itself from the request for attorneys’ fees by co-counsel, via the co-counsel agreement is irrelevant. The claim in the CCC v. Modesto case indicates neither that CRLA is not requesting any attorneys’ fees, nor that no fees collected will go to CRLA. CCC v. Modesto includes a simple request for attorneys’ fees and CRLA is counsel of record in the case. CRLA’s claim for attorneys’ fees is a clear violation of the restriction.

B. CRLA Officials Associate the Grantee with Political Activities.

Unrelated to the CCC v. Modesto or McBride cases, as a result of independent research, the OIG found two instances in which CRLA senior staff appears to be engaged in prohibited political activities. LSC Regulation 1608.4 (a) clearly states “[n]o employee shall intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.”³⁵ Specifically, CRLA’s Executive Director, Jose Padilla, is listed as an endorser of “The World Can’t Wait: Drive Out the Bush Regime.” Likewise, DLAT Ilene Jacobs co-hosted a fundraiser for 2004 Presidential Candidate John Kerry via “Fair Housing Advocates for Kerry. Certainly both Padilla and Jacobs are free to express their own private political beliefs on their personal time. However, in both instances the CRLA employees appear to have inappropriately identified themselves as “of CRLA,” thereby identifying CRLA with such political activities in violation of Section 1608.4 (a) of LSC’s regulations.

³⁴ LSC Regulations, supra note 6, Part 1642.

³⁵ LSC Regulations, supra note 6, § 1608.4 (a).

III. Areas of Continuing Concern

For other allegations and issues arising from our investigation, the OIG requires additional information in order to conclude whether the evidence supports a finding of noncompliance. These issues are sufficiently developed to raise the serious concerns discussed herein.

A. CRLA Engages in Other Activities That Tend to Support the Claim that CRLA Prioritizes Impact Work Over Service Work.

Other common practices at CRLA illustrate the grantee's propensity for impact type work. Some activities include lobbying, monitoring, filing amicus briefs and filing cases on behalf of the "general public" under California's Unfair Competition Law. Though many of these activities raise serious concerns, the OIG has not yet developed sufficient evidence to support definitive findings regarding CRLA's possible violation of federal law as a result of engaging in the following activities.

1. CRLA Engages in Activities that May Violate Restrictions Prohibiting Lobbying.

The OIG found possible prohibited lobbying activities, including legislative and rulemaking activities in violation of LSC Regulations Part 1612 and Section 504(a)(1)-(6)) of the 1996 Appropriation Act (1996 Appropriation), incorporated by reference in LSC's current appropriation. LSC's 1996 Appropriation prohibits grantees from "attempt[ing] to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency"³⁶ and "attempt[ing] to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative or any similar procedure,"³⁷ at the Federal, State or Local level. LSC implemented this prohibition in Part 1612 of its regulations. Part 1612 generally prohibits lobbying contact with legislative or administrative bodies but, in accordance with the 1996 Appropriations Act, allows limited contact with legislative and administrative bodies at the federal, state and local level in response to an unsolicited written request for comment and public rulemakings and using non-LSC funds.³⁸

As stated, the CRLA activities reviewed in this section may violate LSC's lobbying restrictions. In applying LSC's implementing regulation, Part 1612, to CRLA's activities we find the regulation provides less functional guidance than may be needed; additional guidance to grantees may be worth considering.

³⁶ 1996 Appropriations Act, supra note 5, § 504 (a) (2).

³⁷ Id. at § 504 (a) (4).

³⁸ Id. at § 504 (e), LSC Regulations, supra note 6, § 1612.6, also referred to as the Cohen-Bumpers Amendment. LSC also requires grantees to "maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6." LSC Regulations, supra note 6, § 1612.10 (b). This separate timekeeping is often referred to as "Cohen-Bumpers" time.

a. CRLA's Comments on the Housing Elements May Be Considered Lobbying.

The CS described a CRLA wide project called the Housing Elements as an example of CRLA management's desire for staff to engage in "impact work." The CS explained that Housing Elements refers to the housing needs portion of a state mandate that all cities and counties adopt a comprehensive long-term physical development plan for all economic segments of the community within their respective jurisdictions. The CS stated that CRLA management required all CRLA offices to participate in the revision of the Housing Element in their respective service areas. According to the CS, all CRLA offices were instructed to comment on proposed revisions, evaluate each jurisdiction's compliance with the law and assess the litigation prospects in each jurisdiction.

The CS stated that DLAT Jacobs, the DLAT responsible for housing issues, oversaw this project CRLA wide. The CS agreed to take the project in the Modesto Office. According to the CS she attended many community meetings, planning commission hearings, commented on housing element revisions and gave an oral presentation at a planning commission meeting. The CS stated that at least four other advocates from the Modesto Office participated in the Housing Elements project and that she supervised two interns who worked almost exclusively on the project. According to the CS, she presented comments to the planning commission as a representative of CRLA and not on behalf of any client. The CS stated that she charged her time spent working on Housing Elements to the same "all purpose" housing client to whom she charged her clientless time while working on the CCC v. Modesto case. According to the CS, this was the common practice for all CRLA offices.

The OIG substantiated that CRLA staff participated in the revision of the Housing Elements. The CS provided specific times and dates of some of her Housing Elements activities. Internal communications indicate that, indeed, the CS submitted written and oral comments to the Housing Elements planning commission in Modesto and support the CS's statement as to interns working on the project. Language in the communications indicates that the planning commission changed language in a draft of the Housing Element as a result of her comments. DLAT Jacobs commended the CS for the work in a separate documented communication.

Additionally, the aforementioned Housing Elements Priorities Memo³⁹ states "CRLA housing advocates in all field offices continue to analyze housing development proposals for consistency with local housing elements and general plans, responding to written requests for comment upon development proposals..." A Summer 2003 AWHP⁴⁰ Farmworker Housing Survey Report,

³⁹ See supra note 12.

⁴⁰ Agricultural Worker Health Project.

also presented at CRLA's 2003 Asilomar Priorities Setting Conference also refers to CRLA's evaluation of general Housing Elements plans.⁴¹ The May 2003 Six Month Work Plans for the Modesto Office employees indicate the "[t]he Modesto office has made a commitment to become familiarized with Housing Elements law with a goal of long-term monitoring and enforcement" and that multiple Modesto Office employees engaged in Housing Elements work. CRLA's 2004 application for LSC funding also states that it intends to "comment on housing elements, consolidated plans and analysis of impediments to fair housing."⁴²

In an effort to determine the permissibility of CRLA's Housing Elements work, the OIG evaluated CRLA's activities, obtained from CRLA documents necessary to determine whether CRLA used LSC funds to undertake the activity and whether the comments were provided in response to a request for comment as allowed by the Cohen-Bumpers amendment.⁴³ Clearly the activities of the CS fall within the realm of activities covered by Part 1612 of LSC Regulations. Not only did the CS "attempt to influence the issuance, amendment, or revocation of ...[a] statement of general applicability and future effect by [a] local agency;" her actions succeeded in causing the planning commission to change language in a draft of the Housing Elements. The CS's activities do not appear to be exclusive to her or the Modesto Office and CRLA management appears to coordinate and support such activities.

In response to the OIG's request for documents regarding the Housing Elements work, CRLA responded that it does "not consider comments on housing elements to be legislative advocacy nor [] responses to notice and rulemaking." CRLA considers the commenting to be "FHIP work"⁴⁴ and requires neither time to be kept as Cohen Bumpers IOLTA⁴⁵ nor a written invitation from a legislative or administrative official. In at least two instances, though, CRLA reported commenting to state and local officials regarding Housing Elements to LSC pursuant to Section 1612.10 (c) of LSC Regulations,⁴⁶ which requires grantees to submit semi-annual reports describing their Cohen-Bumpers activities.⁴⁷

CRLA sets forth three reasons for not considering commenting on Housing Elements as activity covered by Part 1612, but considering them to be "in the nature of exhaustion of administrative remedies." First, CRLA asserts that a writ

⁴¹ AWHP Farmworker Housing Survey Report, Summer 2003, pp. 6-7.

⁴² CRLA Proposal Narrative for 2004 Grants Competition, p. 8.

⁴³ Under limited circumstances, section 504(e) permits grantees to use non-LSC funds to "respond to a written request for information or testimony from a Federal, State or local agency, legislative body or committee;" 1996 Appropriations Act, supra note 5.

⁴⁴ Fair Housing Initiatives Program is a U.S. Dept. of Housing and Urban Development program that promotes fair housing laws and equal housing opportunity awareness.

⁴⁵ See explanation of "Cohen-Bumpers" supra note 38.

⁴⁶ LSC Regulations, supra note 6, § 1611.10 (c).

⁴⁷ CRLA Semi-Annual Report on Legislative and Rulemaking Activities Conducted Pursuant to 45 C.F.R. § 1612.10 (c), for January 1, 2004 to June 30, 2004, p. 6, and July 4, 2004 to December 31, 2004, p. 4. Additional entries may also be related to the Housing Elements but do not refer to the activities as such.

petition cannot be sustained unless comments were previously submitted. Second, CRLA explains that “unlike legislative acts, a governing jurisdiction cannot legally adopt a housing element without first submitting a draft to the Department of Housing and Community Development for compliance review.” Third, according to CRLA “the governing statute requires each jurisdiction to take public comment in order to be in compliance with state law.” Assuming that CRLA’s first assertion is true, the argument seems irrelevant because grantees are not permitted to “attempt to influence” regarding a statement of general applicability for any reason. As to CRLA’s second claim, when and under what conditions the governing jurisdiction can adopt a Housing Element is irrelevant to the determination of whether or not CRLA “attempt[ed] to influence” that governing body. Finally, CRLA’s third assertion appears to be arguing that commenting on the Housing Elements may be “permissible under Section 1612.6 (e), “a public rule making proceeding.” Although CRLA does not consider it as such, it is unclear whether such activity constitutes a “public rulemaking” for LSC purposes. The OIG requires additional information as to the public comment requirement. Regardless, CRLA’s use of LSC funds to engage in these activities appears impermissible. CRLA failed to provide any information relating to the Housing Elements work of the Modesto Office, however the timekeeping documents for twenty other jurisdictions provided by CRLA indicate that LSC funds were used to support Housing Elements work, despite CRLA’s claim to the contrary.⁴⁸

b. CRLA Attempts to Influence Other State and Local Officials Regarding Legislation and Executive Branch Statements of General Applicability and Future Effect.

Information on CRLA’s lobbying activities is widespread and widely available. CRLA’s activities are easily discoverable via internet search, in CRLA’s internal documents and by admission from the grantee itself.

i. Information Regarding CRLA’s Lobbying Activities is Readily Available on the Internet.

A simple Internet search reveals CRLA’s involvement in other questionable activities that may be violative of LSC’s prohibition on lobbying. The following five items provide a smattering of samples of seemingly impermissible activities in which CRLA engaged:

⁴⁸ In addition to commenting on revisions to the Housing Elements, some Housing Elements work appears to be litigation related and on behalf of a particular client. This work could allowably be charged against LSC funds. However, a significant amount of activity charged against LSC funds appears to be general review and comment work. It is unclear whether that work is on behalf of a particular client. The AWHP Farmworker Housing Survey Report, supra note 41, also indicates that Housing Elements work has a litigation component.

- Drafting of California Assembly Bill 712, introduced on February 17, 2005, regarding residential land use densities. The bill indicates that CRLA is the bills “Source” (drafter). CRLA maintains that they have no record of any involvement in the bill.
- Opposing California Assembly Bill 2399. Governor’s Office Press Release – Wilson Admonishes Organized Labor and CRLA for Death of Bill Requiring Continuing Education for Farm Labor Contractors, April 22, 1998. The Governor’s Office issued the press release following the defeat of A.B. 2399 (Poochigian). The press release states “Governor Pete Wilson today expressed exasperation with ...California Rural Legal Assistance for their opposition to A.B. 2399 (Poochigian), a bill to require continuing education for California farm labor contractors.”
- Commenting on the Parajo Valley Unified School District Board’s decision whether to contract with AdvancePath, which according to its website is a provider of alternative education for out-of-school youth or those at risk of dropping out. A CRLA attorney is represented as having “pulled his support for Advance Path...” and sending letters to officials addressing what happens with students when they leave their education. CRLA records indicate that the attorney spent 115.5 hours working on the comments, all of which was charged against LSC. At the time the OIG requested CRLA’s Report on Legislative and Rulemaking Activities Conducted Pursuant to 45 C.F.R. § 1612.10 (c), the report for the second half of 2005 had not yet been filed. The OIG will request such documentation to determine whether CRLA received a request for comment from the school district.
- An Analysis of the Labor Provisions of McCain/Kennedy. DLAT Rice coauthored an analysis of the immigration reform bill, “prepared to share [] perspectives with labor, immigrant advocacy organizations and other allies in the comprehensive immigration reform movement.” The paper was intended to “state clearly the shortcomings of this legislation so that it can be improved, if possible, and if compromise is necessary and desirable, the trade-offs are clearly understood by policy-makers, and above all, by ourselves.” The paper goes on to analyze provisions of the bill “of serious concern” and suggest alternatives. In response to the OIG’s request for documents, DLAT Hoerger claimed that his work on this project was on personal time and DLAT Rice charged 3.75 hours against LSC funds on the project and that CRLA was not representing a client in this work. DLAT Hoerger also stated that “[i]n [his] opinion, this activity is clearly LSC-appropriate.” In light of the stated goal of the analysis of the McCain/Kennedy immigration reform act, and its intended audience, e.g., “policymakers,” publishing of the analysis is likely a violation of the LSC restriction against lobbying.

ii. CRLA Describes Potentially Impermissible Contact with State and Local Regulatory Agencies.

On June 14, 2006 CRLA sent a letter attempting to explain to LSC Management why the grantee should not be required to comply with the OIG’s “breath-

taking⁴⁹ request for CRLA employee time keeping records regarding “*comment(s)* or testimony on California Department of Industrial Relations current or proposed regulations or *other policies*,”⁵⁰ and other documents and data. In the letter CRLA describes some of the communications and activities its employees undertake in relation to state and local agency officials but that CRLA does not consider to be covered by LSC’s prohibition on lobby activities. The relevant portion of letter reads:

Third example: OIG is requiring CRLA to produce, again on a program-wide basis, all records for a period exceeding three years concerning, ‘*comment(s)* or testimony on California Department of Industrial Relations current or proposed regulations or *other policies*.’ (Emphasis added.)...California’s Department of Industrial Relations encompasses a number of state agencies including, e.g. the Division of Labor Standards Enforcement; the Occupational Safety and Health Administration; the Industrial Welfare Commission, the Employment Development Department, the Unemployment Insurance Appeals Board - - large, state-wide agencies that function in and/or have jurisdiction over – and often local offices – every one of our service areas. While CRLA advocacy concerning regulatory rule-making can be tracked through Cohen-Bumpers reporting requirements, the vast majority of activities undertaken by our advocates that fall within the scope of this request is incalculable. On a daily basis, CRLA staff may be discussing with, e.g., a local Deputy Labor Commissioner, or the Counsel whether a particular existing regulation is being properly applied to calculate penalties on unpaid wages; or CRLA staff may be discussing with a locally-based Cal-OSHA Compliance Officer or a state-wide industry enforcement coordinator or Cal-OSHA’s General Counsel whether a regulation addressing use of the driverless-tractors has been appropriately applied to use of remote engine-“kill” switches, or whether an agency should be encouraging its staff to spend greater time in “field monitoring” and “investigations” instead of desk-analysis, and/or whether and when an agency should investigate a complaint from a laborer concerning employer non-compliance on a work-force-wide basis rather than individually. Every one of these activities falls within the OIG document demand for ‘comments’ on ‘current regulations’ and/or ‘other policies’. And individual employee time-records (reporting under ‘cases’ or ‘matters’) will reflect these activities. But none of the activities falls within Cohen-Bumpers record-keeping requirements, nor under any other LSC statutory or regulatory

⁴⁹ Letter from Jose Padilla, Executive Director, CRLA, to Karen Sarjeant, Vice President for Programs and Compliance, LSC, June 14, 2006, p. 3.

⁵⁰ *Id.* (quoting Data and Document Request from Kirt West, LSC OIG, to Jose Padilla, Executive Director, March 16, 2006) (emphasis in CRLA letter not in original OIG Request).

requirement for tracking. Thus, while records may 'exist', there is no way of locating them except by a hand-review of every individual time-record for every single CRLA advocate...for the entirety of their working hours over a 3+-year period...⁵¹

Furthermore, a Memorandum submitted at CRLA's 2003 Priorities Setting Conference from Ellen Braff-Guajardo, CRLA Project Director, to Jose Padilla states "as a result of ongoing negotiations with Cal/OSHA, we now are much closer to a statewide protocol for the acceptance of CRLA-initiated, rather than worker-initiated, administrative complaints."⁵²

CRLA staffs' discussions with CalOSHA regarding how the agency should spend its resources to ensure compliance with the laws, i.e. how to investigate a complaint, and negotiations with the agency to change the way complaints may be filed and seem to be "attempt[s] to influence...[a] statement of general applicability and future effect by any Federal, State, or local agency," in violation of LSC's 1996 Appropriations language. Just as the promulgation of a regulation itself is a statement of general applicability and future effect, so is a governing agency's application of its regulations, often captured in documents such as operations, policies and procedures manuals and guidance letters, and otherwise captured informally by agency practice. Likewise, advising an agency how it should spend its limited resources is in effect telling the agency how it should generally carry out its mandate, what it should prioritize. How an agency applies its regulations and carries out its mandate affects all those who come before it, and not just the particular rights, benefits or interests of an individual client. Thus, negotiations affecting a change in the manner in which a complaint may be filed with or is investigated by an agency, including whether to investigate a particular individual's complaint or to use an individual complaint as a reason to investigate the entire workforce results in a practice of general applicability and future effect. All of these activities are an attempt to influence agency decisions, formal or informal, resulting in statements of general applicability and future effect. Influencing such agency decisions appears to be the precise type of activity Congress sought to prohibit LSC grantees ability to engage.

2. CRLA Engages in Various Types of Monitoring Activities.

According to the CS, Community Workers from the Modesto Office "spent time going into fields to monitor...sanitation conditions." Additionally, CRLA's applications for LSC funding, CRLA Annual Reports, statements made to the OIG by CRLA Community Workers and various statements by CRLA to the press

⁵¹ *Id.*, pp. 3-4. The OIG and CRLA have discussed this request and have agreed on a starting point for CRLA's review and gathering of information for response. The OIG is awaiting CRLA's substantive response pursuant to this clarification.

⁵² The referenced protocol would appear to facilitate CRLA's filing of complaints without a client. Memorandum to Jose Padilla, Luis Jaramillo, CRLA Board of Directors, CRLA Staff from Ellen Braff-Guajardo, CRLA Project Director, Agricultural Work Health Project, re: Agricultural Work Health and Safety Report for the November 2003 Priorities' Conference, October 14, 2003, p. 5.

indicate CRLA engages in a number of monitoring activities typically relating to farmworker and Latino issues and often absent a specific client. Although not necessarily in violation of the laws and regulations governing the use of LSC funds, CRLA's monitoring of issues for possible CRLA involvement in impact work, creates the conditions for instances of noncompliance with federal laws, see discussion supra Part III.A.3, and diverts resources away from the provision of services to clients who seek assistance. Below are but a few instances of CRLA monitoring activities:

- Labor -- Monitoring activities include extensive field monitoring to assess compliance with applicable laws by agricultural employers. CRLA's Proposal Narrative for the LSC 2004 Grants Competition states that six of its field offices have "in recent years focused on efforts...to monitor and promote compliance with field sanitation and safety requirements."⁵³ "Field Sanitation in Ventura County: When Cal-OSHA Fails Its Job," recounts CRLA's monitoring of Ventura County fields for noncompliance by employers beginning in 1989 and continuing, at least, through 1998.⁵⁴ CRLA's 2002 Annual Report reports CRLA's close monitoring of H-2A applications submitted by agricultural employers. According to its own Annual Report, CRLA community workers began to investigate an Oceanside tomato grower, apparently without a client, when the Department of Labor approved the employer's H-2A application. The story also indicates that the aggrieved plaintiffs learned of their claim against the grower only after CRLA investigated.⁵⁵ Luis Rivera, a Community Worker for the Stockton Migrant Unit but based in the Modesto Office, stated that he spends 70% of his time on community education and outreach work that consisted of field monitoring and observing farmworkers at their worksite.⁵⁶ May 2003 Six Month Work Plans for Modesto Office employees indicates that Community Workers spend up to 80 % of their time monitoring agricultural workers on the job and attorneys either participating in or coordinating monitoring of agricultural workers, including coordination with other CRLA offices.
- Education -- CRLA monitored California's monitoring of public school system for compliance with court orders and federal and state laws particularly regarding Limited English Proficiency students, namely Hispanic students. In the *Comite de Padres* case,⁵⁷ concerning the compliance of the California

⁵³ CRLA Proposal Narrative for 2004 Grants Competition, p. 51. The 2004 Grants Competition is the most recent competition for which CRLA was awarded a three year grant. CRLA has since provided Grant Renewal Applications that do not deviate from the Narrative set out in the 2004 Grants Competition.

⁵⁴ CRLA 1998 Annual Report, p. 4.

⁵⁵ CRLA 2002 Annual Report. p. 5.

⁵⁶ Memorandum of Interview with Luis Rivera, Community Worker, CRLA Modesto (December 21, 2005).

⁵⁷ Comite de Padres de Familia v. O'Connell, No. CV281824 (Cal. Super. Ct. filed May 25, 1979), *termination of consent decree aff'd*, CO42166, 2004 Cal. App. LEXIS 1027 (Cal. Ct. App. Jan. 30, 2004).

State Board of Education with requirements that it ensure that students with limited English proficiency and non-English speaking students receive instruction in a language they understand and which resulted in a settlement agreement requiring the State to monitor the implementation of bilingual education programs,” the CS monitored the State’s monitoring of the programs with DLAT Rice, then DLAT Daniel and two attorneys from Multicultural Education, Training, and Advocacy (META). The CS stated that CRLA was not representing a client in conjunction with the monitoring activities, though she charged her time to a client named in the Comite case. The CS also stated that this client later became CRLA’s all-purpose client⁵⁸ for education issues, particularly issues regarding English as a Second Language (ESL) students.

- Public Benefits – CRLA’s Proposal Narrative for the LSC 2004 Grants Competition states that CRLA intends to “monitor state and county implementation of benefits programs through problem-solving meetings with state and county officials.”⁵⁹

Although monitoring of a case settlement on behalf of a client or monitoring the activity of an adversary may be entirely appropriate advocacy for an LSC grantee to undertake, apparently CRLA often engages in monitoring activities that are not on behalf of an interested client. CRLA’s monitoring of issues in which CRLA wishes to be involved, which appears to be in search of instances in which CRLA can engage in impact work, creates the conditions for instances of noncompliance with federal laws. CRLA’s monitoring activities often raises the issues addressed in Part III.A.3.c, regarding work performed without a client. Time spent monitoring any given situation without a client, be it the activities of private parties or state actions, draws limited precious resources away from their intended purpose, for CRLA to provide legal aid to clients who seek assistance.

3. CRLA Filed Cases Under California’s Unfair Competition Law on Behalf of the General Public and Who Are Otherwise Not Named Plaintiffs.

Until portions of California’s Unfair Competition law (UCL), CA Business and Professions Code §17200, were reformed in 2005, CRLA used the UCL to seek redress from employers for more than just clients represented by CRLA. Under the title “Making an Impact,” CRLA’s 2002 Annual Report explains how CRLA uses the UCL “to file lawsuits that will result in payment of back wages to all workers affected by the illegal practices workers [sic].”⁶⁰ Many of the workers on

⁵⁸ According to the CS all-purpose clients are client files that CRLA keeps open, regardless of whether the actual service to the client has concluded. CRLA advocates record time in all-purpose client files when advocates perform work on a case or matter but are not actually representing any client in the case or matter because no client has sought assistance regarding the case or matter. CRLA’s all-purpose clients are effectively straw man clients.

⁵⁹ CRLA Proposal Narrative for 2004 Grants Competition, p. 13.

⁶⁰ CRLA 2002 Annual Report, p. 7.

whose behalf CRLA filed litigation, under the name of “the general public” may not have been eligible for LSC funded services. Nonetheless, CRLA filed litigation on their behalf and sometimes recovered damages on their behalf and administered a fluid recovery on their behalf. CRLA’s Annual Report goes on to say that “[f]iling strong court actions has resulted in bringing the employer to the settlement table.”⁶¹ Similarly, the same Annual Report states that CRLA used the UCL tool in the H-2A monitoring cases also.

In 2004 California voters passed amendments to the UCL. One of the most significant changes eliminated private lawsuits brought on behalf of the general public. Now, a UCL plaintiff who seeks to represent individuals other than himself must abide by the rules and procedures governing class actions.⁶²

4. CRLA Files Amicus Briefs.

In a five-year period ending in 2005, CRLA filed at least 10 amicus briefs in federal and California appellate level courts.⁶³ CRLA did not file all of the amicus briefs on behalf of clients⁶⁴ and kept questionable time keeping records on those filed on behalf of clients. The filing of amicus briefs in CRLA’s institutional capacity rather than serving individual clients appears consistent with the allegation that the grantee desires to be involved in cases that the grantee deems will have an “impact.”

a. CRLA Files Amicus Briefs in Its Institutional Capacity and Not on Behalf of Any Client.

CRLA filed three of the identified briefs in its “institutional” capacity. A copy of the minutes of an April 29, 2000 telephonic meeting indicates that the Executive Committee of CRLA’s Board of Directors discussed changing CRLA’s policy of filing amicus briefs on behalf of a client “so that CRLA is not limited to only representing individual clients but to represent CRLA itself of this kind of amicus argument.” One board member commented that “in these political times, the policy of having a client to represent is well founded...[but] we need to adapt to changing times and we need to participate in that forum as amicus with a stronger position.” The Board passed a motion to allow CRLA “to represent

⁶¹ Id.

⁶² The OIG recently learned that CRLA is currently attempting to employ the UCL tool to file a representative action without first following the required class action procedures. Though the OIG has not undertaken a comprehensive evaluation of California’s reformed UCL, a cursory review begs the question of whether a representative action filed under the UCL is tantamount to filing a class action. If filing a representative action under the UCL is, in effect, the same as filing a class action lawsuit, CRLA may be in violation of Part 1617 of LSC Regulations, which prohibits any grantee from *participating* in a class action lawsuit.

⁶³ The OIG has not conducted a comprehensive search for CRLA amicus filings.

⁶⁴ CRLA’s filing of amicus briefs on behalf of clients is not inappropriate so long as the filings do not otherwise violate LSC restrictions.

clients or CRLA [in the filing of amicus litigation] when appropriate and at the discretion of the Executive Director.” CRLA filed these three briefs not on behalf of a client, but in its “institutional” capacity. A DLAT working on one of the cases charged all of his time to an existing CRLA client with similar issues as those on appeal. Other DLAT time spent working on amicus litigation without a client is categorized as an “activity.” Again, CRLA’s filing of amicus briefs in its “institutional” capacity seems inconsistent with the premise on which funding is supplied, to provide legal assistance to eligible clients.

Many of the briefs appear to be joined by a number of other private attorneys and civil rights and poverty organizations, indicating the availability of other counsel to perform this work. These briefs include those filed on behalf of particular clients and those filed by CRLA in its “institutional” capacity. The multitude of other attorneys and organizations available to represent the interests of the poor community via the filing of amicus briefs raises concerns regarding CRLA’s use of resources. Although CRLA certainly can use its non LSC funds to file amicus briefs representing itself rather than an eligible client,⁶⁵ as indicated supra note 9, LSC grantees are reportedly turning away half of the clients who seek services due to lack of funding.

It is not for the OIG to judge the wisdom of using non-LSC resources to file amicus briefs rather than for representation of individual clients. The filing of amicus briefs in CRLA’s institutional capacity rather than serving individual eligible clients, however, appears consistent with the allegation that the grantee desires to be involved in cases that the grantee deems will have an “impact.”

b. Even When CLRA Files Amicus Briefs on Behalf of Clients The Quality of Timekeeping Records Is Questionable.

The timekeeping and intake documents for several of the cases raises questions of accurate timekeeping; such as: a retainer agreement requesting CRLA service pertaining the filing the amicus brief dating more than one year after the date of the initial intake documents, and in which the intake documents indicate one attorney sent a letter on behalf of the client one year prior to a separate attorney keeping time under the client’s file. The client’s file appears to still be open in CRLA’s database. Also puzzling is attorney time charged to clients other than the client on whose behalf CRLA filed the amicus; the filing of amicus briefs on behalf of and time charged to clients whose cases are not affected by the filing, i.e. the clients’ cases have already been resolved favorably for the client; time being kept as an “activity” or a “matter” more than one month before the client intake sheet indicates the CRLA acquired the client and not affiliated with the client CRLA purports have filed on behalf of but who is not listed in the filing, rather CRLA appears to have filed on behalf of the defendant-appellant. Such timekeeping irregularities raise doubt as to the accuracy of CRLA’s timekeeping records and the integrity of a basic accountability tool.

⁶⁵ The OIG has not yet determined the source of funding supporting these activities.

D. CRLA's Timekeeping and Case Management Practices Create Conditions in Which Advocates Can Serve Undocumented Persons Without Detection.

The CS and a second witness stated that employees are expected to serve undocumented persons and those employees who do not provide services to undocumented persons are looked down upon by the organization. The CS stated, "I personally provided legal services to undocumented aliens on CRLA time and using CRLA resources and I am aware that other CRLA Modesto staff did as well." The CS also stated, "[b]eyond the parameters of what I was willing to do, there was a clear feeling among certain CRLA staff that anyone unwilling to serve undocumented persons is a bad person." The CS stated that time spent serving undocumented persons was charged as a "matter."⁶⁶ The CS stated that the former Directing Attorney "directed that if an undocumented individual was provided assistance there was to be no paperwork attached to the intake. The directive was that any paperwork which had been generated should be destroyed." The CS and other attorneys did not destroy the paperwork and attached it to the case file despite the Directing Attorney's mandate. The CS also stated that undocumented persons who were served were not given a case number nor entered into the case management system, as is typical for all other clients CRLA sees. Rather, the former Directing Legal Secretary kept a separate binder for the advocates to access in order to determine if and what kind of the services CRLA had previously provided the client.

The second witness corroborated that undocumented persons were served and that a separate binder containing their information was kept while the former Directing Attorney was there. The witness also stated that she served undocumented persons, or at least provided the client with an informational packet or referral, permissible under LSC regulations. The witness also stated that after the Directing Attorney left, the Acting Directing Attorney ordered that all clients, undocumented or not, unserved or not, were to be entered into the case management system and given an case number. The witness stated that Community Workers who gained and assisted clients while out in the field did not always enter their clients, some of whom are undocumented.

Based on the OIG's understanding of how clients are served and entered into CRLA's case management system, the OIG determined that the CS's account of how the Modesto Office was able to serve and not document service to undocumented workers appears entirely plausible. The OIG interviewed the Modesto Office staff regarding how clients are processed through intake. The OIG understands that the receptionist hands walk-in clients an intake form to be filled out. The receptionist tries to assign the client an intake number before the client sees an advocate, but sometimes the receptionist is not able to enter the

⁶⁶ LSC's timekeeping regulation requires time be kept for all cases, matters, and supporting activities. See LSC Regulations, supra note 6, Part 1635.

client into the case management system before the client sees the advocate. When the client sees an advocate before being entered into the case management system, the advocate returns the intake form to her at the end of the day for her to assign the client a number. Advocates close all of the cases and assign the closing codes; however, if the client cannot be provided service, the client's case is closed as a "matter."

Under CRLA's intake system, CRLA advocates could easily provide services to undocumented persons and no record of that service would ever exist. Employee six month work plans for the Modesto Office advocates indicate that persons seeking assistance from CRLA are not processed in the ideal manner described above. As a result, an undocumented person may receive services from a CRLA advocate but no record of the service may ever be created by the intake personnel. Based on the CS and witness statements, former management of the Modesto Office directed such activity. Furthermore, CRLA Community Workers may easily provide services to undocumented persons while monitoring agricultural work sites and no record may ever be created. Internal communications and timekeeping documents indicate that CRLA Management was aware of the lack of accountability for Community Workers' time. The OIG intends to develop additional evidence concerning the CS's allegations.

E. CRLA Allegedly Focuses Its Resources on Latino Work.

The CS and another knowledgeable witness both stated that in their respective views CRLA focuses on issues benefiting California's farmworker and Latino community. According to both, CRLA believes that other advocacy groups focus on issues such as domestic violence, public benefits, etc... and that the farmworker and Latino issues are "[CRLA's] thing." The CS and the witness believe that CRLA's focus on the provision of services to the Latino community, particularly through impact work, results in the provision of inadequate service to other segments of the poor population within CRLA's service area, including other ethnic groups and those living in urban areas. Specifically, the CS stated:

I also believe that CRLA's work demonstrates a bias toward serving farmworkers and Latinos. While I support legal assistance in those areas, CRLA is often the sole recipient of legal services monies in increasingly urbanized areas. Further, the service areas are broadly diverse. Yet in Modesto, for example, the Community Committee (which is supposed to be reflective of the service area population) does not include any African Americans, Southeast Asians, etc. In addition, little – if any – outreach/information service is provided to non-Latino community groups.

The CS also recounted two instances in which non-Latino persons required extended services from CRLA's Modesto Office, as it is the only legal aid provider in the area, but could not find anyone to help them. The CS stated that

she attempted to assist each as much as possible but “the demands of ongoing impact work [] prevented me from accepting their cases for full representation.”

The CS and the witness believe the following CRLA management behaviors support this assertion: CRLA’s Modesto Office expected staff to serve undocumented persons, and they believe this practice is not specific to Modesto; CRLA interjects itself into high profile cases involving Latino issues, such as the CCC v. Modesto case, the McBride Case, and the Ceres Case, see discussion supra Parts III.A.2.a. & b. and note 15.; CRLA Management is disinterested in impact cases unless the case involves a Latino or farmworker issue, such as the mobile home case also described supra note 15; CRLA favors employees who work on Latino issues; and CRLA Management and staff inappropriately travel to Mexico.


The OIG has begun developing facts surrounding this assertion. The OIG is reviewing specific information provided by the CS. The OIG is also reviewing other evidence that tend to bolster or weaken this allegation, including: CRLA’s internal procedures, policies and practices; CRLA publications and representations to the public; CRLA communications with LSC and other evidence developed by the OIG.

The OIG notes that though each of the behaviors alleged by the CS in support of the assertion may, indeed, be true, a determination of whether CRLA truly expends its resources in a manner that disproportionately favors services to Latinos and farmworkers may not be possible due to the lack of accountability in LSC timekeeping requirements.⁶⁷

⁶⁷ See introductory Note of this report, supra pp. iii-iv.

Conclusion

The OIG substantiated the general assertion that CRLA is focused on impact work and developed substantial evidence to support several particular findings of noncompliance by CRLA. At this time the OIG is unable to conclude on the permissibility of several other potentially problematic activities in which CRLA engages. The OIG intends to further investigate the unresolved issues as soon as the access issues with CRLA are remedied.



Kirt West
Inspector General

September 13, 2006