

**LEGAL SERVICES CORPORATION**

**OFFICE OF INSPECTOR GENERAL**

**COMPLIANCE WITH SELECTED REGULATIONS  
PERFORMANCE AUDIT**

**Grantee:                      Legal Aid Society of Middle Tennessee  
   Recipient No. 643040**

**Final Audit Report No. AU96-063H**

**September 1997**

**LEGAL SERVICES CORPORATION  
OFFICE OF INSPECTOR GENERAL  
COMPLIANCE WITH SELECTED REGULATIONS  
PERFORMANCE AUDIT  
PROJECT NO. 96-063**

GRANTEE: Legal Aid Society of Middle Tennessee (643040)  
Nashville, Tennessee

## **INTRODUCTION**

In Public Law 104-134<sup>1</sup>, the 1996 appropriation for the Legal Services Corporation (LSC), Congress imposed restrictions and prohibitions on the types of services LSC grantees may provide to clients and on the methods they may employ in providing those services. The law, enacted on April 26, 1996, required the grantees to discontinue servicing certain types of cases immediately. It also required grantees to divest of three other types of cases (class actions, prisoner litigation, and alien representation) no later than July 31, 1996. Congress required LSC to report whether grantees had divested of these cases within the time allotted.

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

## **BACKGROUND**

LASMT received \$960,328 in Fiscal Year 1996. LASMT's main office is located in Nashville, Tennessee, and there are three branch office locations. As of the date of this audit, LASMT employed, in addition to the Executive Director, approximately 11 attorneys, 4 paralegals, and 26 other staff. In June 1996, LASMT reported six class action suits, one of which was also a prisoner litigation suit, and no alien representation cases, a total of six cases to be divested by July 31, 1996.

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<sup>1</sup> 110 Stat. 1321 (1996)

## OBJECTIVES

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

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

## SCOPE

The audit was conducted at the main office in Nashville, Tennessee from December 2-3, 1996, and did not include any branch offices. Audit procedures were limited to the following six regulations and the applicable interim rules in effect for 1996:

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

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

## METHODOLOGY

The OIG conducted the performance audit of LASMT in accordance with generally accepted government auditing standards. Audit procedures were limited to the following:

- conducting interviews with the Executive Director, managing attorneys and other case handlers to obtain an understanding of the policies, procedures and processes established to implement the regulatory requirements;
- examining documentation supporting management's assertion on its involvement in cases and other matters related to class actions, certain categories of aliens, and certain types of representation involving incarcerated persons;

- conducting a search for restricted cases that were not reported and not divested by July 31, 1996;
- examining a sample of case files opened prior to and after April 26, 1996 to ascertain whether there was continued involvement in restricted cases;
- determining whether the recipient established policies and procedures as required by the respective regulations and communicated those policies and procedures to its staff.

## **FINDINGS AND RECOMMENDATIONS**

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

- We found no evidence that LASMT did not divest of class action, prisoner litigation, and restricted alien cases by the July 31, 1996, deadline as required by section 508(b)(2) of Public Law 104-134.
- We found no evidence that LASMT continued representation after April 26, 1996 with respect to prohibited or restricted services in violation of the law. However, we found the following reportable condition.

### **FINDING 1** — Motions for substitute counsel were not filed in a timely manner.

In two of six reported class action cases, LASMT did not file appropriate motions for substitute counsel to remove its current program attorneys from the cases until December 3, 1996, after the matter was brought to the executive director's attention by the OIG. LASMT filed notices of substitute counsel on July 31, 1996 with copies to defendants' counsel, but this was not sufficient to comply with Section 502(a) of the local court rules.

There was no evidence that LASMT was involved in litigating these cases subsequent to July 31, 1996. The cases were transferred to a non-LSC funded entity, the Tennessee Justice Center (TJC). The court granted the motions for substitute counsel on December 20, 1996.

### **RECOMMENDATION**

None.

### **GRANTEE MANAGEMENT RESPONSE**

LASMT clarified that notices of substitute counsel were filed on July 31, 1996, which were insufficient to comply with the local rules requiring the filing of motions. LASMT also stated "... the orders entered in both cases by the Court on December 20, 1996, specifically provided that the withdrawal and substitution were effective July 31, 1996."

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

#### **GRANTEE MANAGEMENT COMMENTS TO THE DRAFT AUDIT REPORTS**

The complete text of LASMT's response to the first and second draft audit reports are included as Appendix I and II, respectively. As deemed relevant, LASMT's comments have been incorporated above.

# LEGAL AID SOCIETY OF MIDDLE TENNESSEE

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March 7, 1997

Mr. Albert B. Puglia  
Acting Assistant Inspector General  
for Program Integrity  
Office of the Inspector General  
Legal Services Corporation  
750 First Street, N.E., 10<sup>th</sup> Floor  
Washington, DC 20002-4250

by mail and  
by fax to 202-336-8955

## Re: Audit Project 96-063, Performance Audit of Legal Aid Society of Middle Tennessee, 643040

Thank you for sending me a copy of the draft audit report dated February 27, 1997, covering the performance audit of our organization that the Office of Inspector General conducted December 2 - 3, 1996.

Your letter asked me to respond to each finding.

I agree with the "Findings and Recommendation" on page 2 and the "Compliance" on page 3.

Under "Management Controls" on page 3 there is a "Findings 1" which while accurate omits two essential facts.

1. "Findings 1" fails to mention that LASMT attorneys on July 31, 1996, filed Notices of Substitution of Counsel in both of the two class action cases in question. For the sake of accuracy, you should add in "Findings 1" that our attorneys filed those notices in both cases on July 31, 1996, with copies to defendants' counsel, thinking that filing was sufficient.

As far as the defendants and the attorneys were concerned, LASMT attorneys were out of the case after July 31, 1996. Unknowingly, however, we had not complied with a local rule

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March 7, 1997  
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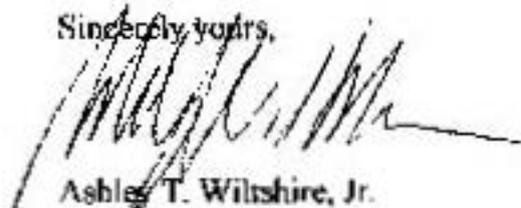
which required a motion rather than a notice. In December, when the OIG representative asked for an "order," this failure came to light and was corrected immediately.

2. The orders entered in both cases by the Court on December 20, 1996, specifically provided that the withdrawal and substitution were effective July 31, 1996.

I think if these facts are added to "findings 1," the draft report will be complete and more accurate.

Thank you for your cooperation.

Sincerely yours,



Ashley T. Wiltshire, Jr.  
Executive Director

ATW:pr

# LEGAL AID SOCIETY OF MIDDLE TENNESSEE

211 Union Street, Suite 800  
Nashville, Tennessee 37201  
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July 25, 1997

Alexis M. Stowe  
Assistant Inspector General for Audit  
Office of the Inspector General  
Legal Services Corporation  
750 First Street, N.E., 10<sup>th</sup> Floor  
Washington, DC 20002-4250

**Re: Audit Project 96-063, Performance Audit of  
Legal Aid Society of Middle Tennessee, Recipient No. 643040**

Dear Alexis Stowe:

Thank you for sending me the second draft of the audit report covering the audit your office conducted of our organization in December 1996. You asked that I review the report and provide written response or comments to you no later than August 1, 1997.

I have two comments.

The first comment concerns the second sentence in the MANAGEMENT RESPONSE section of the second draft on page 4. That sentence now reads, "LASMT also added that the motions that were filed in December 1996 were retroactive to July 31, 1996." This is not what we said. What we said was, "The orders entered in both cases by the Court on December 20, 1996, specifically provided that the withdrawal and substitution were effective July 31, 1996."

This is an important distinction. The important thing is not what our motions said but what the court's order said. The court order said it was effective July 31, 1996, not retroactive to July 31, 1996. I believe you should use the court's language that I used in my letter of March 7, 1997, as quoted above.

The second comment has to do with three sentences in the last paragraph of the FINDINGS AND RECOMMENDATIONS section. This is language that was in the first draft audit report, which you sent to me, and I am embarrassed that I did not notice the problem and call it to your attention in my letter of March 7, 1997.

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#### Staff Attorneys

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Dawn M. Bunting Kathryn E. Calhoun Nan S. Calver Jean K. Crow David A. ElGager	Kimberly J. Kelly L. Tamara West Helen Karow Williams David J. Temple

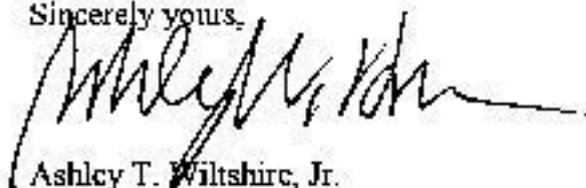
Legal Services Corporation  
Assistant Inspector General for Audit  
July 25, 1997  
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The three sentences that begin with, "The cases were handled by more than one program attorney . . ." and end with ". . . LASMT concluded that the filings were unnecessary" leave a mistaken impression. Who was handling the cases had nothing to do with our failure to comply with § 502(a) of the local court rules. We simply thought that filing a notice was enough. Although in one case one of the former LASMT lawyers transferred to Tennessee Justice Center and continued representation, in another case that was not so. I would remove all three sentences to give a more accurate picture of the situation.

I have attached to this letter a copy of page 4 of the second draft showing the changes I suggest.

Thank you again for allowing me to review the report. Thank you also for the courtesy of your staff during the on-site portion and the report development of the audit.

Sincerely yours,



Ashley T. Wiltshire, Jr.  
Executive Director

ATW:pr

## 2nd. DRAFT

after the matter was brought to the executive director's attention by the OIG. LASMT filed notices of substitute counsel on July 31, 1996 with copies to defendants' counsel, but this was not sufficient to comply with Section 502(a) of the local court rules.

There was no evidence that LASMT was involved in litigating these cases subsequent to July 31, 1996. The cases were transferred to a non-LSC funded entity, the Tennessee Justice Center (TJC). ~~The cases were handled by more than one program attorney prior to the 1996 prohibitions. One of the former LASMT attorneys transferred employment to TJC to continue representation on the restricted cases. Because one of the attorneys of record representing the clients did not change, LASMT concluded that the filings were unnecessary.~~ The court granted the motions for substitute counsel on December 20, 1996.

### RECOMMENDATION

None.

### MANAGEMENT RESPONSE

LASMT clarified that notices of substitute counsel were filed on July 31, 1996, which were insufficient to comply with the local rules requiring the filing of motions. LASMT also added that ~~the motions that were filed in December 1996 were retroactive to July 31, 1996.~~ "The Order entered in both cases by the Court on December 20, 1996, specifically provided that ~~that~~ that law withdrawal and substitution were effective July 31, 1996."

None.

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

### GRANTEE MANAGEMENT COMMENTS

The complete text of LASMT's response to the first draft audit report is included in Appendix I.