

LEGAL SERVICES CORPORATION

OFFICE OF INSPECTOR GENERAL

**USE OF FUNDS FOR PROHIBITED OR RESTRICTED ACTIVITIES
FINANCIAL RELATED AUDIT**

**Grantee: Advocates for Basic Legal Equality
Recipient No. 436150**

Final Audit Report No. AU96-064F

September 1997

**LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL
USE OF FUNDS FOR PROHIBITED OR RESTRICTED ACTIVITIES
FINANCIAL RELATED AUDIT
PROJECT NO. 96-064**

GRANTEE: Advocates for Basic Legal Equality, Inc. (436150)
Toledo, Ohio

INTRODUCTION

In Public Law 104-134¹, the 1996 appropriation for the Legal Services Corporation (LSC), Congress imposed restrictions and prohibitions on the types of services LSC grantees may provide to clients and on the methods they may employ in providing those services. The law 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 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 financial related audit of Advocates for Basic Legal Equality, Inc. (ABLE).

BACKGROUND

ABLE received \$772,981 in Fiscal Year 1996. ABLE's main office is located in Toledo, Ohio, and there are three branch office locations. As of the date of field work, ABLE employed, in addition to the Executive Director, approximately 17 attorneys, 4 paralegals, and 13 other staff.

¹ 110 Stat. 1321 (1996)

OBJECTIVES

The specific objectives of the financial related audit were to determine whether:

- ABLE used funds to pay other legal organizations to handle prohibited or restricted cases;
- current employees, terminated employees, or consultants continued to work on restricted or prohibited cases and received LSC funds for their services after restrictions and prohibitions took effect;
- timekeeping records indicated continued involvement in restricted or prohibited cases after ABLE ceased official involvement with the cases.

SCOPE AND METHODOLOGY

The financial related audit of ABLE was conducted in accordance with generally accepted government auditing standards. Field work was performed in the office in Toledo, Ohio from January 22-24, 1997. Audit procedures included interviews with LSC and ABLE personnel, review of ABLE policies and procedures, and examination of ABLE records.

FINDINGS AND RECOMMENDATIONS

With regard to the specific objectives detailed above, we provide the following findings.

- We found no evidence that ABLE used funds to pay other organizations to handle prohibited or restricted cases.
- We found no evidence that terminated employees or consultants continued to work on restricted or prohibited cases and received LSC funds for their services after restrictions and prohibitions took effect.
- We found no evidence in the timekeeping records to indicate that current employees continued involvement in restricted or prohibited cases after ABLE was required to cease official involvement with the cases, except for transitional work performed in order to transfer four cases to new attorneys pursuant to professional responsibility.

GRANTEE MANAGEMENT RESPONSE TO DRAFT AUDIT REPORTS

Grantee management concurred with the conclusions in the first draft audit report.

Grantee management's response to the second draft audit report indicates that the time charged to the Gonzales case after August 1, 1996 was either allowable pursuant to the LSC regulations or necessary in order to make a satisfactory transfer of the case pursuant to professional responsibility. The complete text of ABLE's responses to the first and second draft audit reports are included as Appendix I and Appendix II, respectively. We have considered ABLE's comments, and have incorporated them in this report where appropriate.



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March 5, 1997

Albert B. Puglia
Acting Assistant Inspector General
for Program Integrity
Legal Services Corporation
750 1st St. NE, 10th Floor
Washington, DC 20002-4250

Dear Mr. Puglia:

We are in receipt of your letter of February 27, 1997, and the draft Audit stating that ABLE "demonstrated substantial compliance with the requirements related to the prohibitions and restrictions on the use of LSC and non-LSC funds."

At this time, the only suggested correction we have to the draft Audit is that ABLE did not receive \$4,599,778 in FY 1996. Rather, we received \$772,981 in LSC funds during that period.

Please contact me if you have any questions.

Thank you for your consideration.

Very truly yours,



Joseph R. Tafelski
Executive Director

JRT/jad

cc: John Tull, Director
Office of Program Operation



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August 19, 1997

Alexis M. Stowe
Assistant Inspector General for Audit
Legal Services Corporation
Office of Inspector General
750 1st Street, N.E., 10th Floor
Washington, DC 20002-4250

Re: Audit Project 96-064, Financial-Related Audit of
Advocates for Basic Legal Equality, Inc.
Recipient No. 435150

Dear Ms. Stowe:

This letter is in response to your letter of July 30, 1997, and the accompanying second draft of the audit report covering the financial-related audit of Advocates for Basic Legal Equality, Inc. (ABLE). More specifically, we are writing to object to the "Findings and Recommendations" contained in this draft report and to urge the Office of Inspector General (OIG) to withdraw the finding regarding the time expended in Gonzales v. Galvin.

Background

By way of background, LSC conducted a financial-related audit of ABLE on January 22-24, 1997. The OIG's stated purpose in conducting the audit was "to confirm that prohibited cases are not being supported with LSC funds."

Throughout the audit process, ABLE provided the OIG with complete access to staff, records, and other requested documentation.

On February 27, 1997, ABLE received a first draft of the OIG's audit report. See Appendix I. The first draft of the audit report included the following Findings and Recommendations:



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ABLE demonstrated substantial compliance with the requirements related to the prohibitions and restrictions on the use of LSC and non-LSC funds. The audit revealed no evidence to indicate that ABLE supported prohibited or restricted activities, either directly or through alternative entities.

Prior to receipt of the first draft report, ABLE was informed by the OIG that 1) all the programs audited by the OIG had time entries after August 1, 1996 on restricted cases; and 2) ABLE's time entries after August 1, 1996 were on matters related to transfer of the case to new counsel, and that the OIG had determined that they did not rise to the level of a "finding".

Because the first draft report made no adverse finding against ABLE, but rather found "substantial compliance with the requirements related to the prohibitions and restrictions on the use of LSC and non-LSC funds", ABLE did not disagree with the first draft report. See Appendix II.

On July 30, 1997, ABLE received a second draft of the audit report with the following "Findings and Recommendations":

With regard to the specific objectives detailed above, we provide the following findings.

- We found no evidence that ABLE used LSC funds to pay other organizations to handle prohibited or restricted cases.
- We found no evidence that terminated employees or consultants continued to work on restricted or prohibited cases and received LSC funds for their services after restrictions and prohibitions took effect.
- We found evidence in the timekeeping records to indicate that current employees continued involvement in restricted or prohibited cases after ABLE was required to cease official involvement with the cases.

FINDING 1-- As reported in ABLE's timekeeping records, a managing attorney in the Toledo office continued involvement in a prohibited case after the divestiture date of August 1, 1996.

ABLE identified four restricted or prohibited cases that were subject to divestiture by August 1, 1996. ABLE

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time records, staff interviews and available copies of court documents indicated that ABLE staff continued working on these four cases after August 1, 1996. A review of the detailed time reports generated by the recipient from its timekeeping system indicated that the time charged by ABLE attorneys after the divestiture date of August 1, 1996 to three of the four cases appeared to represent transitional work performed in order to transfer these cases to the new attorneys.

The time charged to one case, Gonzales, et al v. Galvin, et al, however, appeared to involve time charged beyond transitional work performed in order to transfer this case to the new attorney. The executive director and the managing attorney explained that although this case had been transferred, ABLE maintained an ethical responsibility with regards to certain filings in the case.

RECOMMENDATION

ABLE and this attorney must completely withdraw from this case immediately. In that this case required divestiture as of August 1, 1996, this matter is referred to LSC management for additional follow-up. See Appendix III.

This communication is in response to the Findings and Recommendations contained in the second draft of the audit report.

Response to Findings and Recommendations Contained in Second Draft of Audit Report

ABLE acknowledges that its staff was required to spend time after August 1, 1996 transferring four (4) restricted cases to new counsel. They did this to fulfill their responsibilities under the Ohio Code of Professional Responsibility DR 2-110(A)(1) and (2).¹ However, we object to the Finding that attempts to characterize our work in the Gonzales v. Galvin case as anything but "transitional work performed to transfer this case to the new attorney". In making its Finding, it should be noted the OIG does not specify what time was "beyond transitional work", but rather states that the time charged "appeared" to involve time spent beyond transitional work.

¹ DR 2-110 Withdrawal From Employment. (A) In general. (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission. (2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

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In reviewing the time charged to the Gonzales case after August 1, 1996, it is clear that such time was spent either transferring the case to substitute counsel, or working on a previously filed motion seeking attorneys fees and expenses for time and costs incurred before August 1, 1996. ABLE accordingly contends that the time charged on this case was appropriate and reasonable.

By way of background, the Gonzales case is a class action brought against the City of Toledo by African-American and Hispanic individuals. The case involves claims of racial discrimination in the hiring of police officers. Initiated in 1972, the litigation has presented a variety of highly complex legal issues, and extensive monitoring of a consent order.

Of the time charged by ABLE attorneys to this case between August 1, 1996, and December 31, 1996, 5.2 hours were spent litigating a motion for fees and expenses which ABLE filed on July 25, 1996. This activity was consistent with sections 504(a)(13) and 508(b)(3) of Pub.L. 104-134, and 45 C.F.R. 1642 3(c)(1) (61 Fed. Reg. 45763), which permit recipients to collect fees for claims filed before April 26, 1996. LSC specifically permits recipients, like ABLE, to seek and retain fees in class actions for work performed prior to August 1, 1996.

The remainder of the time was spent transferring the case to private counsel, with the bulk of this time occurring in August, 1996. ABLE had to spend time transitioning this case to private counsel after August 1 because we were not able to find substitute counsel before then.

As soon as it became clear that the new congressional restrictions would actually be imposed, ABLE began seeking substitute counsel for the Gonzales case. It was nearly impossible to find a qualified attorney to take over a twenty-five year old class action case that remained in active litigation. ABLE made numerous requests and used a variety of resources to secure substitute counsel, including the Toledo Bar Association's Lawyer Referral Service. The Legal Assistance Partnership Program (LAPP) sponsored by the ABA and the NLADA also tried unsuccessfully to locate substitute counsel. In addition, the Lawyers' Committee for Civil Rights Under Law, a Washington, D.C. based civil rights organization, contacted numerous law firms about the case.

To add to the complexity of the matter, on June 26, 1996, the Court issued an Order vacating a Consent Decree that had been in place since 1974. To protect its clients' interests, while continuing efforts to locate substitute counsel, ABLE filed a series of post-judgment motions and a notice of appeal prior to August 1, 1996.

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Substitute counsel thus not only had to review a 25 year old case file, but also be prepared to begin work on the appeal of the case immediately.

By August 1, 1996, ABLE had located substitute counsel. In early September additional substitute counsel joined the case. ABLE spent time in August and September transferring the case to these attorneys.²

By this time, the case was on appeal and pending in the United States Court of Appeals for the Sixth Circuit. ABLE assumed that the new attorneys would file a motion for substitution of counsel in the Sixth Circuit. When this did not occur, as reflected in the entries for November 3 and November 5, ABLE filed a motion for leave to withdraw as counsel in the Sixth Circuit.

In December, 1996, substitute counsel, while preparing to file a brief in the Sixth Circuit, requested copies of various documents in the case. Given the size of the case files (16 archive boxes and 14 binders) and the location of substitute counsel (New York City), ABLE still had physical custody of the files. The time entries for December, 1996 reflect time spent responding to requests for documents from the files that substitute counsel needed for the appeal.

The amount of time spent on the Gonzales case after August 1, 1996, and the period of time in which it was spent was very reasonable, especially when one considers its age, size, complexity, and litigation status.

ABLE's ethical obligations precluded it from transferring the case to substitute counsel without explanation or assistance, particularly in light of the Court's June 28 decision to vacate the 1974 consent decree. DR 2-110(A)(2).

In addition, it should be emphasized that no substantive work was undertaken in the Gonzales case after August 1, 1996. As described above, all the time expended on Gonzales after August 1, 1996, was either to seek attorney fees as authorized by LSC, or to make a satisfactory transfer of the case to substitute counsel.

The second draft of the audit report also makes a recommendation that ABLE and the managing attorney in the Toledo office "completely withdraw from the case immediately". As reflected in ABLE's time records and relevant court documents, this

² In preparing this response, ABLE discovered that some of the time spent in August and September 1996 transferring the case to substitute counsel inadvertently had not been entered in ABLE's computer, and did not appear in ABLE's time records. We have attached an itemization of this time. See Appendix IV.

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has been done. ABLE filed a Motion for Substitution of Counsel on August 1, 1996. The District Court granted ABLE's motion on August 5, 1996 (the Order was filed on August 14, 1996). The Sixth Circuit granted ABLE's motion for leave to withdraw as counsel on November 12, 1996. Copies of these court documents were provided to the OIG during its January, 1997 audit of ABLE.

Conclusion

In summary, time spent on Gonzales v. Galvin after August 1, 1996, was necessary to transfer the case to a new attorney in a responsible and ethically appropriate manner. The balance of the time was spent on valid attempts to collect fees and expenses incurred before August 1. ABLE accordingly objects to the Finding contained in the second draft audit report characterizing this time as anything but "transitional". In addition, ABLE submits that any recommendation that ABLE and its managing attorney withdraw from the case immediately is unnecessary since withdrawal from the case was undertaken on August 1, 1996, over a year ago.

Thank you for the opportunity to respond to this draft report. Please feel free to contact me if you have any further questions, or need additional information.

Sincerely,



Joseph R. Tafelski
Executive Director

JRT/jad

cc: John Tull, Director
Office of Program Operations