

NATIONAL LEGAL AND POLICY CENTER

"Promoting Ethics in Government"

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COMPLAINT

Before:

Legal Services Corporation

750 First Street, NE, 11th Floor

Washington, DC 20002-4250

June 9, 1999

In the Matter of:

Legal Services of Northern Virginia, Inc. (LSC Recipient No. 447007)
6400 Arlington Blvd, Suite 6400
Falls Church, VA 22042

Complainants:

Mr. Stuart A. Miller
9806 Kohoutek Court
Vienna, VA 22182-1945

and

National Legal and Policy Center
1309 Vincent Place, Suite 1000
McLean, VA 22101

Background

This complaint alleges that Legal Services of Northern Virginia, Inc. (LSNV), a program funded by Legal Services Corporation, improperly provided legal assistance to an individual who apparently did not meet the eligibility standards for such assistance as set forth in the LSC Act and regulations. Moreover, when information was provided to LSNV that their client owned both residential and investment real estate, horses, an interest in at least two businesses and had imputed income well in excess of the amount which would make her legally eligible for legal assistance, LSNV proceeded to provide legal services to the client and refused to even respond to the individual providing the information.

Additionally, the LSNV client was residing in Maryland, had income in excess of that of her spouse and was apparently in arrears in child support payments at the time LSNV provided her with legal representation.

On February 19, 1999, Mr. Stuart A. Miller wrote a letter to Ms. L. Mestre of LSNV regarding the representation that LSNV was providing to Mr. Miller's ex-wife, Lelia Victoria Kent Kelly Miller (Ms. Kent). [See: Exhibit A] Mr. Miller, the custodial parent of the couple's 11-year old son, had learned from his son's

school that a LSNV attorney had requested to talk to the son's 4th and 5th grade teachers and guidance counselors.

Mr. Miller's letter questioned the eligibility of his ex-wife to qualify for legal assistance, noting, inter alia, that his ex-wife:

- lived on a ranch in Allegany County, Maryland where she raised horses
- had real estate investments, including 30.5 acres of developed non-primary-residential property in Garrett County, Maryland
- had given up custody of the couple's son in 1996 to move to a Maryland farm and raise horses
- had failed to pay any court-ordered child support
- had ceased paying court-ordered health insurance premiums
- owned an interest in at least two businesses: "Doctor's Billing Services" and "Classic Carriage Services"
- had imputed income under a July 1996 court order of \$2733 per month
- had two attorneys of record with respect to domestic issues and that neither of the attorneys had filed a motion to withdraw as attorney for Ms. Kent

Mr. Miller provided LSNV with photocopies of the deeds of the referenced properties along with his letter. [See: Exhibits B, C, and D]. He also appended a copy of the July 1996 Final Order for child support in which the court imputed a monthly income to his ex-wife of \$2733, amounting to approximately \$32,800 in annual income. [See: Exhibit E]

On February 25, 1999, Mr. Miller sent a letter via fax to the principal of his son's school (Mrs. Virginia B. Mahlke) prohibiting LSNV interviews of his son's teachers and guidance counselors, alternatively arguing that at least such interviews should be postponed pending a motion for injunctive relief that he intended to file in the event that his request to prohibit the interviews was not sufficient. The school principal telephoned Mr. Miller to inform him that LSNV had already conducted the interviews over the two prior days. Mr. Miller took their actions to be a sign that they were ignoring the evidence that he had provided as to his ex-wife's ineligibility and proceeded to accelerate their provision of legal representation for Ms. Kent.

LSNV never answered Mr. Miller's letter.

Apparent Violations of 45 CFR Part 1611

"... preference to the legal needs of those least able to obtain legal assistance."

The Legal Services Corporation Act of 1974 provided ample authority to LSC to ensure that tax dollars appropriated to LSC went to provide legal assistance to those individuals who truly needed it. The LSC regulation which most specifically deals with eligibility issues, 45 C.F.R. Part 1611, stated as its purpose ensuring

*"...that a recipient will determine eligibility according
to criteria that give preference to the legal needs of those*

least able to obtain legal assistance... 45 C.F.R Part 1611.1

This case makes a mockery out of the requirement that LSNV give preference to those least able to obtain legal assistance. A client who owns horses, real estate investments, business interests and was found to have imputed income far in excess of that of her ex-husband as well as the maximum amount allowed by LSC regulations can hardly be said to be among those least able to obtain legal assistance. The fact that the client had two private attorneys earlier also underscores the fact that she could afford legal representation.

45 C.F.R. Part 1611.3 Maximum Income Level

While the complainants are not privy to the exact annual income of Ms. Kent at the time she became a client of LSNV, purportedly in February 1998, the 1996 court order in Miller v. Miller found her imputed income to be \$2733 a month. [Exhibit E] That monthly income represents an annual income of \$32,796.

The maximum income level for individuals eligible for assistance for the period of time in question in this matter was \$10,063 for single individuals in all states but Alaska and Hawaii. This figure represents 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services. 63 FR 11376

Whatever the vagaries of Ms. Kent's business income, the imputed income found by the court in 1996 represented more than three times the maximum income level allowable for eligibility.

Unless authorized by 45 C.F.R. 1611.4 of the LSC regulations, no person whose income exceeds the maximum annual income level established by the recipient shall be eligible for assistance under the LSC Act.

45 C.F.R. 1611.6 Asset Ceilings

LSC regulations require recipients of LSC funds such as LSNV to establish reasonable and specific asset ceilings to be utilized in determining eligibility for services. These determinations must be consistent with the recipient's priorities established in accordance with 45 C.F.R. 1620 with special consideration given to the legal needs of the elderly, institutionalized, and handicapped. None of those categories apply to Ms. Kent.

The LSNV board of directors has the authority to allow its program to waive asset ceilings on allowable assets in extremely meritorious situations. 45 C.F.R 1611.6(e)

Nothing in this case remotely qualifies the client's situation as extremely meritorious. If anything, just the opposite is true. A woman whose income exceeded her husband's had voluntarily relinquished custody and subsequently failed to pay court-ordered child support as well as health insurance premiums for her child. While LSNV seemed determined to interview the child's teachers and guidance counselors over the strong objections of the custodial father, LSNV subsequently took no legal action challenging that custody. Presumably, if there was a strong case to challenge the father's custody, LSNV would have done so.

45 C.F.R. 1611.7 Manner of determining eligibility

As this case clearly involved custody issues which had been determined recently in a Fairfax County Circuit Court, a court within the service area of LSNV, it was very easy for LSNV to obtain a good idea of their prospective client's financial situation through a review of the child support order.

LSC regulations state that if there is substantial reason to doubt the accuracy of information provided by a prospective client, that the legal services program

...shall make appropriate inquiry to verify it... 45 C.F.R. 1611.7(b)

Mr. Miller's letter of February 19, 1999 to LSNV was sent to the LSNV attorney involved in the case and a carbon copy was sent to the Acting Director of LSNV, Lori Wagner. It not only set forth numerous credible

reasons why Ms. Kent was not eligible for assistance, but it included copies of deeds and court records substantiating the points he made. All of the information he provided was easily confirmable.

In short, Mr. Miller provided more than ample substantial reasons as to the ineligibility of his ex-wife for assistance, yet there is no indication that LSNV took any steps required by LSC regulations to verify the information at issue. The very fact that the lawyer in the case as well as the program director never responded to Mr. Miller and the protested interviews were promptly scheduled underscores the apparent blatant failure of this program to follow LSC regulations, as required by law.

Legal Services of Northern Virginia, Inc.: Serial Violator of LSC Act and Regulations

On its face this case is not only about a legal services program which represented a client who was clearly ineligible - and failed to terminate that representation when substantial evidence was provided as to the client's ineligibility.

The larger issue is why a program with a heavily documented record of abusing LSC regulations continues to operate without anything remotely resembling sanctions for its multiple acts of mismanagement and apparently willful violation of regulations.

According to an October 1998 audit report of the LSC Office of Inspector General, Legal Services of Northern Virginia was plagued with regulatory violations and gross mismanagement. [See: **Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance With Selected Regulations, Office of Inspector General, LSC, Audit Report No. AU99-001**]

The audit report found:

- LSNV significantly overstated the number of open and closed cases worked on during the year
- A significant number of case files could not be located for review.
- attorneys or paralegals responsible for client cases were incorrectly identified for almost 18% of sample cases
- incorrect case numbers were assigned to many clients.
- ...eligibility determinations for some individuals were not fully documented.
- ...controls over the intake and processing of client data were inadequate.
- LSNV's time keeping system did not comply fully with LSC's requirements established in 45 C.F.R. 1635...

Given the eligibility issues raised by this complaint, it's important to note that the audit also found:

- "Cases were opened and later closed for ineligible clients." (Audit, page 6)
- Individuals were accepted as clients and case numbers assigned at the intake point, prior to the eligibility determination. In some cases where the individual was later found to be ineligible, the case was closed and reported to the LSC. We were unable to estimate the over reporting of such cases because data was not available. (Audit, page 6)
- Recommendation

LSNV

ÖWe recommend that LSNV:

9. Remind case handlers, in writing, that the procedures for documenting client eligibility must be consistently followed.Ö
(Audit, page 13)

The written response by LSNV to the recommendation of the auditor that Öthe procedures for documenting client eligibility must be consistently followed.Ö was the following:

ÖThis is absolutely essential. The written requirements are in place. It is our responsibility to provided (sic) the needed training and oversight on a regular basis - and we will do so. Next training - at our scheduled all-staff meeting is on Oct. 2nd.Ö
(Audit, page 21)

Apparently the training didnÖt take. Approximately four months after the attorneys were purportedly trained to document client eligibility, NVLS was presented with substantial credible evidence that their client was ineligible. The Acting Director and the attorney ignored the evidence and both failed to even provide the complainant with the courtesy of a response.

The fact that the abuses regarding eligibility documented in the audit were directly related to the abuses in the present complaint speaks volumes about the ineffectual enforcement of LSC regulations by the present LSC management. The lesson of the audit was apparently that even the most flagrant mismanagement and violations of eligibility regulations would not result in sanctions.

ItÖs no wonder Legal Services of Northern Virginia feels they have no compelling reason to follow LSC regulations.

When a program decides that a deadbeat mom client with a horse ranch, real estate investments, private attorneys, business interests, ample documented income and a meritless custody case deserves representation as one Öleast able to obtain legal assistance,Ö that program is seriously dysfunctional.

While the complainants have no real confidence that Legal Services Corporation will give proper consideration to this complaint, it is important that the case be made. Ultimately, the case will be made to the public, Congress, the media, the Virginia legislature, and funders of LSNV.

And itÖs always possible that LSC will determine that Legal Services of Northern Virginia did violate LSC regulations in representing an ineligible client.

Possible - but we wouldnÖt bet the ranch.

E X H I B I T S

Exhibit A Letter from Stuart A. Miller to Legal Services of Northern Virginia

Exhibits B, C and D Deeds

Exhibit E

Final Order in Miller v. Miller, Case CH-109683, Circuit Court of Fairfax County

Exhibit F
School

Letter from Stuart A. Miller to Principal Virginia B. Mahlke of Wolftrap Elementary

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