



**Legal Services Corporation
Office of Program Performance**

Final
Report from the
Program Quality Visit
to
Choctaw Legal Defense
(Mississippi Band of Choctaw Indians)

Recipient No. 625100

March 26 - 28, 2012

LSC Review Team

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INTRODUCTION

During the period March 26 – 28, 2012, the Legal Services Corporation's (LSC) Office of Program Performance (OPP) conducted an on-site program quality visit to Choctaw Legal Defense (CLD). The purpose of the visit was to assess the quality of CLD's legal work, management, and administrative systems. The LSC team consisted of an LSC OPP program counsel and two LSC temporary employees.

After this visit was formally scheduled, the CLD director informed OPP staff that the Mississippi Band of Choctaw Indians (MBCI or the Tribe), through the Tribal Council's Judicial Affairs and Law Order Committee (Judicial Affairs), planned to reconsider serving as the grantee for the LSC Native American grant in the state of Mississippi. Despite this preliminary assessment provided in January 2012, the Judicial Affairs committee has not taken any formal action regarding its intentions to continue to manage the LSC grant. By the time the team had arrived at the program on March 26, 2012, the Judicial Affairs Committee had instructed the CLD director to spend more time in court and much less time on oversight and administrative tasks related to the LSC grant. This development lessened the LSC team's confidence that the Tribe could successfully implement the LSC grant in the future. Following the visit, OPP and other LSC staff were informed that the CLD director would leave the program effective April 27, 2012. Thereafter, MBCI named an acting director for CLD, but made no explicit provisions for the acting director to become familiar with the LSC grant and did not authorize any change in the acting director's workload to permit time to be devoted to oversight and administration of the grant. Despite urging by LSC staff that appropriate resources be allocated for grant oversight, thirty days (30) after appointment of the acting director, there is no indication that mechanisms necessary for proper oversight and grant management have been implemented.¹

Through its program quality visits, OPP seeks to determine the effectiveness of program management and the quality of legal services provided to eligible clients. In performing its evaluation of the grantee's delivery system and operations, OPP relies on the LSC Act and regulations, LSC Performance Criteria, LSC Program Letters, and the ABA Standards for the Provision of Civil Legal Aid. The team considered CLD's narrative and grant application documents submitted in the 2009, 2010, 2011, and 2012 competition cycles, and case services and other grant activity reports. As a part of the assessment of program quality, the OPP team reviewed numerous documents submitted by CLD in advance of the visit, including writing samples submitted by CLD's advocates.

The on-site visit began with a presentation by the CLD director and policy board chair that consisted of an overview of the origins of the program, its work, and the challenges it faces. During the course of the on-site visit, the team interviewed CLD's executive director, the program's legal and non-legal staff, attorney policy board members, contract attorneys, and select members of the MBCI tribal council, the tribal judiciary, and the local Mississippi state judiciary. The visit was limited to MBCI's Smith John Judicial Center, the complex that includes CLD's sole client service office and is situated in the tribe's Pearl River community. At the

¹ Subsequently, LSC discontinued funding CLD effective June 30, 2012 and CLD withdrew its Notice of Intent to Compete for 2013 grant funds.

conclusion of the on-site visit, the team conducted an exit conference with the CLD executive director and policy board chair to share the team's preliminary observations regarding the program's strengths, challenges, and opportunities for improvement.

PROGRAM OVERVIEW

CLD is an agency of the tribal government of the Mississippi Band of Choctaw Indians ("MBCI" or the "Tribe"), the only federally-recognized American Indian tribe in Mississippi. MBCI established CLD in 1995 as the tribal public defender office² to defend low income Choctaw Indians residing in Mississippi. Several years later, CLD expanded its mission to include civil legal aid services to low income Choctaw Indians.

The MBCI website describes Choctaw Legal Defense as "the people's law firm."³ The description goes on to state that "Legal Defense represents individual Tribal members in Choctaw Tribal Court, Federal Courts and the Municipal, Justice, Chancery and Circuit Courts of Mississippi. In addition, Legal Defense responds to numerous requests for counsel and advice by Tribal members. Priority cases are felony criminal cases, consumer matters and those affecting Tribal jurisdiction and enrollment. Criminal cases handled include felonies (manslaughter, murder, rape, DUIs, burglary, possession/sale of drugs, etc.) and misdemeanors (assault, trespassing, shoplifting, etc.). Civil cases handled include matters concerning consumer law (collections, repossessions, etc.), family law (divorce, adoption, custody, child support, etc.), Indian law (blood quantum, enrollment, jurisdiction, Indian Child Welfare Act, etc.), youth law, wills and estates and other types of noncriminal cases."

From the mid-1990s through 2006, the service area was served by the LSC grantee Mississippi Center for Legal Services (MCLS) via a subgrant agreement with CLD. In 2008, MCLS decided that the Choctaw Indian poverty population in Mississippi would be better served if Mississippi Band of Choctaw Indians (MBCI) implemented the LSC Native American grant directly. LSC invited CLD to file a competitive grant application for the FY 2009 funding cycle. CLD was the sole applicant for the service area and LSC awarded the program the grant, effective January 1, 2009 in the amount of \$80,718 for a one-year grant term.

The service area is entirely rural and is situated in seven counties in east-central Mississippi. It is coterminous with the MBCI reservation. The MBCI reservation consists of approximately 35,000 acres. Tribal enrolled membership currently stands at 10,000 plus individuals, all of

² Among the salient reasons for establishing CLD, the Tribe cited the fact that "indigent defendants in all criminal cases in the federal district courts are furnished counsel" and that in view of the "use of the English language in non-tribal courts, Choctaw criminal defendants, [] especially those with low-income levels, are in need of legal counsel in defending themselves against misdemeanor charges...." *Resolution CHO 114-95, Mississippi Band of Choctaw Indians (April 18, 1995)*.

³ The MBCI website contrasts Choctaw Legal Defense with the other Tribal law firm on the reservation, the MBCI Attorney General's Office, which represents the Tribal Government and its various agencies and enterprises.

whom must have at least a 50% quantum degree of Choctaw blood. Half of the Choctaw community residents are under the age of 25.

SUMMARY OF FINDINGS

CLD provides a full range of legal services in the NMS-1 service area. The last needs assessment for the service area was completed in 2006 by Mississippi Center for Legal Services (MCLS), the LSC grantee for the service area at that time. The 2006 assessment confirmed prior determinations of the most pressing legal needs. In conjunction with the two Mississippi LSC basic field-general grantees, CLD has the capacity to address the basic needs of the low-income Choctaw population and recurring legal problems that have significant adverse impact on the low-income population. The adopted priorities are reviewed annually and the program's policy board exercises appropriate oversight of the case service priorities and informal division of labor between CLD and the other civil legal aid providers in the state.

One of CLD's overarching goals is to help achieve effective and non-politicized resolution of disputes within the context of a strong and independent Tribal judiciary. The location of CLD's one office in the Smith John Judicial Center (the SJJC) is appropriate and strategically located. The building is handicap accessible, comfortable, clean, and professional in appearance.

CLD is a very small legal defense/civil legal aid agency with a total of nine employees at the time of the visit—four attorneys (including the director), two paralegals, one legal secretary, one investigator, and a receptionist. Nevertheless, the program's staff is reasonably diverse and sufficiently experienced. In addition to experience and diversity, the program has staff that speaks the Choctaw language and can also draw upon the Choctaw language abilities of employees in other agencies of the tribal government. In CLD proper, the receptionist and the investigator speak Choctaw.

Intake is structured around the tribal court system and, at present, appears to work best for those applicants with definite court dates. If applicants have a court date or court papers, a case acceptance decision and determination of the level of assistance to be provided is promptly made, and they are assigned a staff attorney or a contract attorney for representation. For applicants without court dates, the system often results in long delays and repeated visits to the office before a case acceptance determination is made. Apart from these delays, CLD strives to treat applicants and clients with dignity and sensitivity.

Because it is an agency of the Tribal government and is located in the Smith Johns Judicial Center, CLD is widely known by all segments of the low-income population. The program has strong community connections and enjoys a good reputation among the client community.

CLD advocates conduct their representation of clients in an effective and high quality fashion. While the program had only minimum written legal work management and supervision guidelines at the time of the visit, the team is satisfied that advocates adhere to legal work and advocacy practices and procedures consistent with the *LSC Performance Criteria* (2006) and the *ABA Standards for the Provision of Civil Legal Aid* (2006). Advocates' ongoing caseloads are

within appropriate limits. The attorneys practice in a variety of forums, including the Choctaw Tribal courts, the Choctaw Supreme Court, the Mississippi state trial and appellate courts, and the federal courts in Mississippi. CLD provides reasonable training opportunities appropriate to its staff's functions and responsibilities. The program's productivity appears to be reasonable.⁴ The proportion of cases closed that are extended service cases exceeds the national median for all three years reported, 2009 – 2011.

Consistent with its overall goals, objectives, and strategies, CLD provides a reasonable amount of community legal education and other services in addition to direct legal representation. The program is not, however, sufficiently engaged with non-Choctaw institutions and entities whose activities could have a significant effect on low-income populations throughout the state, such as the Mississippi judiciary, the Mississippi state bar, government agencies, social service agencies, a variety of regional and state social action organizations, regional and state legal advocacy organizations, and other civil legal aid providers.

Although CLD is not a separate legal entity from the MBCI, the program established a policy board that operates separately and apart from the MBCI Tribal council as a condition to receive LSC grant funds. The policy board has been operating with the four attorney member positions only. The two client member positions have been vacant for more than one year. The attorney members are very experienced and highly respected in the legal community. They appear to care deeply about the program and its mission. The attorney members of the board are actively engaged in significant decisions under the LSC grant; they understand and share MBCI's vision and mission for CLD. Policy board members expressed confidence in the executive director and the program's advocates.

By necessity, CLD is required to maintain a lean management structure. It is not clear from the visit, however, that the commitment to lean management fosters the kind of team spirit and workplace culture where administrative and clerical staff can provide effective and dynamic support to management. The executive director is known in the tribal communities. She was praised for her leadership by staff and policy board members, and by others throughout the tribal government. The advocacy staff understands and shares the program's vision and mission.

As an instrumentality of the Mississippi Band of Choctaw Indians, CLD obtains the benefit of the Tribe's high-quality administrative and support services.

Within the constraints of the program's financial and staffing resources, CLD's delivery structure is reasonably coherent. Although the CLD director has attended several statewide meetings of the Mississippi Access to Justice Commission and statewide training, traditionally, the program has not been an active participant in the Mississippi state justice community.

⁴ In its final report on the July 2011 CSR/CMS Review visit to CLD, the LSC Office of Compliance and Enforcement (OCE) found instances of significant non-compliance with the requirements of LSC's CSR Handbook (2008 Edition). *Final CSR/CMS Review Report, Recipient No. 625100 (July 18-21, 2011), pp. 1-2.*

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

PERFORMANCE AREA ONE. *Effectiveness in identifying the most pressing civil legal needs of low-income people in the service area and targeting resources to address those needs.*

Criteria 1 and 2. Periodic comprehensive assessment and ongoing consideration of legal needs, setting goals and objectives, developing strategies, and allocating resources.

Finding 1: CLD is aware of the service area's critical legal needs and strives to identify new needs that may emerge.

The last needs assessment for NMS-1 service area was done in 2006 by Mississippi Center for Legal Services (MCLS), the then LSC grantee for the service area, through Dr. Tony L. Henthorne, Professor of Marketing and Research at the University of Southern Mississippi. Dr. Henthorne relied on a total of 270 written surveys distributed to approximately 1,200 Choctaw households.

The result of the survey was unremarkable in that there were no changes from the needs identified over the history of the Native American grant. The overwhelming majority of the Native Americans surveyed by Dr. Henthorne identified family law problems as their most urgent need. After family law problems, other important needs include juvenile concerns, equal employment opportunities, job disputes, education-related issues, health care, and wills.

In the future, CLD plans to use the Choctaw Indian fairs as a venue for updating the legal needs assessment. The fairs are held during the summer months. Neither CLD nor other MBCI agencies appear to collect, analyze, and publicize for the Choctaw population the kind of census, demographic and economic data traditionally collected by the U.S. Census Bureau and being collected now by the American Community Survey, which could aid in a more comprehensive needs assessment for the service area.

CLD intends to make adjustments in its delivery strategies and legal representation work in those areas where significant new developments and changes occur.

Finding 2: CLD has adopted legal priorities that are sufficiently broad to address the most pressing legal needs of the low-income Choctaw population in the service area.

Since the 2006 needs assessment, CLD has adopted five broad priority categories:

- Populations with special vulnerabilities
- Support for the family
- Maintaining economic stability
- Preserving the home
- Safety, stability and health

Under each broad priority category, CLD lists a series of concrete case types that can be accepted by the attorneys for representation, within the stated limitations beside each case type.

For example, under the priority area "support for family," traditional family case types such as divorces, protective orders, custody, child support, visitation, adoption, annulment, separate maintenance, emancipation, paternity, child support contempt, and parental termination defense are listed. In addition, CLD includes consumer cases that support the stability of the family such as "truth-in-lending". Those cases should be accepted if representation: "(a) can rescind deeds of trust; (b) compulsory counterclaims may be filed; (c) canceling contracts."

The CLD legal priorities are sufficiently broad to address a full range of pressing legal problems. Through communication with Choctaw service agencies, Tribal officials, the Tribal courts, and its ongoing intake experiences, CLD receives feedback on its delivery strategy and learns of new and emerging needs. The Policy Board reviews the established priorities annually. Ongoing implementation of the CLD priorities takes into consideration the availability of other providers and resources available to the low-income Choctaw population. For example, after losing the services of one contract attorney, CLD began referring SSI cases to Mississippi Center for Legal Services.

Criteria 3 and 4. Implementation, evaluation, and adjustment of the program's work.

Finding 3: CLD's allocation of resources is consistent with its adopted priorities. The program is aware of changes and emerging needs among the low-income Choctaw population.

CLD's four staff attorneys are principally responsible for implementing the program's legal advocacy and representation priorities. The attorneys are keenly aware of the program's broad priorities, and the types of cases and level of services to be provided. They appear to embrace an aggressive advocacy philosophy, albeit by serving one client at a time.

While CLD uses client satisfaction surveys, the survey instrument appears complex and at a high literacy level. For example, the survey asks the client to check boxes to indicate, among other things, "type of legal problem" and "what did CLD do for you?"

Under "what did CLD do for you," the form gives the client the option to check the following:

- Gave advice
- Provided brief service
- Extended service (not court)
- Represented me in court or other hearing

The survey form goes on to list six questions and asks the client to indicate whether they "Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree." One of the six questions asks: "Did you better understand your legal rights and options after receiving help from CLD?" Another asks: "Has your overall quality of life improved since receiving help from CLD?"

If the client's case involved domestic violence, the form lists six additional questions and asks the client to answer "yes" or "no" to the first five additional questions. The sixth additional question is "Since receiving service from CLD, has your stress level...Gone up...Gone down...Remained the same."

Recommendation I.4.3.1.⁵ CLD should explore the development of a client satisfaction survey form that is simple and consistent with the reasonable literacy levels of the client population.

Recommendation I.4.3.2. CLD should explore the development of an internal evaluation policy and procedure to ensure that a comparison of "the results actually achieved with the outcomes originally intended" is a significant element of the program's self-evaluation process.

PERFORMANCE AREA TWO. *Effectiveness in engaging and serving the low-income population throughout the service area.*

Criterion 1. Dignity and sensitivity

Finding 4: CLD and its staff have a reputation in the service area for treating clients and applicants for services with dignity and sensitivity.

The team uniformly heard high praise for the staff's commitment to the low-income population. Overall, the team believes the program's services and activities are conducted in a culturally and linguistically competent fashion.

Finding 5: The current CLD intake system often results in long delays and requires repeated visits by applicants and clients. Advice and limited services are generally not provided at the time of initial contact. CLD has just begun the process of memorializing its intake policies and procedures.

CLD has a single office location, the MBCI's Smith John Judicial Center,⁶ and, as a result, there is a single intake procedure for civil legal aid applicants. Pursuant to LSC special grant conditions, the program is in the process of memorializing its intake policies and procedures. Applicants access the program by walking in or calling a single number. The telephone system

⁵ In this report, recommendations are numbered as follows: The Roman numeral references the Performance Area followed by the Criterion number, the finding number, and lastly the recommendation number that pertains to the particular finding. There are two levels of recommendations in this report, Tier One and Tier Two. Recommendations that are indicated with an asterisk are Tier One Recommendations and are intended to have a direct and major impact on program quality and/or program performance. Therefore, if CLD were continuing as an LSC grantee, the program would be required, in its next grant renewal and/or competitive grant application, to report what actions or activities, if any, had been undertaken in response to the Tier One Recommendations.

⁶ In addition to Choctaw Legal Defense, the Smith John Judicial Center also houses the Tribal courts, police department, jail, and juvenile detention center.

is Nortel Networks (AT&T), which is used throughout the tribe. There are four intake lines available to CLD applicants and clients.

Initial contact for intake is with the receptionist/lay advocate, who screens to ensure that the applicant is an enrolled member of the MBCI or the parent of an enrolled Choctaw minor. If applicants present civil problems with no court dates, they are given an appointment to come into the office to complete an intake application. If applicants have court dates, they can come into the office without a scheduled appointment to complete the intake application. For applicants without court dates, their name and telephone number are entered into the system along with a brief statement of the problem. These applicants are told that "someone will be in contact with them." Applicants for Choctaw's services are not given advice or legal information at the time of their initial contact. CLD cites the "certification of Native American (Choctaw) Status" as one of the reasons it believes that telephone advice is unworkable.⁷

After intake applications are completed, the receptionist enters the data in the Kemps case management system and runs conflict checks, and the executive director assigns the case to one of the attorneys. There are no case acceptance meetings. When completed, the intake sheet and assigned file are delivered to the staff attorney, and the attorney contacts the prospective client. If an emergency is presented the executive director or one of the staff attorneys conducts a call back.

CLD acknowledges that it can take as long as three months for an intake appointment for some cases where the applicant has not received court papers. These are cases where the assigned attorney has sent out an opening letter requesting that the client contact the attorney for an appointment. This puts the ball in the client's court.

Despite the fact that CLD has not expressed any preference for applicants to seek service by telephone or by walking in, 80 percent of applicants access the program by telephone and 20 percent by walking in. CLD has not published any brochures describing its services or its intake system.

Finding 6: During the on-site visit, CLD announced that the program plans to implement a \$25.00 intake fee to address the problem of applicants and clients not following through with their cases.

The CLD director informed the team that the program is considering charging all civil law applicants a \$25.00 intake fee regardless of their financial eligibility. The plan is to refund the fee if the client follows through with his or her case. The program estimates that each year some 400 clients do not follow through with their cases. This may be due, at least in part, to the lengthy delays in receiving intake appointments.

⁷ The certification is signed and dated by the applicant and simply states: "I hereby certify that I am an enrolled member of the Mississippi Band of Choctaw Indians and my Roll Number is _." One thought is that the Tribal government could forego this certification in advice and limited services cases just as citizenship attestation is treated in LSC grant cases generally.

Finding 7: CLD has a written policy on providing services to client eligible individuals with limited English proficiency.

CLD values the dignity of clients and serves them in a culturally competent manner. The staff is diverse. Of the four attorneys at the time of the visit, one is Choctaw (the director); none speak the Choctaw language. Of the remaining five employees, two are Choctaw and speak the Choctaw language. One other employee speaks Choctaw. In conjunction with Choctaw-speaking staff in other agencies of the tribal government, the CLD staff provide sufficient language capability to serve the service area's low income population.

CLD has a written policy on serving limited English proficient persons in the Choctaw population. All of the program's advocates and intake staff are charged with ensuring that an interpreter is provided to all applicants and clients who need to converse in the Choctaw language.⁸ CLD does not encounter languages other than English and Choctaw and the primary language spoken by most applicants and clients is English. The team notes, however, that the client retainer agreement, client grievance forms, and applications are available only in English and the MBCI website has English only.

Recommendation II.1.5.1*. CLD should consider participating in the Mississippi state justice community's telephone intake (call centers) discussions as a means of exploring ideas for improving its own intake system. This would include ideas on how to streamline its intake process for the benefit of clients and staff alike:

- Screening applicants at initial contact, with the information being placed directly into the case management system (CMS).
- Training all support staff and paralegals on initial screening steps so that the initial screening can rotate among all non-case handling staff.
- Using the centralized calendaring system so that intake screeners and/or executive director can more easily make assignments to case handling staff.
- Having the staff attorney speak to applicants early in the process so that advice and brief service can be provided expeditiously and so that the case can be concluded when that is all the assistance that is needed.
- Explore using volunteer lawyers for advice and brief services via the Mississippi Volunteer Lawyers Project.

⁸ The MBCI website contains the following: "The Choctaw language is an essential element of the Tribal culture, tradition and identity. The language links modern Choctaws to their ancestors, offering a common vocabulary and way of looking at the world. Many of today's Choctaw adults and elders learned to speak Choctaw before they learned English. Many grew up with grandparents and other relatives who spoke Choctaw most of the time. Their earliest memories are likely to include stories in Choctaw, the sound of Choctaw hymns, and the cadences of Choctaw speech and laughter as the family gathered in the evening to discuss the day's events....While they encourage their children to hone their communications skills in English, most Choctaw parents also make sure that their sons and daughters speak Choctaw as well."

Recommendation II.1.7.1.* CLD should take all steps necessary to make the client retainer agreement, client grievance forms, and the intake application and related forms available in the Choctaw language for applicants and clients who are not fluent in English.

Criteria 2 and 3. Engagement with the low-income population; access and utilization by the low-income population.

Finding 8: CLD is reasonably engaged with the client population throughout the Choctaw reservation communities.

The Smith John Judicial Center (SJJC) in general and the CLD office in particular are clean, professional and accessible.

In addition to providing high quality legal representation, CLD's mission includes providing "strong and viable community education programs, and to maximize available resources to members" of the Tribe. Accordingly, CLD staff makes community legal education presentations in the various Choctaw communities on community law days and as part of festivals.

There are various cultural court-related settings steeped in Choctaw culture that CLD considers part of its community education efforts. For example, one attorney attends Healing to Wellness court sessions where Tribal members are allowed to correct substance abuse problems by participating in support group-styled meetings.

Another example is Trial Court Reentry, where one of the program's staff attends family group decision-making training geared toward helping children express their feelings and give input to solving problems.

Finally, CLD staff writes articles for the Choctaw Community News to inform and educate the Choctaw people regarding a variety of subjects, including predatory lending, elder law, wills, powers of attorney, and health care directives.

PERFORMANCE AREA THREE. *Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area.*

Criteria 1. Legal Representation.

Finding 9. CLD's advocate staff is sufficiently experienced and competent.

The four attorneys (including the executive director) on staff at the time of the on-site visit have an average of nine years' experience in the legal profession and seven years with the program. The staff attorney who is chiefly responsible for assisting clients under the LSC grant has seven years of experience in the legal profession and two years with CLD. One hundred percent of his time is devoted to CLD's civil division. The executive director at the time of the visit had nine years of experience in the legal profession, nine years with the program, and eight years as director. She devotes 40 percent of her time to the civil division. One of the four attorneys is designated "supervising attorney" of the public defender division. He has seven years of

experience in both the profession and with CLD. He devotes 10 percent of his time to the civil division. The fourth CLD staff attorney has 12 years of experience in the legal profession and 12 years with the program.⁹ At the time of the visit, 10 percent of his time was devoted to the civil division. The four attorneys are supported by five contract attorneys.

In addition, CLD attorneys are supported by a secretary/paralegal, a full-time paralegal in the public defender division, a full-time legal secretary, an investigator, and a receptionist who also serves as a lay advocate.

The CLD advocates have an excellent reputation among judges and tribal government officials. They are viewed as committed, caring professionals who value their work and their clients. CLD does not pursue impact advocacy. The huge demand for individual case services overwhelms the program.

Finding 10: The quantity of legal work¹⁰ performed by CLD is reasonably related to the program's staffing and financial resources. The amount of extended service representation is a significant strength of the program.

CLD exhibits the pressures and challenges of a small tribal agency practicing law in a high volume environment, with a limited budget and staff. The expectation of the tribal government of the Mississippi Band of Choctaw Indians is that CLD's work will consist of individual legal assistance in the tribal court and the Mississippi state courts. Nevertheless, the program's civil legal aid work satisfies the LSC requirement that a full range of services be provided and its overall distribution of closed cases appropriately tracks the program's priorities.

After the conclusion of its first year (2009) as an LSC grantee, CLD reported closing 263 LSC eligible cases¹¹ of which 45.6 percent (120 cases) involved extended service compared to the national median of 25.9 percent.¹²

⁹ On April 27, 2012, the Office of the Tribal Chief of the Mississippi Band of Choctaw Indians announced the appointment of this attorney as acting director of Choctaw Legal Defense, effective April 30, 2012.

¹⁰ As noted in footnote 4 above, OCE found instances of significant non-compliance by CLD with the requirements of LSC's CSR Handbook (2008 Edition) during the July 2011 CSR/CMS Review visit. *Final CSR/CMS Review Report, Recipient No. 625100 (July 18-21, 2011), pp. 1-2.*

¹¹ As an agency of the Mississippi Band of Choctaw Indians, one of CLD's overarching missions is to represent low-income Native Americans in criminal cases in tribal court, among other forums. Under the LSC Act, as amended, grant funds can be used to provide legal assistance with respect to criminal proceedings in Indian tribal courts. CLD was unaware that it could include its closed tribal court criminal cases (for financially eligible clients) in its case statistical submissions to LSC. Thus, all of the closed cases reported to LSC are non-criminal cases.

In calendar year 2010, CLD reported closing 394 LSC eligible cases of which 294 cases, 74.6 percent (294 cases) involved extended service compared to the national median of 28.6 percent. In calendar year 2011, CLD reported closing 272 LSC eligible cases. Of these 272 cases, 49.6 percent (135 cases) involved extended service compared to the national median of 23.8 percent.

Over the last two years, CLD closed cases in all but three of the 10 broad subject matter categories¹³ identified in LSC's CSR Handbook--education, employment, and individual rights. In 2011, of the 272 LSC eligible cases CLD reported closing, the predominant case category was family, 84.9 percent¹⁴ 5.9 percent of cases closed were juvenile and 3.3 percent were in the consumer/finance area.

At the time of the visit, the civil law caseloads of the LSC-funded staff attorney and tribal funded contract attorneys reflected an average of 23 open cases. None of the cases appeared to involve complex issues. The director reported that advocates are on top of their cases and work diligently to close them in a timely manner.

Finding 11. The legal work performed by CLD attorney staff is of good quality.

CLD's legal representation involves a mix of limited and extended services and, as noted above, the percentage of closed extended service cases far exceeds the national median for LSC's basic field Native American programs. Historically, CLD advocates have practiced in a variety of forums including the Choctaw tribal courts, the Choctaw Supreme Court, Mississippi state trial and appellate courts, and federal courts.¹⁵ The judges interviewed uniformly gave the program's advocates praise for their knowledge of the law, professionalism, good quality written work, and strong advocacy on behalf of their clients.

In preparation for the on-site visit, the LSC team requested a writing sample from CLD advocates, selected by the advocates as representative of their best work in the last 24 months

¹² Ordinarily, LSC would consider the number of closed cases per 10,000 poverty population as one measure of a grantee's performance program-wide basis. This analysis is not available here because there are no acceptable census data available for this grantee. When such data are available, LSC compares the grantee's case closing statistics to the national median. Such comparisons may or may not lead to specific conclusions as a grantee's case closing statistics can reflect a number of factors, including the inexperience of staff, demographics, the geography of a service area, the grantee's legal priorities, the grantee's policy on the levels of services provided, and the focus of resources on work that is not captured in the CSRs, among others.

¹³ The categories are consumer/finance, education, employment, family, juvenile, health, housing, income maintenance, individual rights, and miscellaneous.

¹⁴ The LSC team does not view this high family law percent as a significant concern due to the high degree of domestic violence, child welfare issues, and other family issues faced by persons in the Mississippi Choctaw communities.

¹⁵ Historically, CLD advocates have not handled cases before state and federal administrative tribunals.

and reflecting their legal research, analytical, and writing skills. While CLD's legal work is conducted through two units--a civil legal aid division and a separate Tribal funded public defender division--we asked all four program attorneys to submit writing samples since each attorney could be called upon to handle a civil legal aid matter. We received samples from all four attorneys.

The writings covered the following substantive and procedural areas: A memorandum of law in the Chancery Court supporting service of process upon a resident of Panama by certified mail pursuant to the Inter-American Service Convention treaty where the defendant had previously resided in Mississippi; a case memorandum analyzing a juvenile criminal assault where the youth told his dog to attack another youth, inflicting bodily injuries; an opposition to the tribal government's motion in the Choctaw Tribal Youth Court for appointment of a guardian ad litem in a child welfare case transferred from an Oklahoma tribal court; and an appellate brief in the Choctaw Supreme Court challenging tribal reservation jurisdiction in an assault and battery case. The arguments advanced appear sound. While the legal and factual issues covered in the samples are not complex, the writings represent solidly developed advocacy skills. They highlight the fact that CLD advocates have the knowledge and skills to represent clients well.

Finding 12. Pursuant to LSC special grant conditions, CLD developed some written legal work management, supervision, and related policies and procedures to ensure high quality and efficient civil legal assistance. At the time of the visit, CLD's goal was to have the policies in place by mid-April 2012.

CLD has established written legal work management and supervision policies, procedures, and systems to ensure that the program's legal work is conducted in an effective and high quality fashion. These are included in a manual titled "Supervision and Attorney Evaluation Guidelines," based in part on the *LSC Performance Criteria (2006)* and the ABA's *Standards for the Provision Civil Legal Aid (2006)*. The manual articulates valuable supervisory standards that go to the heart of high quality work from which managers and their supervisees can gain significant benefits. These include monitoring of case assignment and work load; client representation skills such as client counseling and advocacy skills; case file maintenance; periodic case status reports; open case file reviews; closed case file reviews; courtroom observations; and in-house observations.

Oversight of legal work performed by staff attorneys and paralegals at CLD is done by the supervising attorney. Under the new legal work and supervision policies to be implemented, supervisory activities will include periodic case file reviews, review of case management information reports, and identification of training needs and support.

The executive director is responsible for the overall substantive legal work of the program. Under the new policies, the executive director will perform her supervisory responsibilities mainly through the case management system.

Finding 13. CLD provides its advocates reasonable training to ensure high quality, effective legal advocacy.

All of the advocates interviewed confirmed that CLD affords staff reasonable opportunities to attend training. The Mississippi State Bar requires 12 hours of annual CLE. In addition to CLE programs, staff reported attending training provided by other legal aid providers, as well as events such as the National Consumer Law Center, Native American Rights Foundation, National Association of Indian Legal Services, Federal Criminal Defense Seminar, Legal and Financial Issues in Elder Law, Microsoft Excel, Microsoft Excel advanced, and National Association of Criminal Defense Lawyers.

The executive director approves all training, subject to the fiscal oversight of the Tribe's Finance Department.

Recommendation III.1.12.1.* CLD should take all the necessary steps to complete and implement its legal work management and supervision policies and procedures, and ensure that all advocates comply with them.

Criterion 2. Private Attorney Involvement.

Finding 14. As a grantee solely for a Native American service area, CLD is exempt from LSC's private attorney involvement requirement in so far as grantees are required to "devote an amount equal to at least twelve and one-half percent of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services[,]" pursuant to 45 CFR 1614.1(b).

45 CFR 1614.1(b) states that "Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible."

CLD complements the work of its staff attorneys with the paid services of five contract attorneys. On a monthly basis, CLD expends from \$13,000 to \$14,000 per contract attorney. The attorneys are paid with Tribal funds to handle a variety of criminal and civil cases.

Criteria 3 and 4. Other program services and activities.

Finding 15: CLD engages in other services for the Choctaw low-income population, including community legal education and involvement in various community activities designed to assist the low income population.

The program is not, however, sufficiently engaged with non-Choctaw institutions and entities whose activities could have a significant effect on low-income populations throughout the state, such as the Mississippi judiciary, the Mississippi state bar, government agencies, social service agencies, a variety of regional and state social action organizations, regional and state legal advocacy organizations, and other civil legal aid providers.

PERFORMANCE AREA FOUR. *Effectiveness of Governance, Leadership and Administration.*

Criterion 1. Board Governance.

Finding 16: The CLD Policy Board shares the mission of the program and is striving to provide appropriate oversight and support.

CLD has a policy body consistent with the requirements of 45 C.F.R. Part 1607 of the LSC regulations to help guide the program in its efforts to provide high quality legal services, be accountable to its civil legal aid clients, and provide a measure of community input.¹⁶ The CLD policy board consists of six (6) positions. Of the six positions, four are reserved for attorney members¹⁷ and two for eligible client members.¹⁸ After serving two consecutive three-year terms, members must allow a one year break in service before they are eligible for further appointment to the policy board.¹⁹ At the time of the visit, the policy board's four attorney positions were filled but the two clients' positions had been vacant for approximately a year.²⁰

The written bylaws for the policy board require the board to meet four times each year during the months of January, April, July, and October. A quorum for meetings consists of four members, the total membership of the board considering that two client eligible positions are vacant. Despite the fact that members may participate in meetings by telephone, there was no quorum for meetings of the board during 2010 and 2011.

While the bylaws stipulate that the policy board should act independently, the board's authority does not supplant "the powers of the MBCI Tribal Council to oversee the general administration of the activities of Choctaw Legal Defense," including "hiring an executive director, staffing decisions, capital expenditures and approval of an annual budget..." Succession and leadership development

¹⁶ When LSC invited the Mississippi Band of Choctaw Indians to apply for the Mississippi service area NMS-1, CLD was informed that 45 C.F.R. Part 1607's governing body requirement would be waived upon submission of a "policy board" certification. Following the 2009 grant award, CLD submitted its policy board certification to LSC on March 13, 2009.

¹⁷ The Choctaw Bar Association and the Neshoba County Mississippi Bar Association appoint two attorney members each.

¹⁸ The Committee on Judicial Affairs and Law and Order of the Mississippi Band of Choctaw Indians Tribal Council appoints two non-attorney members, who must be at the time of appointment financially eligible for legal services from the program.

¹⁹ A person appointed to fill in an unexpired term because of a vacancy occurring after the commencement of a term may serve out the remainder of the partial term and two full appointed terms before the required one year break in service applies.

²⁰ Ordinarily, the LSC team would assess whether the client-eligible policy board members were full participants in meetings and other activities. This could not be done in view of the absence of client members and the lack of attendance at meetings.

activities are beyond the scope of the policy board. As an agency of the Mississippi Band of Choctaw Indians, CLD is subject to the laws, rules and regulations of the Tribe.²¹ Other than the attorneys on the policy board, the team could not identify any attorney in the tribal government with oversight or supervisory authority over CLD. The Tribe has an Attorney General's Office,²² but that office does not oversee the CLD staff.

The CLD policy board does not have a written policy and procedure that addresses conflicts of interest or potential conflicts of interest. There are no board committees. The policy board is not responsible for evaluating the executive director or providing input to the Tribal government regarding its evaluations. At meetings of the board, the director makes a general presentation about CLD's civil legal aid work. CLD advocates and others do not make presentations or reports to the board regarding the legal problems encountered by the low-income Choctaw population or the program's delivery strategies.

The bylaws provide for a secretary-treasurer in addition to a president and vice-president. The policy board reviews CLD's budget for the LSC grant, spending under the grant, and the annual audited financial statements for the grant. There is no separate budget, finance, or audit committee of the policy board. The board does not participate in resource development or fundraising, although the members interviewed acknowledge the urgent needs for increased resource development to meet the demands for civil legal aid services on the reservation.

The executive director provides an orientation to new board members. Members are given copies of the LSC Act and regulations, and the LSC Performance Criteria. The members interviewed had a general understanding of the LSC rules and requirements. They could discuss the program's mission and its work. Within the last three years, the policy board chair attended two of NLADA's annual conferences and one of the Federal Bar Association's Indian Law Conferences and shared her experiences with the other members of the board. There is no formal mechanism or informal practice to groom other policy board members for leadership responsibilities.

Finding 17: The CLD Policy Board members are concerned that the LSC grant is not sufficiently cost effective for the Tribe because of the management and administrative requirements.

Several policy board members expressed strong concerns regarding the management and administrative requirements of the LSC grant. In their view, the grant is not sufficiently cost effective for the Tribe. Board members interviewed by the team expressed concerns that LSC

²¹ The Mississippi Band of Choctaw Indians is governed by a tribal council and a tribal chief whose powers are set forth in a written constitution. Internet access at: www.choctaw.org/government/court/constitution.html.

²² The Attorney General's Office prosecutes all criminal cases on the reservation; is the primary liaison between the Tribe and the State of Mississippi; serves as in-house counsel to all Tribal agencies and enterprises; handles land acquisition for the Tribe; pursues large-scale consumer protection matters; advises the Tribe in contractual matters; and provides in-service training to all Tribal entities.

would interpret the LSC restrictions to apply to the Tribal government because CLD is not a legally separate and distinct entity, but a mere agency of the Mississippi Band of Choctaw Indians. In the policy board's view, if applied to tribal funded activities, the LSC restrictions would be too onerous for the Tribe to accept.²³

The team was advised that establishing CLD as a nonprofit separate and distinct from the MBCI Tribal government is not acceptable at present. They view a separate nonprofit as an unacceptable cost to establish and maintain and still devote personnel to ensuring compliance with LSC requirements. If the restrictions apply to Tribal funded activities, the policy board and Tribal officials are resigned to the LSC grant not continuing. Some members and officials express support for awarding the grant to another LSC grantee, including but not limited to Mississippi Center for Legal Services (MCLS), or current Native American grantees in Oklahoma, North Carolina, or New Mexico.²⁴

Recommendation IV.1.16.1. The policy board should undertake a review of its bylaws and recommend to the MBCI Tribal Council all changes needed to improve the performance of the board, including but not limited to holding all but the annual meeting by telephone or video conferencing, reducing the number of members required for a quorum, and adopting a conflicts of interest policy.

Recommendation IV.1.16.2. The policy board should encourage the MBCI Tribal Council to adopt a leadership development and succession plan to begin making the proactive and systematic investment in building a pipeline of leaders within CLD and related MBCI agencies so when transitions are necessary, leaders at all levels are available.

Recommendation IV.1.16.3. The policy board should encourage CLD advocates to make presentations to the policy board and the MBCI Tribal Council regarding the legal problems encountered by the low-income Choctaw population and CLD's civil legal aid delivery strategies.

Recommendation IV.1.17.1. The policy board should determine and recommend to the MBCI Tribal Council a clear direction regarding continued receipt of LSC funding and compliance with grant responsibilities.

Recommendation IV.1.17.2. The CLD Policy Board should be integrally involved in strategic discussions regarding needed changes or transformation of the civil law or civil legal aid component of Choctaw Legal Defense to explore new approaches, whether or not MBCI continues to receive the LSC grant funds or not.

²³ The restriction on "political activities," which the Tribe engages in with its own funds, would be a substantial challenge to the Tribe's sovereignty.

²⁴ The idea is that, in view of current technology enabling remote attorney supervision, a current LSC grantee could retain a contract attorney qualified to practice in the Choctaw Tribal courts and the Mississippi state courts, and, if needed, lease space from MBCI.

Criterion 2. Leadership.

Finding 18. The CLD director at the time of the visit had led the program for eight consecutive years.

The CLD director at the time of the visit had led the program for eight consecutive years. She is a 2003 law graduate of Mississippi College of Law, and began work for CLD as a staff attorney in 2003. In March 2004, she became the executive director for CLD. Although she does not have significant experience as a trial attorney, the director is credited by policy board and some Tribal officials with leading the program to the best position it has ever achieved.²⁵ She is admitted to practice in the Choctaw Tribal Court, the state courts of Mississippi, the federal courts in Mississippi, the U.S. Court of Appeals for the Fifth Circuit, and the U.S. Supreme Court. The director is one of only four Choctaw attorneys in Mississippi and she is the only woman. The CLD director is highly praised for her knowledge of the Choctaw community. Before graduating from law school, she worked as an administrative assistant in the office of the Tribal Chief.

In 2008, the CLD director persuaded the Mississippi Band of Choctaw Indians to apply for the 2009 LSC grant for the Mississippi Native American service area. Prior to receiving the LSC grant directly, CLD functioned as a unitary and cohesive law firm without regard to any criminal defense or civil law divisions. The budget wasn't divided between criminal and civil work as the program handled whatever the courts referred or whatever court matters applicants presented when they walked in. CLD states that in 2008, the overall caseload for the program was 70 percent civil and 30 percent criminal defense. After the LSC grant was first awarded directly to CLD for 2009, CLD increased its full-time attorney staff from four to five.²⁶

Because of its size and its dual mission as both a public defender service and a civil legal aid program for the Choctaw reservation, the program has found it difficult to establish and maintain a shared sense of vision and mission for the civil legal aid component. The one unifying observation across the public defender/civil legal aid divide, however, is a strong commitment to providing excellent legal representation.

As noted earlier in this report, subsequent to the program quality visit, the executive director resigned her position and an acting director was appointed by the MCBI. LSC is concerned that the acting director has not been provided the resources or direction to become familiar with the LSC grant and related LSC requirements. There does not appear to be a commitment to permit the acting director adequate time to devote to oversight and administration of the grant.

²⁵ The team found this significant because CLD was created as a public defender office in 1995 and was expanded to include a civil law component in or about calendar year 2000. Thereafter, CLD was a subgrantee of the LSC grantee Mississippi Center for Legal Services (MCLS) and its predecessor programs from 2001 through 2006.

²⁶ At the time of its 2009 grant application, CLD had a staff of 11 employees--the executive director, a supervising attorney, two staff attorneys, three paralegals, one criminal investigator, and three support staff. In addition, the program engaged eight contract attorneys to complement the program's legal representation.

Recommendation IV.2.18.1. *Working with the policy board, CLD's new leadership should establish a clear commitment regarding adherence to the LSC grant regulations, policies, and requirements as an integral part of the organizational culture going forward.

Criteria 3, 4, 5, 6 and 7. Overall management, human resources, and financial administration; internal communication; general resource development and maintenance.

Finding 19: CLD's overall management and administration are tied to the Tribal government.

As an agency of the Tribal government for the MBCI, CLD falls under the Tribe's Member Services Department.²⁷ The director of member services supervises the director of CLD as to non-law practice matters. The current director of member services, a non-attorney, has been in her position for two years. While she receives quarterly case and expense (financial) reports from the CLD director, the director of member services has not evaluated the CLD director, has never attended a meeting of the CLD policy board, and has never reviewed or received a copy of the annual audited financial statement for CLD and the LSC grant.

In addition to the Member Services Department, CLD is subject to oversight by the MBCI Tribal Council and its Judicial Affairs and Law and Order Committee (Judicial Affairs Committee). Pursuant to the bylaws for the CLD policy Board, the Judicial Affairs Committee is responsible for appointing the two client eligible policy board members. Policy board members may be removed for cause by majority vote of the MBCI Tribal Council. The bylaws for the policy board state that "no authority granted to the Policy Board shall be construed as a delegation of the powers of the MBCI Tribal Council to oversee the general administration of the activities of Choctaw Legal Defense, including but not limited to, hiring an Executive Director, staffing decisions, capital expenditures and approval of an annual budget."

MBCI retains "the authority to increase or decrease the size of the Policy Board; to alter the terms of the Policy Board members and the number of meetings," provided such actions are "consistent with the governing body requirements of the Legal Services Corporation Act" and any waiver granted by the LSC president. Finally, the policy board bylaws may be "amended at any meeting of the MBCI Tribal Council by the affirmative vote of a majority of the members of the MBCI Tribal Council then in office."

Apart from the concerns discussed above about CLD's overall capacity and will to properly administer the LSC grant, the program quality visit did not reveal any direct concerns regarding the overall management and human resources administration of the program, or related policies, procedures, and practices.

²⁷ The Member Services Department ensures that Tribal members receive adequate services from various Tribal programs. In addition to Choctaw Legal Defense, other services include but are not limited to: Tribal enrollment, healthcare, education, family and community services, fire and rescue, recreation, and public transportation.

Finding 20: Financial administration is handled by the MBCI Finance Department.²⁸

In its most recent grant application for LSC funding, CLD explains that the annual budget for CLD is developed by the director and the Judicial Affairs Committee in conjunction with personnel in the MBCI Finance Department's Budget Office for submission to the full Tribal Council. The narrative explains that the budgets for CLD are done one year at a time; there is no multi-year budget planning. The team interviewed the current chair of the Judicial Affairs Committee. He had taken office in October 2011. Despite this, the chair was not familiar with the LSC grant and its requirements. Because MBCI's fiscal year runs from October 1 through September 30th, the Judicial Affairs chair had not yet gone through a budget cycle with the CLD director as the 2012 budget had been completed before he assumed office.

Each year MBCI provides an annual financial audit for CLD to the LSC Office of Inspector General. The financial audits submitted have not revealed any significant concerns.

Finding 21: Over the last two years, CLD has been striving to improve overall technology for the program's management, administrative, and legal work systems.

CLD does not have a technology budget that is separate and apart from that for the Tribal government overall. Hardware and software acquisition, maintenance, and upgrades are handled by the Tribe's IT department. The CLD supervising attorney is recognized as the program's unofficial technology person.

At the time of the on-site visit, CLD was still in the process of converting its case management system from Abacus Gold to Kemps Case Work. While Kemps training had been provided to some key staff, none had become proficient with the new system and more training had been scheduled. The CLD director did not rely on the case management systems for legal work supervision. She reported having an open door policy.

CLD uses Westlaw and Casemaker for online legal research. Casemaker is provided free of charge by the Mississippi State Bar. In addition, CLD advocates have access to the Internet on their desk top. Internet access for personal use is allowed (but is supposed to be minimal), and the Tribe's IT department monitors its use.

Finding 22: Historically, CLD has had little to no authority to expand its base of funding, but states it will embark upon resource development in the future.

The 2012 projected annualized budget for CLD is \$547,405. The program is funded overwhelmingly by the Mississippi Band of Choctaw Indians to provide criminal defense and civil legal assistance to the Tribe's low income people. In addition to Tribal funding in the

²⁸ This visit was conducted by the Office of Program Performance (OPP) for the purposes set forth in the Introduction. Assessment of fiscal operations is conducted by other offices at LSC. The Office of Compliance and Enforcement (OCE)'s Final Report from its July 2011 Case Service Report/Case Management System (CSR/CMS) review contained findings, recommendations, and corrective actions that pertain to the fiscal review and assessment.

amount of \$408,958, CLD also receives two small grants from the Native American Rights Fund in the amounts of \$36,375 and \$23,784. The annualized amount of CLD's 2012 LSC funding is \$78,288, which represents 14.3 percent of CLD's annual budget. As indicated above, CLD's grant from LSC is only for a funding term of six months, granting CLD at present only 50 percent of the annualized \$78,288, which amounts to \$39,144.

The chair of the Judicial Affairs Committee and the executive director informed the team that CLD is considering charging all civil law applicants a \$25.00 intake fee regardless of their financial eligibility. The plan is to refund the fee if the client follows through with his or her case. The program estimates that each year some 400 clients do not follow through with their case. Despite the refund proviso, CLD views the intake fee as a resource development device that is expected to raise as much as \$10,000/year. The intake fee is unlikely to be an effective fund raiser as the MBCI Tribal Council will reduce its appropriated funding to CLD by every dollar raised from the intake fee.

At present, CLD has not decided to pursue any additional fund raising activities nor has it developed a written resource development plan. While CLD includes some highlights of its work and accomplishments of staff in its annual budget requests to the Tribal Council, the program doesn't produce an annual report. There is little to no coverage of CLD in the Tribal and wider Mississippi media. The program has not considered an overall media strategy tied to resource development.

Recommendation IV.1.19.1. CLD should consider developing a resource development plan and a media strategy to become more proactive in expanding its base of funding.

Criterion 9. Participation in an integrated legal services delivery system.

Finding 23: While CLD and its executive director are known by leaders of the Mississippi state justice community, the program and its director rarely participate in state justice community activities.

Since becoming an LSC grantee in 2009, CLD has not been an active participant in the state justice community, spearheaded by the Mississippi Access to Justice Commission and the Mississippi Center for Justice. We note, however, that in 2009 and 2010, the CLD director participated in Mississippi Access to Justice public hearings regarding the unmet civil legal needs of the state's low income residents and the need for improvement in access to justice.

The press of work and CLD's small staff are cited as reasons for the CLD director's inability to be more active in the state justice community. The team would note, however, that participation with others in the state is a very effective way for CLD to establish a good working relationship with key partners who may be willing and able to assist CLD with some of its more vexing challenges--like intake systems and retrenchment in the face of declining revenue.