

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS & REGULATIONS COMMITTEE
OPEN MEETING

Friday, October 28, 2005

2:49 p.m.

The Grove Hotel
245 South Capitol Boulevard
Boise, Idaho

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Committee Chairman
Lillian R. Bevier
Michael D. McKay

OTHERS PRESENT:

Helaine M. Barnett, President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
Mattie Condray, Senior Assistant General Counsel
Patricia Batie, Manager of Board Operations
Sarah Singleton, Board Nominee
Tom Polgar, Director, Office of Governmental Relations
And Public Affairs
Linda Perle, CLASP
Dave Maddox, Assistant Inspector General for Resource
Management
Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel
Kirt West, Inspector General
Karen Sarjeant, Vice President for Programs

& Compliance
Charles Jeffress, Chief Administrative Officer
David L. Richardson, Treasurer & Comptroller

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1 P R O C E E D I N G S

2 (2:49 p.m.)

3 MR. MEITES: Let's begin.

4 This is the scheduled meeting of the
5 Operations and Regulations Committee.

6 Let's start with the agenda.

7 First I ask for a motion to approve the
8 agenda.

9 M O T I O N

10 MS. BEVIER: So moved.

11 MR. McKAY: Second.

12 MR. MEITES: The agenda is approved.

13 The next item on the agenda is approval of the
14 committee's meeting minutes of July 28, 2005.15 Lillian, you were the chair of that meeting.
16 Have you had a chance to review the minutes?

17 M O T I O N

18 MS. BEVIER: Yes. The minutes -- I move to
19 approve the minutes.

20 MR. McKAY: Second.

21 MR. MEITES: The minutes are approved.

22 We have three items on our -- three rulemaking

1 items in our agenda today.

2 Each is a recommendation from the staff asking
3 our committee to initiate rulemaking proceedings to
4 three of our existing rules.

5 Mattie, why don't you start with the first
6 item, which is "Consider and act on initiation of
7 rulemaking to remove Expenditure of Grant Funds
8 regulation," which is 45 CFR Part 1631.

9 MS. CONDRA Y: Sure.

10 For the record, this is Mattie Condray with
11 the Office of Legal Affairs, Legal Services
12 Corporation.

13 As you know from the rulemaking options paper
14 that you were provided, Part 1631 requires that no LSC
15 funds may be expended except as in accordance with
16 restrictions contained in the corporation's fiscal year
17 1985 appropriation. This regulation was promulgated in
18 response to Congressional concerns that significant
19 amounts of pre-1982 funds were being held by recipients
20 and spent on activities which were not prohibited at
21 the time that those funds were appropriate but which
22 were later prohibited for current year funds.

1 By 2005, there is really no reason to believe
2 that any grantees have any pre-1982 funds left sitting
3 around. As such, the original aim of Part 1631 has
4 been long fulfilled, and there is no continuing purpose
5 served by Part 1631, because the 1996 restrictions have
6 superseded the 1980s restrictions. Thus, Part 1631 is
7 obsolete.

8 In light of the above, management is
9 recommending that the committee recommend to the board
10 the deletion or, in Federal regulations parlance, the
11 removal of part 1631 in its entirety. Management
12 believes that removal of Part 1631 will streamline
13 LSC's regulations and remove any potential source of
14 confusion from having this obsolete regulation on the
15 books.

16 Management further recommends that a simple
17 notice and comment process is all that is called for in
18 this case.

19 Now, typically, with this process, if the
20 committee recommended and the board approved the
21 initiation of a rulemaking, staff would then go back
22 and prepare a draft notice of proposed rulemaking for

1 the committee's consideration at its next meeting.
2 However, because of the very simple nature of the
3 course of action management is recommending today,
4 management has gone ahead and we've prepared a draft
5 notice of proposed rulemaking for the committee's
6 review and recommendation for publication to the board.
7 The committee members have been given copies of that
8 draft notice.

9 That's pretty much it.

10 MR. MEITES: Is there any public comment on
11 this item on the agenda?

12 All right.

13 Let me open it to discussion of our committee.

14 I certainly think that we should follow the
15 staff's recommendation on this item. If we have an
16 obsolete regulation, we should remove it.

17 Lillian and Mike?

18 MS. BEVIER: Well, I completely agree. If we
19 were to try to anticipate any objections, can you
20 imagine them coming from any quarter and what they
21 might consist of?

22 MS. CONDRAY: No, I really can't imagine why

1 anybody would suggest that we keep an obsolete
2 regulation on the books.

3 MS. BEVIER: No, I can't either, but I just
4 wanted to check.

5 MR. McKAY: I agree.

6 MR. MEITES: I believe it's the unanimous
7 conclusion that we will recommend to the board
8 initiating a rulemaking procedure to remove our
9 regulation Part 1631 from our regulations and that the
10 staff be directed to publish the notice of proposed
11 rulemaking.

12 The next item is "Consider and act on
13 initiation of rulemaking to revise Client Grievance
14 Procedure regulation," which is our Part 1621.

15 MS. CONDRAV: Sure.

16 Part 1621 requires recipients to establish a
17 grievance committee and procedures for receiving and
18 investigating complaints that service was improperly
19 denied or that service provided was inadequate.

20 The purpose of Part 1621 is to ensure that
21 recipients are accountable to those that they are
22 expected to serve.

1 This regulation was adopted in 1977 and has
2 not been amended since then.

3 Although I will say that Part 1621 is not a
4 source of significant problems for our grantees or the
5 corporation, in light of 30 years -- nearly 30 years of
6 experience and changing circumstances, it does appear
7 that it is appropriate to consider if there is a better
8 way to approach the client grievance process.

9 To that end, management is recommending that
10 the committee recommend that the board initiate a
11 rulemaking on Part 1621.

12 Management is further recommending that the
13 rulemaking focus on the six major issues that are set
14 forth in the rulemaking options paper.

15 Management is further recommending that, prior
16 to the development of a notice of proposed rulemaking,
17 that LSC convene a rulemaking workshop. Management
18 makes this recommendation because the proposed review
19 would benefit greatly from an informal exchange of
20 ideas and the input of client representatives, as well
21 as grantees.

22 In the rulemaking options paper, there was a

1 footnote which discussed, you know, what the rulemaking
2 options paper has to say about rulemaking workshops.
3 If you have any questions about that, I'm happy to
4 answer them, but if you think you've got the concept
5 down, that's fine. I won't take up excess time with
6 it.

7 MR. MEITES: Why don't you -- this is the
8 first time we've heard the phrase "rulemaking
9 workshop."

10 Why don't you tell us what it is, how it
11 works, and what the pluses and minutes are?

12 MS. CONDRAV: Sure.

13 I will say that the corporation has not yet
14 convened a formal regulatory workshop under the
15 existing rulemaking protocol. That would be something
16 new for us, but I have participated in rulemaking
17 workshops in my former life, before LSC, and so, I can
18 talk some about not only how the rulemaking protocol
19 conceives of them but how they've worked in real life.

20 All of our rulemaking has to be done by -- at
21 base, you get down to the written notice and comment,
22 but just doing notice and comment rulemaking, which is

1 often referred to as black box rulemaking, has its
2 limitations.

3 In very simple situations like the 1631, it
4 can work just fine, but there are times where it really
5 helps the rule writer, the agency, to kind of have an
6 open discussion and to have a collegial, collaborative
7 process whereby they get factual input and discuss
8 issues with the various stakeholders who will be
9 impacted by the regulation.

10 This allows for issues to kind of come up and
11 get fleshed out and ideas to be bounced back and forth
12 so that when the reg writer then goes back and writes
13 the regulation, they have a much better basis of
14 factual information and concerns with which to start
15 working, plus there is an opportunity for some policy
16 guidance.

17 MS. WATLINGTON: This is Ernestine. Can you
18 hear me?

19 MS. CONDRAV: Yes.

20 MS. WATLINGTON: I wanted to ask a question.
21 Do you see this rulemaking workshop -- what do you see
22 it doing as far as changing the grievance procedure for

1 the better, or you know, how would it change it, or
2 what are you looking for it to do?

3 MS. CONDRAY: Well, the rulemaking workshop
4 itself does not presuppose any outcome and does, in
5 fact -- is not -- it distinguishes from a full-blown
6 negotiated rulemaking inasmuch as the object of the
7 workshop is not to develop a draft notice -- consensus
8 notice of proposed rulemaking.

9 It's a more informal exchange of ideas and
10 thoughts and facts that then go back and inform the
11 staff in the development of the rule.

12 As I said, the corporation has not done one
13 before.

14 There's a great deal of flexibility in the
15 basic process, depending on -- it's very fact-specific.

16 If, in the collective wisdom, everybody thinks that
17 the issues need to be discussed, but it's only going to
18 take half-a-day, well, then you set up a regulatory
19 workshop for a half-a-day.

20 If people think that there -- the issues might
21 be more complicated and require a little more time, you
22 could set up a rulemaking workshop that would take up

1 the better part of two days. I mean there's no --
2 there's no hard-and-fast rule of what it has to be.

3 It's more of an opportunity to engage the
4 parties and give them an opportunity to sit down
5 together.

6 As conceived of in the rulemaking protocol,
7 there is also an opportunity for LSC staff, management,
8 and board members, should they choose to involve
9 themselves in that process, to take part in those
10 discussions, as well as stakeholders.

11 So, I would imagine, for the client grievance
12 procedure, it would seem to be clear that obviously our
13 grantees, as the regulated entity, but also
14 representatives of the client, client representatives,
15 and as I mentioned, would be appropriate to have and
16 participate in a workshop, because the process for
17 client grievances needs to be meaningful for both the
18 grantees and clients and applicants, as well as LSC.

19 So, it's an informal -- it's intended as an
20 informal process but a way to get us a lot more
21 information than we might otherwise have if we relied
22 solely on the notice and comment process.

1 MR. MEITES: Just out of curiosity, why is it
2 that LSC has never used this procedure?

3 MS. CONDRAY: Well, partially, the new
4 rulemaking protocol, which went into effect -- I
5 believe it dates to November of 2002.

6 We had two open rulemakings going on at that
7 point, 1611, which is now concluded, and 1626, and so,
8 those were already in -- had gone through the
9 negotiated rulemaking.

10 It just -- we haven't had an opportunity to
11 try out our new --

12 MR. MEITES: Did this board adopt the new
13 rulemaking protocol?

14 MS. CONDRAY: No, no, that was the prior
15 board.

16 MR. MEITES: Before we get to public comment,
17 one thing that maybe concerns me a little bit is your
18 suggestion that we recommend to the board that this
19 rulemaking focus on the six areas that you've outlined
20 in your memo.

21 I think I'd feel more comfortable, since
22 you're going to use this regulatory workshop, that we

1 just throw the whole thing open.

2 MS. CONDRAV: That's fine.

3 MR. MEITES: I think that would be a better --
4 I will tell you right now I will make the first
5 comment, because I sat on a grievance committee, and
6 you're not going to like what I'm going to say.

7 The grievant was unrepresented, and it was a
8 grievance against a staff attorney, and I was one of
9 the two-person grievance committee, and I didn't feel
10 that the grievant was able to adequately present his or
11 her case.

12 So, one thing I would like you to consider is
13 what kind of assistance a grievance should actually
14 have when they are -- when the grievance process is
15 actually undergoing.

16 Questions for Mattie on this, or public
17 comment?

18 MR. McKAY: I have a quick question. When you
19 have this meeting, would you bring people into
20 Washington, D.C.?

21 MS. CONDRAV: I don't know that we've worked
22 out all of those details, but I presume that we would

1 bring people into Washington, D.C., or we would make an
2 opportunity, if people wanted to participate but
3 couldn't get in, to participate by telephone, to be
4 able to call into it.

5 MR. MCKAY: And people who would travel in --
6 would LSC be paying for this?

7 Like, for instance, presumably grantees would
8 be involved in this.

9 MS. CONDRAV: Right.

10 MR. MCKAY: Would the grantees be paying for
11 this out of their budget, or would it be coming out of
12 our budget?

13 MS. CONDRAV: I don't know the specific answer
14 to that question.

15 I can tell you that when we convened the
16 rulemaking, the negotiated rulemakings, people
17 participated on their own dime in terms of travel.

18 The grantees and the other representatives
19 from like CLASP and the ABA -- they covered their own
20 travel costs.

21 MR. MEITES: This case is a little different.

22 MS. WATLINGTON: This is Ernestine. That goes

1 back to what the gentleman said earlier, and that
2 eliminates the clients completely.

3 MS. CONDRAV: I am not disagreeing.

4 I am just telling you what happened in the
5 previous process.

6 MS. WATLINGTON: Yeah. I was just making a
7 statement.

8 MR. MEITES: Well, in this particular rule,
9 though, I think it's quite important that we get
10 outside our usual stakeholder community, because we're
11 concerned about grievances against our grantees.

12 MS. CONDRAV: Exactly.

13 MR. MEITES: And whether by phone or whether
14 we pay for it, I think it's important that you
15 facilitate as wide an opportunity to participate.

16 Is there public comment on this?

17 MS. PERLE: I'm Linda Perle from the Center
18 for Law and Social Policy.

19 I absolutely agree that we should go forward
20 with this.

21 This is one of the rules that CLASP, on behalf
22 of NLADA, suggested that we might address.

1 I wanted to inform the committee that, in
2 1994, there was an effort to revise this rule. There
3 was a notice of proposed rulemaking that was sent out,
4 and we received a number of comments, and there is a
5 draft rule, that addressed a number of the issues that
6 Mattie raised in her rulemaking options paper, and I
7 think that many of those issues are still live issues
8 today.

9 I think there are some new takes on some of
10 those issues, particularly with the development --
11 additional developments in technology, similar to what
12 Karen was talking about for the Provisions Committee,
13 but technology has sort of changed the way we look at a
14 lot of these things, and I think it's something that we
15 definitely need to consider, but I also think that we
16 should at least make widely available the draft that
17 was considered a decade ago, because I think it does
18 definitely address some of the issues that were there.

19 I agree that we do have an issue where we have
20 to make it clear that there's an opportunity for client
21 input, but I think it's also clear that we have to have
22 an opportunity for program input, because obviously

1 there may be some differences in view. We don't want
2 to -- we want to make sure it's as open to clients as
3 possible but also that it doesn't impose unnecessarily
4 heavy burdens on programs.

5 MR. MEITES: Mattie, can you give us an idea
6 of what -- the time schedule you'd envision for this
7 rulemaking workshop?

8 MS. CONDRAY: Well, quite honestly, given that
9 we're about to embark on that time of year known so
10 joyously as "the holidays," I --

11 MR. MEITES: Only in Washington.

12 MS. CONDRAY: You don't have Thanksgiving and
13 Christmas?

14 MR. MEITES: It's not a low-work -- facetious
15 comments. Go ahead. We all work very hard every day
16 of the year.

17 MS. CONDRAY: I suspect that it will be
18 difficult to get -- given that the board's next meeting
19 is in January, I suspect it will be -- it would not be
20 hard to have the rulemaking workshop done before the
21 board's next meeting, and if you wanted, you know, we
22 could provide a briefing on what happened. I doubt

1 that we would have a draft proposed rule until the
2 April meeting.

3 MR. MEITES: If that schedule works and you
4 could give us a briefing in January, I think that would
5 be of interest to us.

6 MS. CONDRAY: Yeah. I think we would try to
7 shoot to have the rulemaking workshop either sometime
8 in December or early January, depending on people's
9 availability, etcetera.

10 MR. MEITES: Any other comments?

11 M O T I O N

12 MR. MEITES: I recommend that we do follow
13 this rulemaking workshop. It sounds like a procedure
14 worth trying out.

15 I propose that we ask the board to initiate a
16 rulemaking preceded by a rulemaking workshop.

17 MR. McKAY: Second, if that's a motion.

18 MR. MEITES: Yes, it is.

19 MS. BEVIER: I just have one question. How do
20 the budgetary issues get worked out with respect to
21 something like this? Maybe this is just irrelevant,
22 but --

1 MR. MEITES: Travel expenses of groups coming
2 in to participate.

3 MS. CONDRAV: That's a good question, to which
4 I do not have an answer for you.

5 MS. BEVIER: Okay. Well, I expect that you'll
6 figure that out.

7 MR. MEITES: With that, I'll take it it's
8 unanimous that we will make that recommendation to the
9 board.

10 The third item on our rulemaking portion of
11 our agenda is -- deals with our prohibition against
12 discrimination on the basis of handicap regulation,
13 which is our existing regulation 1624.

14 Mattie?

15 MS. CONDRAV: Sure.

16 Part 1624 implements section 504 of the
17 Rehabilitation Act, which prohibits discrimination on
18 the basis of handicap by recipients of Federal
19 financial assistance.

20 Part 1624 was adopted in 1979 and has not been
21 revised in over 25 years.

22 Since the adoption of Part 1624, the Americans

1 With Disabilities Act has become the law of the land,
2 and there have also been amendments to the
3 Rehabilitation Act itself. LSC's regulations do not
4 take any of this new law into account in any way.

5 In addition, although LSC does not receive
6 many complaints of violations of Part 1624, when they
7 do come in, they tend to raise interesting issues,
8 particularly relating to LSC's authority and expertise
9 investigating discrimination claims and resource
10 allocation, particularly when there are other agencies
11 devoted to investigating discrimination claims.

12 Accordingly, management is recommending that
13 the committee recommend to the board that LSC initiate
14 a rulemaking to consider revisions to Part 1624.
15 Management notes that revision to Part 1624 need not
16 necessarily entail the imposition of new requirements
17 but could allow LSC, for example, to clarify
18 requirements where changes in the substantive law have
19 occurred, to include cross references to the Americans
20 With Disabilities Act and address the interplay of the
21 ADA and the Rehabilitation Act requirements, and to
22 develop policies and procedures for the coordination of

1 investigations between LSC and other responsible
2 agencies.

3 Management further recommends that prior to
4 the development of NPRM, LSC convene a rulemaking
5 workshop. This recommendation is made because the
6 proposed review would benefit greatly from an informal
7 exchange of ideas among staff, board members, grantees,
8 perhaps disability rights advocates, client
9 representatives, and perhaps grantee staff employee
10 representatives.

11 Convening such a rulemaking workshop would
12 significantly help inform the development of an NPRM
13 and do so without the -- although at some cost but not
14 at the same cost in terms of time and expense of a
15 full-blown negotiated rulemaking.

16 I see that other entities, parts of the
17 Federal Government, have resolved obligations under
18 Federal law regarding disabilities in a variety of
19 ways.

20 So, if you have this rulemaking workshop, I
21 would hope you get input of the experience, for
22 example, of the Department of Transportation and the

1 Department of Justice.

2 MS. CONDRAY: Absolutely, yeah.

3 MR. MEITES: Okay. Questions? Public
4 comments on this provision?

5 MS. PERLE: Again, this is one of the
6 regulations that we suggested that the board might want
7 to take up, for the reasons that Mattie gave, because
8 it's been a long time, there's been a lot that's
9 happened.

10 The one difference was that we did suggest in
11 our comments that this be a negotiated rulemaking.

12 We think that potentially the issues are very
13 complicated.

14 I'm not sure that we necessarily think it has
15 to be the same kind of full-blown negotiated rulemaking
16 that we used for 1621 and 1626.

17 I think that if the workshop idea does provide
18 an opportunity for significant conversation over the
19 course of a couple of days and there is an opportunity
20 to try to really raise all the issues and, where there
21 is consensus, to try to draw that out, I think that
22 that would be -- that that might be sufficient, but

1 since -- it's hard to know -- since we don't have any
2 experience with that process, it's hard to know exactly
3 how complete that would be.

4 I think that this is -- there are many
5 stakeholders that need to be fully consulted before we
6 reach any conclusions on this.

7 So, I am concerned that there be a substantial
8 discussion.

9 MR. MEITES: Does it make sense to try the
10 workshop route first and see if more is needed?

11 MS. PERLE: I think, certainly, if the
12 corporation is open to the idea, that we'll try the
13 workshop, and then if it appears that a negotiated
14 rulemaking would be helpful and would meet the needs of
15 all of the stakeholders, I think that that would
16 certainly be a good way to proceed.

17 MR. MEITES: Mattie?

18 MS. CONDRAY: I think doing it by a rulemaking
19 workshop is probably the best way to go, and I think,
20 as I noted in my little disquisition on rulemaking
21 workshops, we have the flexibility, if we think it's
22 going to be a complicated issue, to have a couple of --

1 you know, it doesn't have to be an afternoon. It can
2 be two full days, if we think that's what we need.

3 And of course, I'll remind that anything that
4 gets developed out of -- any information that comes
5 that then informs the development of a notice of
6 proposed rulemaking -- that notice does go through our
7 comment period where it gets brought in front of the
8 committee, and the committee does what it wants to --
9 makes its policy recommendations, opportunity for
10 discussion in front of the full board, written comment
11 period.

12 So, it's not like, at the end of the
13 rulemaking workshop, we come back with a final rule
14 that we ask the board's blessing on.

15 MS. PERLE: But it is possible that, at the
16 end of the rulemaking workshop, there might be a
17 determination that what we really need to do is do a
18 negotiated rulemaking.

19 I don't think it's precluded.

20 MR. MEITES: Then you can come back to us and
21 report that.

22 MS. CONDRAY: Absolutely. We would have to do

1 that, certainly.

2 MR. MEITES: Okay.

3 Well, then, my sense is we should go the route
4 recommended by Mattie.

5 Okay.

6 That's what we will do. We will recommend to
7 the board it initiate a rulemaking proceeding with
8 regard to Part 1624 and that the staff convene a
9 rulemaking workshop on this regulation.

10 Okay.

11 The next is another staff matter -- the report
12 on -- staff update on dormant class actions.

13 Vic?

14 MR. FORTUNO: Good afternoon, everyone.

15 For the record, Victor Fortunato, Office of
16 Legal Affairs.

17 I think that, at page 160 of your board book,
18 you have a written update.

19 By way of background, in February of this
20 year, staff provided a confidential written report
21 identifying grantees with dormant class actions.

22 That written report was discussed at a

1 committee meeting, and staff was asked to contact those
2 grantees and to inquire of them whether they would be
3 willing to look for substitute counsel in those dormant
4 class actions.

5 We did so, and at the April meeting of this
6 committee, John Asher and I reported to the committee
7 on the results of our discussions with those grantees.

8 At the conclusion of our presentation, we were
9 asked to update you in six months on any progress made.

10 This agenda item is that six-month update.

11 I think that the short memo that you have
12 effectively does so.

13 I think what we do in the memo is we identify
14 programs by name, which we have not done in the oral
15 presentations that have occurred to date.

16 So, I can summarize what the written memo
17 says, but if you feel no need for that, then I can just
18 respond to any questions you might have.

19 MR. MEITES: Lillian? Mike?

20 MR. McKAY: It's a good memo, very helpful,
21 but it appears that the reports you're receiving
22 generally is that they're trying to find substitute

1 counsel and they're not successful.

2 MR. FORTUNO: Well, one grantee succeeded in
3 finding substitute counsel and was allowed to withdraw
4 from the case and have new counsel substituted. The
5 others have been looking but have not succeeded.
6 They've explained to us, when they were contacted
7 recently for updates, that circumstances, in some
8 cases, there are jurisdictions where they don't have
9 very many attorneys. They couldn't find attorneys in
10 those rural jurisdictions.

11 What they're doing is looking elsewhere in
12 large cities and are not hopeful, because the cases are
13 at a stage where they're dormant, and they're finding
14 it difficult to find counsel who's willing to immerse
15 themselves to the extent that they have to in order to
16 assume responsibility for the cases.

17 So, they've explained -- all but two, I think,
18 two grantees who had initially respectfully declined to
19 seek substitute counsel, and those two grantees account
20 for an aggregate of nine such matters. Those two
21 grantees have reaffirmed their position that they don't
22 feel they need to do that under the rule; moreover,

1 that to attempt to do so would, in their judgement, not
2 yield any fruit. They don't anticipate that they'd be
3 able to find anyone. So, they have reaffirmed their
4 position that they'll just ride that out, so to speak.

5 The other grantees, as I said, are looking for
6 substitute counsel.

7 Whether they will be successful is unclear,
8 but at least one grantee has, in fact, found substitute
9 counsel and withdrawn from the case.

10 MR. MCKAY: And that's what struck me as
11 hopeful but just a tad bit curious that only one was
12 able to find substitute counsel, and I'm wondering why
13 a case that's been dormant for a couple or three years,
14 why an attorney who is publicly spirited would not --
15 would not find it a problem, because the odds are he or
16 she would not have to roll up their sleeves and get up
17 to speed on it, because the case has been dormant for a
18 long time.

19 MR. FORTUNO: I don't know that I have much
20 light to shed on that.

21 I can only report on what the grantees have
22 informed us of.

1 Incidentally, three of the cases, the dormant
2 class actions are actually pre-'96 attorneys' fees.
3 So, I think that those can probably be excluded from
4 the calculation here, so the number is actually
5 smaller, but we're still talking about a handful of
6 cases where we've been informed that efforts are being
7 made to locate substitute counsel.

8 But we have further been informed that they
9 have met with no success other than the one case. We
10 can -- we have not done anything terribly formal or
11 official. This has not been -- I think it was handled
12 by the Office of Compliance and Enforcement at the very
13 outset for purposes of determining -- conducting a
14 survey to determine how many grantees had dormant class
15 actions.

16 Since then, OCE has not played a role in this.
17 We've simply -- John Asher and I, in the first
18 instance, and Legal Affairs, more recently, have
19 contacted grantees to get the information, but it's not
20 been in the way of any kind of formal inquiry; it's
21 just been discussion over the telephone, getting the
22 information they provide, and then passing that along.

1 If you would like us to take a more focused
2 look at this and report back, we can certainly do so,
3 or if you'd like us to simply check with grantees again
4 in a few months and report back in three months on
5 whether they've had any -- made any progress, and if
6 so, that may be sufficient, and if not, then you may
7 want us to take a more focused look.

8 Either way, the committee's preference will
9 guide us.

10 MR. MEITES: Lillian?

11 MS. BEVIER: I'm curious about the rationale
12 offered by the couple of offices that have just said
13 no, we're not going to do this, and one of them has
14 quite a big number of these --

15 MR. FORTUNO: Yes.

16 MS. BEVIER: -- cases pending. Was a reason
17 given for that refusal?

18 MR. FORTUNO: The one grantee with -- I think
19 actually has eight, and the other grantee has one. The
20 one grantee with the eight, we have dealt with two
21 executive directors.

22 The former executive director, who's retired,

1 had taken the request under advisement and then gotten
2 back to us to report that he had discussed it with his
3 staff and that the consensus there was that they knew -
4 - that the cases were too complex, that they knew the
5 cases and the players very well, and that they did not
6 think they would be able to find anyone willing to, at
7 this late stage, acquire the necessary command or the
8 cases to be able to assume professional responsibility
9 for the cases, and moreover, that since they were
10 satisfied that they were not required to do so under
11 the rule -- that is, to withdraw -- that it was their
12 judgement that their clients were best off with them
13 not withdrawing.

14 The other program, with the one case, did
15 essentially report the same, although I should add that
16 that one program director said if, however, no other
17 program takes this position and they all agree to
18 withdraw, let us know, and we'll reconsider. I think
19 that the fact that there was another grantee with a
20 more substantial number of cases declining to withdraw
21 is causing the second grantee to hold its ground on
22 this point.

1 MR. MEITES: But you suggested that there has
2 been a change in management in the grantee with the
3 eight cases.

4 MR. FORTUNO: Yes. And we spoke with the new
5 executive director, who initially said that she would
6 consider the issue, and then spoke with her again, and
7 she said she'd discussed it with staff and that she was
8 reaffirming the original position that they would
9 respectfully decline to seek substitution counsel.

10 MR. MEITES: Okay. So, that's happened since
11 you prepared this memo.

12 MR. FORTUNO: Yes.

13 MR. MEITES: Yeah.

14 MR. FORTUNO: Yes.

15 I'm sorry.

16 When the memo was prepared, that was after she
17 had indicated that she would revisit the issue but
18 before the second discussion where she said I've
19 discussed it with staff and revisited the issue with
20 staff and it's our determination that we should
21 reaffirm our position.

22 MR. MEITES: We have not, as a committee or as

1 a board, taken any direct hand in relations between LSC
2 and its grantees. I'm very reluctant for us to do
3 that. I think I would feel more comfortable asking the
4 staff to give us a view on what they think the
5 appropriate next step is. Since we've opened this
6 discussion, I think we have to continue to inquire
7 about it, but I don't feel that we should tell you what
8 to do.

9 You're the experts on grantee/grantor
10 relations.

11 Does that make sense, Mike?

12 MR. MCKAY: Yeah.

13 MR. MEITES: So, why don't we put this back on
14 the agenda when you have something to report to us and
15 give us your views on -- maybe nothing should be done,
16 maybe something should be done, but keep us informed of
17 what the staff's thinking is on this area.

18 MR. MCKAY: Because this is an important issue
19 to us.

20 MR. FORTUNO: Yes.

21 MR. MCKAY: And for reasons that we all
22 embrace, and that's trying to further the cause of

1 legal services, and we're hoping that you and your
2 colleagues will be able to jawbone our folks to do
3 whatever it would be helpful for them to do.

4 MR. FORTUNO: We will.

5 MR. MEITES: We're not asking you to put it on
6 the next agenda, but when you think you have something
7 to report back to us, you'll do that?

8 MR. FORTUNO: Certainly, yes.

9 MR. McKAY: But if you have nothing to report
10 in six months, could you just remind us that there's
11 been no change?

12 MR. FORTUNO: I'll wait no longer than six
13 months to report one way or the other.

14 MR. MEITES: Okay.

15 MR. FORTUNO: Thank you very much.

16 MR. MEITES: Thank you.

17 The next item is other public comments on any
18 other matters.

19 (No response.)

20 MR. MEITES: Hearing none, consider and act on
21 any other business.

22 (No response.)

1 If there is none, I will entertain a motion to
2 adjourn.

3 M O T I O N

4 MR. MCKAY: So moved.

5 MS. BEVIER: Second.

6 MR. MEITES: Thank you very much.

7 MS. BARNETT: Might I just say, since we are
8 ahead of schedule, but because Vic Fortuno has
9 explained that our notice in the Federal Register is a
10 rolling notice, perhaps we could take a 10-minute break
11 and then go into Finance Committee ahead of schedule,

12 MR. MEITES: Sure.

13 MS. BARNETT: Thank you.

14 (Whereupon, at 3:25 p.m., the committee was
15 adjourned.)

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