



Legal Services Corporation
Office of Program Performance

Final Report

Program Quality Visit
to

East River Legal Services
Recipient No. 542026

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LSC Review Team

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INTRODUCTION

The Legal Services Corporation's (LSC) Office of Program Performance (OPP) conducted a Program Quality Visit to East River Legal Services September 10-12, 2012. The visit was conducted by OPP Program Counsel Evora Thomas and Tim Watson (team leader).

Program Quality Visits are designed to evaluate whether LSC grantees are providing the highest quality legal services to eligible clients. In conducting the evaluation, OPP relies on the LSC Act and regulations, the LSC Performance Criteria, LSC Program Letters, and the ABA Standards for the Provision of Civil Legal Aid. The evaluation was organized to follow the four Performance Areas of the LSC Performance Criteria, which cover needs assessment and priority setting; engagement with the low-income community; legal work management and the legal work produced; and program management, including board governance, leadership, strategic planning, resource development, and coordination within the delivery system.

The team reviewed documents routinely provided by the program, including recent grant applications to LSC, technology and PAI plans, workforce analysis charts, case reports, and other service reports. The team also reviewed materials requested in advance of the visit, including documents relating to the program's intake, legal work, case management policies and systems, advocates' writing samples, and the results of an online staff survey. The team interviewed all staff members. The team also met in person or by phone with the program's board chair and other board members, judges, and representatives of other community organizations.

PROGRAM OVERVIEW

East River Legal Services, in Sioux Falls, South Dakota, receives \$382,505 in basic field funding to provide a full range of legal services to the Sioux Falls area and the sparse rural farm country of eastern South Dakota, totaling 33 counties. In 2012, LSC funding accounts for 45% of the total program budget of \$798,157.00. ERLS has a single office¹ and nine employees - executive director, two staff attorneys, paralegal, legal secretary, receptionist, administrator, and two persons who staff the Senior Medicare Patrol (SMP), which is a program funded by the Administration on Aging. One of the SMP staff is located in Rapid City. ERLS' executive

¹ At one time the program had four offices as a result of expansion grants. These offices were closed after only two years when severe cuts were made to the LSC budget in 1982.

director was the first staff attorney hired by the program in 1977 and became executive director in 1980. He left the program for private practice for a brief period and then resumed the position of ERLS' executive director in 1994.

ERLS attorneys are able to represent clients in locations within an hour and a half driving time, but more distant locations are served through a Judicare contract component. Most cases closed with LSC funding are family cases and are resolved with court decisions or settlements with litigation.

SUMMARY OF FINDINGS

ERLS relies on community connections and hands-on advocacy to inform itself of critical legal needs. Its last comprehensive needs assessment was conducted in 1996 and may no longer adequately reflect the needs of the eligible population. The program has customary legal services priorities, but its goals and objectives in each priority are only generally stated. There is no policy or procedure for evaluating the effectiveness of the program's work.

ERLS is respectful of its clients and sensitive to their circumstances. The program conducts only limited client education and outreach activities. Intake is somewhat outmoded, though generally sufficient for program needs.

ERLS' experienced advocates are dedicated to their work and have sufficient capabilities, but the program suffers from recent losses of advocates, and caseloads are out of balance. ERLS primarily performs extended work in family cases and uses a Judicare program to provide representation in distant areas.

Although some improvements would be advantageous, the board effectively carries out its oversight function. Leadership of ERLS is primarily limited to its experienced executive director, who appears to have shouldered too much of the day to day work of the program.

It appears that ERLS has sufficient financial management. ERLS has adequate benefits and human resources administration, but needs to establish a staff evaluation system.

The program has some challenges, largely related to its small size and funding losses, but it is a competent, respected provider of legal services and is well-integrated in the delivery system.

DISCUSSION OF FINDINGS

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.

Criterion 1. Periodic comprehensive assessment and ongoing consideration of legal needs.

Finding 1: ERLS relies on community connections and hands-on advocacy to inform itself of critical legal needs. Its last comprehensive needs assessment is outdated and may no longer adequately reflect the needs of the eligible population.

The last formal needs assessment was conducted in 1996. The program employs an ongoing form of needs assessment by periodically sending out surveys containing open-ended questions to organizations that serve the poverty population. Interviews with other providers and staff indicate that the program also maintains a continuing dialogue about client needs with these partners, which include domestic violence shelters, senior centers, social service agencies, homeless shelters, public housing authorities, and the bench and bar. The program also relies upon the knowledge of client board members about emergent issues. Even though these methods have from time to time brought new issues to the attention of the program, a more comprehensive approach is needed to satisfy LSC requirements and to assure program leadership that client needs have been effectively assessed. ERLS has consistently maintained that it does not have sufficient resources to conduct a new assessment.

Recommendation:²

I.1.1.1. *As part of a recommended strategic planning process, ERLS should conduct a legal needs assessment as soon as resources permit. It should seek input from community partners, the bench and bar, and other legal services providers to employ methods that will achieve the best result for the cost. It should consider posting a needs assessment input form on its website.*

Criteria 2-3. Setting goals and objectives, developing strategies, allocation of resources, and implementation.

Finding 2: The program has customary legal services priorities, and appears to expend its resources to address them, but its goals and objectives in each priority are only generally stated.

Priorities are reviewed annually by the board. ERLS's priorities are housing, public benefits, consumer/debt issues, family matters (custody and domestic violence), and protection for vulnerable groups from abuse and discrimination (senior exploitation, fair housing). The program's goals or projected outcomes for each activity, whether client representation or client education, are not expressed in quantifiable terms. The statement of priorities does not reflect a thoughtful goal-directed, measureable approach. ERLS resources are primarily allocated to direct, extended service to clients.

² Recommendations in this report will be identified by a Roman Numeral cross-referenced to the Performance Area, followed by three numbers identifying, respectively, the Criterion addressed by the recommendation, the number of the finding, and a number designating whether it is the first, second, third, etc., recommendation under that finding. For example, III.2.14.3 designates Performance Area III, Criterion 2, Finding 14, third recommendation under finding 14. There are two tiers (levels) of recommendations in this report. Recommendations marked with an asterisk are Tier One Recommendations and are intended to have a direct and major impact on program quality and/or program performance. **In your next grant renewal application or competitive grant application, instead of submitting a full narrative, your program will be required to report what it has done in response to Tier One Recommendations.**

The program closed the majority of its cases in three of its priority areas in 2011: family (66.8%), housing (20.1%), and consumer (5.9%). Only one public benefits case was closed. The fourth highest number of cases was in the miscellaneous category (3.6%). The latter included 11 wills, five advance directives, and one Indian/tribal law case. In addition to direct representation, a small amount of LSC resources are also used for client education activities and materials.

See the program's comments regarding this finding at pages 1-2 of the attachment.

Criterion 4. Evaluation and adjustment.

Finding 3: ERLS does not have a policy or procedure for evaluating the effectiveness of their representation and other activities that benefit the low income population.

ERLS has not conducted a formal evaluation of its delivery approach but has indicated that evaluations and adjustments to its service delivery are made as a result of input gained through case meetings, client satisfaction questionnaires, and a periodic request for information about its performance to other agencies that serve the client population. Evaluation of the program's delivery strategies is hindered by the fact that the program's work is not guided by quantifiable goals, objectives, and measurable outcomes. Without clearly stated benchmarks, the program cannot make meaningful adjustments to its service delivery as circumstances warrant.

Recommendation:

I.4.3.1.* ERLS should engage in a strategic planning process that will include a needs assessment, identification of measurable goals and objectives, and development of case acceptance criteria and procedures to ensure that resources are allocated to meet clearly articulated program objectives.

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

Criterion 1. Dignity and sensitivity.

Finding 4: ERLS is respectful of its clients and sensitive to their circumstances,

Judges and community partners all stated that ERLS advocates and staff are courteous to their clients and demonstrate compassion and sensitivity for them and a genuine concern for their needs. This is consistent with impressions gained in interviews. Judges noted that program advocates evince heightened compassion for people who have difficulty understanding the legal system and for clients that have linguistic and cultural difficulties.

The program's service area is overwhelmingly white and English-speaking. Less than 3% of the population is Hispanic. The largest non-white group in the service area is Native American (6%). The program has three Native American staff members. Two are enrolled tribal members, and one is Native American by birth but not enrolled in a tribe.

More than 40 languages can be encountered in the service area, including Spanish, Arabic, Somali, and Russian. ERLS has no bilingual staff and no LEP plan. ERLS does not have a service account with a translation service such as Language Line, but uses it as needed. Translation for clients who have limited English proficiency (LEP) is often achieved through friends and family. The program has used language assistance provided by Lutheran Social Services and the Spanish Ministry. It also described using a listserv to find an Albanian speaker.

Recommendation:

II.1.4.1. The program should create a written plan for assisting clients with limited English proficiency.*

Criterion 2. Engagement with the low-income population.

Finding 5: ERLS conducts only limited client education and outreach activities.

There is no regular planned outreach at ERLS. Outreach and educational activities funded by LSC are limited to a few presentations to specific client groups, e.g., to public housing tenants, usually upon request. Interviews with other organizations suggested that clients in the community would benefit from activities that would provide legal education and advice about their rights.

The Senior Medicare Patrol Program, funded by the Administration on Aging, provides information to seniors with presentations, one-on-one counseling, and advice to volunteers. These activities occur at libraries, senior centers, and outreach events such as health fairs. The visit team was provided with several examples of high quality educational material concerning medical debt and consumer concerns for older Americans. The SMP staff make referrals to ERLS, but do not conduct intake onsite. SMP cases are not included in case reports sent to LSC.

See the program's comments about this finding at page 3 of the attachment.

Recommendation:

II.2.5.1. ERLS should include the goal of improving and increasing outreach activities in its strategic planning process.

Criterion 3. Access and utilization.

Finding 6: Client intake is somewhat outmoded, though generally sufficient for program needs.

The office is on the third floor of a downtown building and is accessible and visible to clients. A bus line runs within two blocks, though there are very few buses in the city. There is very little space for waiting clients in the reception area, which can adversely affect the confidentiality of information given to the receptionist.

ERLS has a toll-free number with designated telephone intake from 9:00 a.m. to noon on Tuesday of each week. Clients who call or walk in during the week are screened by the receptionist for financial eligibility and case type. They are instructed to call back during designated intake hours. Applicants with emergencies or who need immediate service (evictions) have their situations reviewed immediately by an attorney to determine if they need expedited service.

On Tuesday mornings, the legal secretary, who has handled intake for seven years, takes calls in the order received. The telephone system has five incoming lines and few high-end capacities other than TTY capability. Although the system has the capacity to play recorded information while clients wait, this capability is not being used. The receptionist keeps an eye on the blinking lines and will let a waiting caller know she is next if the wait time has been long. She estimates that approximately 10% of the people on hold hang up before they are served. Some interviews suggested that on Tuesdays it is difficult to place a phone call to the program because the lines are occupied by intake applicants on hold.

The legal secretary interviews the clients and enters preliminary information into the case management system (Kemps Prime). If needed, the intake worker can use scripts supplied by advocates for specific subject areas. It appears that some of the questions that are asked of clients during the intake interview duplicate questions that were asked of clients by the receptionist when they first came into the office or called the office. In a typical week approximately 35 people call or walk in to the office, and 10-15 become new clients. The program makes arrangements as necessary to accommodate clients who cannot come in during regular hours or who are homebound.

The legal secretary in charge of intake has considerable experience and is well-versed in a variety of fact situations. Situations that are appropriate for counsel and advice are often dealt with by the legal secretary during the intake process where the office procedure and policy regarding the client's circumstances are clear. However, it appears that review of her advice by an attorney (usually the executive director) may be intermittent.

The office conducts a meeting on Tuesday afternoon to review intakes. Cases are assigned to staff (or designated for pro bono referral or Judicare) and a standard acceptance letter is mailed out that day to the client along with a retainer and a citizenship form. Applicants whose cases have been rejected are notified with rejection letters. The acceptance letter identifies the lawyer who will handle the matter and instructs the client to return forms and pleadings or other documents within 30 days. Once these documents have been received, appointments are made for the clients to come to the office for consultation with the designated advocates.

Intake and case acceptance procedures are primarily conducted based on past practices and institutional memory. A detailed case acceptance policy was adopted in 1991 but has not been in use for several years. The same is true of the intake process; the manual has not been updated in many years.

See the program's comments about this finding at pages 3-4 of the attachment.

Recommendations:

II.3.6.1.* *As part of its strategic planning process, ERLS should engage in an evaluation of its intake process to determine: (1) Whether the intake hours should be increased to expand access to applicants, (2) if it can be made more efficient for both applicants and for staff, (3) if it can be made more client friendly, (4) if the phone system has sufficient capacity, (5) the need for revision of outdated written policies, (6) whether the program has a sufficient procedure for*

review of advice given by the intake staff during the intake process, and (7) the extent to which case acceptance criteria and procedure need to be revised. The board should consider creating an intake committee for this purpose and reviewing the systems used by other small legal aid providers.

II.3.6.2. *ERLS should create announcements concerning program services or legal information for intake applicants to hear during time on hold.*

II.3.6.3. *The program should consider adding on-line intake to its intake system to expand access to the program and improve efficiency for staff and clients. This has been achieved by many providers at very low cost and is considered by many analysts to be an inevitable step for all legal aid providers.*

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

Criterion 1. Legal representation

a. Experience / capacity of advocate staff

Finding 7: ERLS' experienced advocates are dedicated to their work and have sufficient capabilities, but the program suffers from recent losses of advocates, and allocation of advocate time presents some difficulties.

Consistent with the interviews of community partners and judges, the team found that program advocates are dedicated to serving the needs of the client community and have sufficient skills to do so. One judge indicated that the executive director's skills in the courtroom are quite good and that all advocates are timely, prepared, and know the issues.

Writing samples indicated that the attorneys have sufficient depth for a full range of litigation, although one sample suggested that the attorney engages in rapid turnover litigation (protective orders) or fact-intensive family cases that do not require significant legal research or writing.

ERLS has lost two attorneys in the past year. One was lost after seven years with the program when VAWA funding ceased. The other, a Benedictine nun, had been assigned by her order to ERLS and moved on when her order deemed it appropriate. Of the remaining three attorneys, two have more than 30 years' experience, and the third one has 20. The loss of attorneys was mentioned by judges, who were concerned about the lessened presence of the program in the courts.

Case lists reviewed by the team - both open and closed - appeared to be unbalanced. The executive director is handling more cases than the two staff attorneys combined. This is consistent with interviews of area judges, who indicated that the executive director is the attorney most frequently seen in court. While it is not unusual in small programs for the

executive director to be a case handler, it is the experience of LSC reviewers that in such situations the director's caseload is substantially smaller than those of the staff attorneys. The anomalous distribution of ERLS cases suggests that there is a need for criteria concerning case acceptance, case assignment, and caseloads.

See the program's comments about this finding at pages 4-5 of the attachment.

Recommendation:

III.1.7.1.* *As part of the recommended strategic planning process, the distribution of cases should be studied by the program to determine if there is a need for new or improved policies or criteria concerning case acceptance, case assignment, and caseloads.*

b. Systems / approaches to ensure effective representation

Finding 8: ERLS' minimalist approach to litigation management and advocate support is generally sufficient to meet its needs.

ERLS does not have a litigation manual. The program's case acceptance manual was last revised in 1991 and was originally written when the program had four offices. It has not been used by the program's advocates in several years. With a small staff and budget, the program uses a minimalist approach to litigation monitoring and support. In addition to the weekly intake staffing, there is a monthly case review. The program administrator generates reports concerning case lists, open and closed cases, and dormant cases for the advocates and executive director. Each advocate is supported by a secretary or paralegal. Each pair conducts a monthly case review prior to the monthly office meeting. Attorneys and their support staff also frequently review cases for pending dates. A large calendar that has the court appearances of all staff is in the central hallway. Each attorney is also responsible for maintaining his own personal appearance calendar. A file closure checklist is used when cases are completed. The program administrator sends a client satisfaction letter to clients whose cases have been closed at the end of each month.

Support for advocates is a challenge for the program. The program's budget restricts training opportunities. The attorney staff would like to attend national training events in order to stay current with legal developments and learn about emergent issues, but training is mainly accomplished through local seminars and webinars. Advocates have access to electronic legal research through Westlaw and the state bar association on-line research tool. They also have access to publications specific to their work, such as the National Consumer Law Center and National Housing Law practice manuals. Secretaries and paralegals assist with the preparation of documents and with case handling logistics such as sending reminder letters to clients and filing or checking on file documents at the courthouse. Bar dues are paid by ERLS. The program has a litigation budget of \$1,000. Advocates and other staff keep forms, briefs, and other written documents on separate directories and trade them as needed.

See the program's comments about this finding at page 5 of the attachment.

Recommendation:

III.1.8.1. ERLS should revise its old litigation manual to address changes in practice in the last two decades and to codify current practices for case reviews, file closures, and other aspects of case management.

c. Quality and quantity of legal work

Finding 9: ERLS primarily performs extended work, representing clients in family cases. This results in anomalous CSR's when compared to national norms.

ERLS advocacy resources are overwhelmingly devoted to direct representation. With this traditional approach, the total number of cases closed per 10,000 poor (108)³ is only 41% of the national median (263), but the number of *extended* cases closed per 10,000 poor (88) is 45% higher than the national median (61). Moreover, ERLS' *contested* cases closed per 10,000 poor (79) is 155% more than the national median.

Even though the primary case handling emphasis is on direct service cases, the program closes a few cases after giving clients counseling and advice or brief service during the intake process or in the form of incidental advice for existing clients or walk in clients. The program reported 25 advice and 64 limited cases in 2011. All staff agreed that the program could do a better job of capturing these instances of counsel and advice and reporting them as cases. Additionally, it is likely that ERLS could report more cases to LSC if it were to determine that some of the clients served with Older Americans Act funding are actually eligible for LSC funded legal services.

ERLS' cases are heavily concentrated in family law. Over the six-year period from 2006-2011, the average percentage of family cases at ERLS has been 68.5%. The national median for all LSC-funded programs is 36.8% family cases. ERLS projects that this figure is expected to drop significantly. The program is closer to national norms with its closures in housing (20.1%), and consumer (5.9%). However, as stated earlier only one public benefits case was closed. This may be attributable to a decline in SSI cases and a concomitant increase in time spent on evictions and bankruptcies for seniors.

Two of the attorneys are in court weekly, often several times per week. Comparatively, the staff attorney who handles senior issues and bankruptcies makes few court appearances. The overall impression of the visit team is that advocates sufficiently attend to the needs of their clients, although no significant or complex litigation is taking place. In particular, the program has engaged in little litigation that could provide attorneys' fees under fee shifting provisions with prevailing party status, although efforts are under way to do so. Judges characterized the quality of representation as adequate, commensurate with that of the private bar, and sometimes better than adequate. They also expressed concern about the significant rise in the number of pro se litigants.

See the program's comments about this finding at pages 5-7 of the attachment.

³ Case closure numbers are for 2011.

Recommendations:

III.1.9.1. *The program should rewrite its case acceptance policies and criteria, incorporating, but not limited to, cases that can include prevailing party attorney fees.*

III.1.9.2.* *The program's approach to litigation should be considered in a strategic planning effort that will return the program to formal litigation procedures, create a more varied litigation strategy, explore systemic approaches, and promote professional growth for the advocates.*

III.1.9.3. *ERLS should review and improve its procedures for recording and reporting its brief service work.*

III.1.9.4. *The program should consider conducting clinics for services such as wills and pro se assistance.*

Criterion 2. Private attorney involvement.

Finding 10: ERLS uses a Judicare program to provide representation in distant areas.

ERLS closed 42 PAI cases in 2011 – all extended cases on family issues. The program satisfies its \$48,000 PAI obligation primarily through its long-standing Judicare program, which maintains a list of 129 lawyers in 33 counties for service to clients more than 100 miles distant. ERLS publishes a description of its Judicare program in the state bar association's newsletter each year. ERLS' administrator creates Judicare files when they are referred through the group case review process. She prepares the documents that clients will take with them in search of an attorney. She creates budget projections to determine how many additional cases can be referred by keeping an ongoing record of amounts encumbered. A distant attorney accepting a case completes an O-1 Form, which includes an estimate of how much the case will cost. There is also a three-party contract that must be signed by the attorney, the client, and the executive director. The administrator requests that attorneys update the status of the case every 90-100 days. At the conclusion of the case, the attorney prepares a case closing form. The ERLS administrator prepares reports for the Judicare program, including encumbrance projections, audit reports, and quarterly financial reports.

ERLS also involves private attorneys through the Second Circuit Bar Association's Pro Bono Project, which it has administered for 18 years. In addition to utilizing private attorneys for client representation, this pro bono project engages students one evening per month to assist divorce clients at the ERLS office. Students who participate in this project are then qualified to participate in the Unified Judicial System's Pro Se Assistance Project in which the courts' clerks refer clients for assistance with pro se forms.

See the program's comments at pages 7-8 of the attachment for more detailed information about its pro bono work.

Recommendation:

III.2.10.1. *The program should consider recruiting volunteer attorneys for client education activities and clinics concerning subjects such as wills, powers of attorney, and pro se representation.*

Criteria 3-4. Other program services and activities to, and on behalf of, the eligible client population.

Finding 11: The program’s outreach efforts, though small, are beneficial to the client population.

As stated earlier the program does not have an active outreach component. [See finding 5 concerning outreach activities.] Most LSC-funded outreach activities are conducted by the executive director, who attends meetings and events of the domestic violence network and events concerning veterans. In particular, much of his work has been focused on activities with the bench and bar concerning state funding, distribution of IOLTA funding, promotion of the program’s work, and the unmet needs of the client population.

The program distributes a variety of booklets and brochures that deal with common legal issues confronted in the eligible client population, as well as brochures about ERLS and its services. These documents are available at the office and are available at community events. An example is the Tenants’ Rights and Responsibilities booklet, which is available in both English and Spanish.

ERLS provides a variety of pro se forms to clients: Power of Attorney forms for medical and financial matters, and minor children care; South Dakota Visitation Guidelines; Medical Directives, and sample Answers in Eviction cases for non-payment of rent to income eligible people.

PERFORMANCE AREA FOUR. Effectiveness of governance, leadership, and administration.

Criterion 1. Board governance.

Finding 12: Although some improvements would be advantageous, the board effectively carries out its oversight function.

The 18-member board of directors is committed to the program’s mission and is conscientious about its fiduciary and oversight responsibilities. Some members of the board have long-standing experience with the provision of civil legal services and volunteer attorney programs. Members are knowledgeable about the activities of the organization and the statewide legal services delivery system. It does not appear that new members receive an orientation, training in understanding financial reports, or formal guidance concerning their fiduciary responsibilities.

With some exceptions, the Board holds quarterly meetings. Participation is consistent, and accommodations are available for telephone participation. Participation by members, including client-eligible members, is described as active and open. The board receives oral reports from the executive director describing program activities and other developments impacting the program, such as updates on LSC activities and funding prospects. Other staff rarely provide information to the board at its regular meetings.

The ERLS board of directors exercises oversight of fiscal and compliance activities of the program. The full board reviews quarterly financial statements and other data prepared by the executive director. The ERLS board receives and implements recommendations from the annual audit. None of the board members are considered a financial expert for purposes of fiscal oversight. The board supports the program's efforts to increase revenue to the legal services programs from the state legislature, state bar, and courts. It appeared to the team from a review of a sample board packet that the board would benefit from an earlier mailing date for board materials.

The board is aware of the desperate need for more funding for the program and wrestles frequently with ideas and methods for improving the program's financial situation. Some comments indicated that the conservative environment of South Dakota is a difficult one in which to solicit funds. Nevertheless, board members realize that the organization needs a resource development plan that may include direct solicitations to attorneys and businesses in the area.

The board's by-laws were last amended in May 1986. They do not reflect changes in the LSC regulations and contemporary practices in board governance. They do not contain term limits or a conflict of interest provision. Although the by-laws have provisions for a robust committee structure of governance, the board has not elected to establish committees other than the executive committee. The latter consists of the officers of the board and might include additional members.

The board of directors periodically conducts a performance evaluation of the executive director using an Evaluation Committee that interviews staff, agencies, bench and bar. The board has not articulated its expectations for the executive director or vision of the organization in specific terms that include future goals and objectives.

See the program's comments about this finding at pages 8-9 of the attachment.

Recommendations:

IV.1.12.1. ERLS should consider providing monthly financial reports to the members of the executive committee.

IV.1.12.2. Program management should provide materials to the board sufficiently ahead of board meetings and consider posting online in a secure page on the website to allow for meaningful review.

IV.1.12.3. ERLS should develop new member orientation to cover information on fiduciary responsibility and train members on understanding financial reports.

IV.1.12.4. To ensure the overall effectiveness of the organization in the delivery of legal services, the ERLS board of directors should adopt strategies that promote accountability for program activities, such as written executive director reports, special project reports, outcome reports or other means of learning about programmatic activities. Staff should periodically make presentations to the board on case/office activities so as to educate the Board on program service delivery.

IV.1.12.5. The ERLS board of directors should be proactive in resource development by adopting a resource development plan that considers local fundraising, along with current ongoing development strategies.*

IV.1.12.6. ERLS must adopt a conflict of interest policy for the board of directors.*

IV.1.12.7. The board should review and revise its bylaws to make them current.*

Criterion 2. Leadership

Finding 13: Leadership of ERLS is primarily limited to its experienced executive director, who appears to have shouldered too much of the day to day work of the program.

The executive director has a long history of involvement in legal services delivery in South Dakota. He is held in high esteem by the board of directors, community agencies, judges, and the states justice system stakeholders and planners. He is well-liked by staff members. Concern has been expressed regarding decision making and implementation without clear standards and follow-through. The assessment team developed an impression that the executive director must shed some duties, such as some case work and community education presentations, in order make the organization more effective.

Recommendation:

IV.2.13.1. Given all the expectations of the director and the challenges the program faces, the director should consider delegating and sharing some of the tasks he has to others in the organization, including the board.

Criterion 3. Overall management and administration.

Finding 14: ERLS devotes appropriate resources to management, considering the size of the program.

Along with the executive director, whose activities have been detailed in several sections of this report, ERLS is managed by a program administrator, who effectively performs the duties she is assigned, including financial and HR functions. She and the executive director work collaboratively on a daily basis. As noted above, some functions that are undertaken by the executive director, could be delegated to other staff to make program administration more efficient. ERLS has not adopted a leadership succession plan or disaster plan.

Recommendation:

IV.3.14.1. ERLS should develop both a succession plan and a disaster plan.

Criterion 4. Financial administration.⁴

Finding 15: It appears that ERLS has sufficient financial management.

The program administrator, who has 40 years' experience in office administration, joined the staff in October 1995. She had a year of paralegal studies training in college, and worked a variety of jobs that afforded her accounting, bookkeeping and other administrative experience. She has not had any formal training in accounting for legal services. She handles accounting, check writing, and grant proposal financial components. She prepares quarterly financial reports for the director and the board. ERLS has an accounting manual, but she is not aware of it being updated in the past few years to reflect amendments required by the 2010 LSC Accounting Guide.

Recommendations:

VI.4.15.1. ERLS should revise its accounting manual to reflect amendments required by the 2010 LSC Accounting Guide.*

IV.4.15.2. Financial reports should be prepared for administration on a monthly basis.

IV.4.15.3. ERLS should consider having an outside consultant perform a review of its fiscal operations to ensure that they have adequate policies and sufficient internal controls in place.

Criterion 5. Human resources administration.

Finding 16: ERLS has adequate benefits and human resources administration, but needs to establish a staff evaluation system.

Human resources administration is handled primarily by the administrator. She has had no HR or employment training. She tracks vacation and sick leave. She conducts due diligence reviews before renewal of insurance policies. The program has a complete set of benefits to support retention of staff. Employee benefits include vacation leave, personal days, federal holidays, health and dental insurance, and both short and long term benefits and life insurance. Employee health benefits are paid in full by the program. Benefits no longer include a 403(b) plan. The administrator is a confidential employee. Personnel records are housed in her office.

⁴ This visit was conducted by the Office of Program Performance for the purposes set forth in the Introduction. OPP findings and recommendations under this criterion are limited to staffing, organization, and general functions. Assessment of fiscal operations is conducted by other offices at LSC.

Time and attendance, as well as evaluations, are handled by the executive director. However, evaluations have not been conducted for several years. Training and professional growth opportunities are lacking. There is a Personnel Policy Manual that was adopted in October 1990, but is no longer relied upon. ERLS has written job descriptions. The salary schedule is re-evaluated about every four to five years. Salaries are comparatively low. Attorneys are paid about 80% of the salary of public defenders. ERLS pays attorneys' bar dues.

Recommendation:

IV.5.16.1. The program should establish a staff evaluation system that supports the professional development of all staff. The system should be integrated with training and should recognize the varying needs of staff based on their experience levels and positions and the goals and needs of the program. It should also include setting goals for staff and tracking whether such goals are met.*

Criterion 6. Internal communication.

Finding 17: Despite its small size, ERLS appears to experience some internal communications challenges.

Although communication in a small law office setting is normally not an issue, it appears that some staff members feel that communication is an issue that needs to be addressed. Some staff feel that the executive director should be more forthcoming about the status of grants and the program's financial situation. Some comments in the interviews of staff led the team to believe that internal communications would be enhanced by having a core hours attendance policy and more frequent planned meetings.

Recommendations:

IV.6.17.1. The program should consider evaluating its methods of intra-office communications.

IV.6.17.2. The program should consider establishing a core hours policy.

Criterion 7. General resource development and maintenance.

Finding 18: ERLS has suffered significant reductions in funding from state and federal sources.

ERLS is challenged by reduced revenue. In addition to national funding reductions experienced by other LSC-funded legal services providers, the program lost VAWA funding last year and consequently lost the attorney doing that work. The possibility for revenue from IOLTA, state, and LSC funding streams is extremely unlikely to return to previous levels in the foreseeable future. A state legislative initiative (filing fees) results in \$60,000 in annual revenue, but only \$20,000 goes to ERLS. The program is working on a proposal for representation in

housing and consumer issues to be supported by funds from the national foreclosure settlement. ERLS does not produce an annual report.

Recommendation:

IV.7.18.1. The board should seek technical assistance in developing a resource development plan. Consideration should be given to a plan or campaign for direct donor solicitation as a means of increasing funding, in order to help build support and important partnerships for the program.

Criteria 8-9. Coherent and comprehensive delivery structure, and participation in an integrated legal services delivery system.

Finding 19: ERLS is a competent, respected provider of legal services and is well-integrated in the delivery system.

Although there are some aspects of service delivery and management that can be improved, ERLS is a respected and effective provider of legal services. It is accessible to clients and actively works to solve their problems in the legal system. The executive director has worked successfully at the state level, including testimony at the legislature, to coordinate efforts with the bar and other providers for obtaining state funding, private funding, and cy pres awards. He has worked with the state government to secure a contract for senior work. The program works in partnership with the state law school, referring some applicants to the R.D. Hurd Volunteer Law School Society, which is a pro bono project of the USD Law School, if their cases do not fit within program priorities. This project utilizes law students, under the supervision of the ERLS Executive Director, to meet the legal needs of clients with uncontested low-difficulty divorces.

Recently a Legal Services Summit was called by the South Dakota Supreme Court. Discussion included the possibility of having just one statewide legal services program and establishing mandatory pro bono. The Supreme Court has created a special task force to look into these issues. ERLS will participate in those deliberations.