

***FLORIDA LEGAL SERVICES, Inc.***

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**TABLE OF CONTENTS**

CIVIL RIGHTS ..... 2

COMMUNITY ECONOMIC DEVELOPMENT ..... 3

CONSUMER ..... 4

EDUCATION/JUVENILE ..... 4

EMPLOYMENT ..... 10

FAMILY ..... 11

HEALTH/SENIOR ..... 13

HOMELESS ..... 24

HOUSING ..... 26

IMMIGRATION ..... 31

MIGRANT FARMWORKER ..... 33

PUBLIC BENEFITS ..... 47

# ***Civil Rights***

## **LITIGATION**

- 1. *Williams v. Snipes* (Region VI)**  
Case No. 4:04CV405-SPM  
Northern District of Florida

**Summary:** This case was filed on behalf of an elderly voter who had recently relocated to Broward County from New York. She filled out a mail-in voter registration card but the Supervisor of Elections refused to register her to vote because she had failed to check the box stating she was a U.S. citizen, even though she swore that she was a U.S. citizen under oath elsewhere on the same form. Numerous persons in Broward County were denied registration for the same reason. The policy of the Broward Supervisor of Elections varied from that of Miami-Dade County, for example, which did register voters who failed to check the citizenship box but took the oath stating they were a citizen. We sued for violation of the Voting Rights Act and for equal protection, since whether one was registered to vote varied from county to county.

**FLS Advocates:** JoNel Newman

**Co-Counsel:** Randall Marshall (ACLU)

**Status:** After the case was filed, the Broward Supervisor of Elections changed her policy and issued voter registration cards to Ms. Williams and others.

- 2. *Friedman v. Snipes* (Region VI)**  
Case No. 04-22787-CIV-GOLD  
Southern District of Florida

**Summary:** This case was a challenge to Miami-Dade and Broward Counties' refusal to count absentee ballots from voters in the United States received after 7:00 pm on election day, when they do count the absentee ballots of voters who have mailed them from overseas (including Canada) if they are received within seven days after election day, as long as they are postmarked by election day. The challenge was based on the Voting Rights Act, equal protection and the first amendment.

**FLS Advocates:** JoNel Newman

**Co-Counsel:** Randall Marshall (ACLU)

**Status:** After several hearings the court denied our request for preliminary injunction. We later dismissed the case.

## ***Community Economic Development***

### **1. *Gadsden Saves Project***

**(Region I)**

**Number of People Affected:** 20,000 estimate (low income Gadsden County residents)

**Summary:** Legal Services of North Florida coordinated the creation of a program in Gadsden County called “Gadsden Saves” beginning in May 2001. The project is modeled on “Cleveland Saves,” a pilot program of the Consumer Federation of America to encourage persons to establish and regularly contribute to savings accounts, particularly those without accounts at financial institutions. Gadsden Saves is part of the Federation’s “America Saves” program. LSNF requested the assistance of Florida Legal Services with Gadsden Saves. Gadsden Saves held its official “kick-off” in August, 2002, which was successful, and continues to be operational.

**FLS Advocate:** Alice Vickers

**Status:** Participation by LSNF and FLS has waned in the last year. However, discussions are currently underway between LSNF and FLS about renewing greater involvement.

### **LEGISLATIVE ADVOCACY**

#### **1. *Low-Income Emergency Home Repair Program funding***

**Number of People Affected:** About 800 households annually

**Summary:** One of the state housing programs in the Sadowski Act, the 1992 legislation that funds affordable programs in Florida through documentary stamp taxes, is the Low-Income Emergency Home Repair Program (LIEHRP) operated by the state Department of Community Affairs. The program pays for emergency home repairs of weatherization program recipients, who are low income and primarily elderly or disabled, that are necessary for the recipients’ health and safety, but are not payable through federal weatherization funds. In Florida, weatherization agencies generally are community action agencies that are governed by and serve low income residents. LIEHRP received \$2 million annual funding from 1994 to 2003, and the Governor’s office recommended the same funding for 2003-04. The 2003 Legislature, though, initially removed that funding. FLS then requested that the funds be restored. Funding was partially restored, to \$1 million for 2003-04. The Department of Community Affairs requested \$2 million funding for 2004-05, but the Governor’s office deleted that funding from its proposed budget and then vetoed the funding when it was put in by the legislature.

**FLS Advocates in 2004:** Dorene Barker, Arthur Rosenberg, Kent Spuhler

**Status:** The Governor has once again failed to include LIEHRP in his proposed budget. However, home repair funds are being proposed for funding through the Governor’s Hurricane Housing Workgroup process. FLS has a member on the Workgroup and FLS will be advocating for the positive Workgroup recommendations through the legislative process.

## **CONSUMER**

### **ADMINISTRATIVE ADVOCACY**

#### **1. *Implementation of Florida Predatory Mortgage Lending Law***

**Number of People Affected:** 16,000,000 (whole state)

**Summary:** The Florida Fair Lending Act, was signed by the Governor as Florida Law 2002-57, effective October 2, 2002. The Act applies to certain high-cost non-purchase mortgage loans that are covered by the federal Home Ownership Equity Protection Act (“HOEPA”). It explicitly preempts local government regulation of state-regulated lending practices, save for title loan ordinances. In return, the state Act creates state remedies for many HOEPA violations, including state regulatory powers to investigate and bring disciplinary actions; authorizes the state to seek injunctive remedies for violations; and, importantly for legal services clients, provides for affirmative equitable relief and a defense in foreclosure proceedings based upon material violations of the state act. There is a right to a 45-day reinstatement period after default, and a prohibition against door-to-door solicitation of covered loans covered by HOEPA. FLS has opposed proposed rules by the Department of Banking and Finance on implementing the act as not being consistent with the act.

**FLS Advocates:** Dorene Barker and Arthur Rosenberg

**Status:** FLS continues to monitor implementation of the new law.

## **EDUCATION/JUVENILE**

### **ADMINISTRATIVE ADVOCACY**

#### **1. *Dept. Of Children and Families: Promulgation of Florida Administrative Code Rules in the Family Safety Program.***

**Numbers Affected:** Currently there are almost 50,000 children in the custody of, or under the supervision of, the Department of Children and Families.

**Summary:** As DCF has privatized its foster care and related services, many of the community-

based care agencies have resisted compliance with the department's internal operating procedures that govern all aspects of the provision of child welfare services. To ensure compliance, DCF has drafted proposed rules that will incorporate current operating procedures, but that will also change many of the current policies and procedures.

**FLS Advocates:** Deborah Schroth, Valory Greenfield, Miriam Harmatz, Cindy Huddleston, Anne Swerlick.

**Co-Counsel:** FLS has pulled together a group of advocates to work on this massive project. The majority of the attorneys are members of the Juvenile/Education Umbrella Group, including some joint members of the group and Florida's Children First!.

**Status:** Initially FLS got involved in drafting a series of proposed rules governing the appeal of DCF's decisions concerning Independent Living services for former foster youth. The implementing legislation, § 409.1451, F.S., required DCF to promulgate such rules, but DCF did not. We know that many former foster youth were being denied requested and available services, including cash assistance, but were not being provided any notice about the appeal process. DCF's proposal adopts some of the language we had written, while still refusing to allow affected youth to have an evidentiary hearing. FLS will continue to pursue this point with DCF, as it is our legal opinion that affected youth must be granted an evidentiary hearing pursuant to Florida's Administrative Procedures Act. *See* Litigation section below for more on this specific issue.

As to the overall drafting project, DCF has finally begun the formal rule promulgation process, scheduling five separate rule development workshops (for the 5 different proposed rules) for January 12, 2005. With DCF controlling the timing. It will be difficult to have advocates at all workshops. However, FLS will continue to collect comments from the advocates, and will ensure they are timely presented to the Department. We have learned that the process will continue to be slow, as DCF intends to conduct two more rule development workshops in central and southern Florida, but has not yet set the dates.

## **2. Implementation of McKinney Vento Act for Homeless Children(Region VII)**

**Number affected:** Hundreds in Miami-Dade County

**Summary:** The McKinney Vento Homeless Assistance Act, among other provisions, specifically provides that homeless children have a right to continue attending their "school of origin, which is defined as the school that the child was attending when permanently housed or the school in which the child was last enrolled. The Act requires the local educational agency (usually the school board) to implement the law and provides numerous actions the agency must take to assure that the provisions of the law are carried out. The Miami-Dade County School Board has not been effectively implementing the law: parents are not being informed of their rights; transportation to school of origin is not being provided; and few children remain in their school of origin.

**FLS Advocate:** Arthur Rosenberg with LSGMI

**Status:** Working with the Homeless Unit at LSGMI, FLS and LSGMI met with the superintendent of the Miami-Dade County School Board and his chief of staff to advise them of the Board's failure to comply with the requirements of the McKinney Vento Act and to request that the Board immediately adhere to the specific provisions of federal law. The Miami Coalition for the Homeless also attended the meeting. Immediately subsequent to the meeting, a designee of the superintendent requested greater detail of our requests and area of improvement needed. This was transmitted both orally and in writing. In the short time since this contact, some improvement has been made. Monitoring and evaluation will be ongoing.

### **LEGISLATIVE ADVOCACY**

#### **1. In-state college tuition for undocumented immigrant students who reside in Florida**

**Number affected:** Thousands

**Summary:** Florida state colleges and universities charge a different tuition rate for Florida residents and non-Florida residents. For example, the University of Florida charges \$2,630 for state resident students (in-state) and \$12,096 for non-Florida (out-of-state) residents. Though in-state tuition is stated as the rate for state resident students, many state resident students are excluded from this rate because of their immigrant status. Florida currently funds the primary and secondary education of state residents regardless of immigration status. Undocumented immigrant college students in Florida must pay out-of-state tuition to attend state colleges and universities, regardless of the fact that they attended and graduated from Florida high schools, or may have lived in Florida for much of their lives.

**FLS advocates:** Arthur Rosenberg and Dorene Barker

**Status:** Working with the Florida Immigrant Coalition, bills were introduced in the Florida Senate and House of Representatives to eliminate the barrier of out-of-state tuition that prevents many immigrant students from attending college. Pursuant to the proposed legislation, in order to qualify for in-state tuition, a student must earn a Florida high school diploma or its equivalent, and have lived in Florida for at least three years immediately preceding the attainment of their high school degree. For the second year in a row, the bill was passed by the Senate, but the Speaker again refused to bring it to a vote on the House floor and the bill died. Efforts to secure passage in the 2005 Session are underway and last year's sponsors will do so again.

#### **2. *Psychotropic Medication of Foster Children***

**Numbers affected:** A few thousand foster children.

**Summary:** Foster children are more likely than children in the general population to receive mind and behavior-altering medications. While this is to be expected, because these children

have been subjected to abuse and neglect, it is also believed that these children are grossly over-medicated to placate their foster placements. In July 2003 the Statewide Advocacy Council published its “Red Item Report” on Psychotropic Drug Use in Foster Care. This Report uncovered the files of many foster children who were medicated with multiple medications, who did not receive necessary medical monitoring for side effects, and/or who did not have a parent provide informed consent and who were also lacking a court order authorizing the medication therapy.

**FLS Advocates:** Deborah Schroth, Dorene Barker

**Co-counsel:** Andrea Moore, Florida’s Children First!

**Status:** For the past few years the legislature has filed bills dealing with the consent process for foster youth to receive psychotropic medication. The medical lobby has attempted to remove protections for these youth, while FLS has lobbied to ensure the court functioned *in loco parentis* as to foster children, in determining whether a child should be medicated as recommended.

We worked extensively with Sen. Campbell and staff for the Senate Judiciary Committee to craft language to protect foster children during the 2004 session. However, the Senator’s bill was never heard. On January 11, 2005, Sen. Campbell, as Chair of the Senate Children and Families Committee, agenda’d the Department’s presentation of some data studies it has done on medicating children in foster care over the past year. While we have not yet seen Sen. Campbell’s draft bill, it promises to provide greater protections for foster children. In part, this is from the data DCF has obtained, as well as national and international studies over the past year showing the dangers of psychotropic medications

## LITIGATION

### 1. *N.C. v. DCF, et al.*

### Region I

**Numbers Affected:** A few thousand former foster youth.

**Summary:** This is a circuit civil action filed in Leon County, challenging the former foster youth’s termination of his road to independence scholarship and petitioning for a writ of mandamus requiring the Department to immediately promulgate rules concerning the appeals process. In September 2004, Stephanie Johnson at LSNF requested FLS’ help in representing a former foster youth who had been summarily terminated from receiving Road to Independence Scholarship benefits. The notice he received from the Leon County community-based care (CBC) was defective in that it failed to state a statutory reason for the termination, and failed to notice N.C. of his right to appeal the termination. FLS and LSNF filed suit in the Circuit Court in Leon County seeking an injunction requiring the CBC to reinstate N.C.’s benefits until such time as he received proper notice of the termination and his right to appeal the termination, as well as seeking a writ of

mandamus requiring DCF to promulgate the necessary rules providing for an appeals procedure.

**FLS Advocate:** Deborah Schroth, Valory Greenfield and Cindy Huddleston.

**Co-counsel:** Stephanie Johnson, Legal Services of North Florida.

**Status:** Shortly after filing, the CBC determined it had sent N.C. the notice “in error” and reinstated his scholarship benefits retroactively. However, to delay, the Defendants filed a motion to extend their time to file responsive pleadings, requiring us to go to a hearing on this issue. At the hearing, the Defendants’ legal counsel assured the court she would promptly file pleadings. As expected, the Defendants filed a Motion to Dismiss, to which FLS has filed a response. We are currently awaiting hearing on their Motion.

**2. *Master Trust issues***

**(Region II)**

**Numbers Affected:** Approximately 4,000 foster children state-wide.

**Summary:** FLS has discovered wholesale violations of the state’s obligations for foster youth who receive monetary benefits such as SSI, SSDI, VA, child support, etc. Federal and Florida law permit a state child welfare agency to assess the cost of providing foster care services to children who receive federal and other monetary benefits. However, Florida law also requires DCF to act in the children’s best short and long-term interests, as their fiduciary. DCF is required to provide notice to the children, their parents, GAL’s and the courts that each child has the right to request the Department to waive any portion of the cost of care DCF pays itself from the child’s income, and is to provide the child a right to contest any denial of such request through administrative proceedings. However, DCF generally fails to provide this statutorily-required notice, as well as the regular accountings of how it spends each child’s money.

**FLS Advocate:** Deborah A. Schroth

**Co-Counsel:** Leslie Goller (pro bono co-counsel).

**Status:** FLS had previously negotiated with District 4 to attempt to resolve monetary issues as to an individual client and to redress the issue for children who have been denied their rights from the inception of the Master Trust account in 1996 until the present. Although District 4 allowed FLS to co-conduct, with its General Counsel, a mandatory training on the legal requirements of Master Trust accounts, FLS has recently learned that even in District 4 there is a failure to comply with the law. FLS continues to explore this issue with Children’s Legal Service grantees around the state, and class litigation early this year is possible.

**OTHER ADVOCACY**

## **1. *Stability in Education for Foster Children/ Education for Homeless Youth***

**Summary:** Approximately 18 months ago, while helping two children in the foster care system, FLS discovered the usefulness of the McKinney-Vento Act, that provides special services for homeless children and youth, with “homeless” being broadly defined, to include children initially removed from their parents custody and placed into shelter care.

**FLS Advocate:** Deborah Schroth

**Co-Counsel:** Jodi Siegel, Southern Legal Counsel

**Status:** FLS was asked to provide technical assistance to the Florida Department of Education, by reviewing the local school board applications for 2003 - 2004 school year McKinney-Vento special funding. FLS and SLC have also provided numerous trainings on this federal law. FLS and Southern Legal Counsel anticipated working with a few of the Regions in 2004 to create an advocacy project. To promote this project, SLC has included McKinney-Vento training in its June 2004 education training event; FLS raised this issue at the first Region II advocates meeting in June 2004, and a group of advocates has signed on to look at this and other education issues for projects promoting systemic reform.

While we believe a few individuals around the state have incorporated this law into their advocacy “toolbox”, we have not been able to generate enthusiasm for working on this issue state-wide. LSNF remains interested in the issue, but has been unable to develop an appropriate case for litigation. It appears that school district personnel in Leon County are at odds with following this law, but will comply whenever approached by LSNF on behalf of an individual client.

## **2. *Psychotropic Medication of Foster Children***

**Numbers affected:** A few thousand foster children.

**Summary:** See “Legislative” item Number 2 for description of this issue.

**FLS Advocate:** Deborah Schroth

**Co-Counsel:** Heather Morcroft (LASOCBA); Andrea Moore and Bob Jacobs (private counsel); and other members of the working group.

**Status:** The “psychotropic medications working group” drafted proposed rules of juvenile

procedure, which were submitted to the Juvenile Rules Committee for consideration at its January 2004 meeting. Due to opposition, FLS withdrew its proposal from the Rules Committee. FLS intends to resubmit an amended rule after the 2005 session, as many of the issues hopefully will be clarified by the legislature this year.

## **TRAINING**

### **1. *Training of foster care counselors on the Subsidized Independent Living Program.***

As part of the discussions with DCF concerning a failure to use the Subsidized Independent Living program, Deborah Schroth was asked to make presentations to different Community-Based Care agency staff. The last such presentation was to “daniel, inc.” in August, 2004.

### **2. *Children’s Legal Services Training - Educational Issues.***

In June 2004, the Florida Bar Foundation sponsored a training on educational issues designed by Jodi Siegel of Southern Legal Counsel and other educational advocates. This training was attended by approximately 35 legal services advocates and a few private attorneys, as well as two assistant public defenders. Deborah Schroth provided an update on Florida’s 2004 education bills, and she was joined by Arthur Rosenberg in discussing education advocacy for homeless youth pursuant to the McKinney-Vento Act.

### **3. *Master Trust Training with District 4, DCF.***

Pursuant to her negotiations with DCF District 4 concerning its wholesale violations of the master trust laws, Deborah Schroth co-presented at 4 sessions of a mandatory training for District 4 caseworkers and their supervisors concerning the Master Trust, including the caseworker’s duties, the children’s right to request a waiver of the “cost of care” assessed fees, and the children’s right to appeal any denial of such requests.

## **EMPLOYMENT**

## **LEGISLATIVE ADVOCACY**

### **1. *Living Wage Ordinances Around the State***

**Number Affected:** Thousands

**Summary:** FLS, the Human Services Coalition, and the South Florida AFL-CIO founded the Community Coalition for a Living Wage, to organize the community and mount a campaign to enact a living wage ordinance in Dade County. The aim of the campaign was to (1) ensure that the County, and any business or organization that contracts with the County to provide services must pay its workers above the federal poverty level, and (2) bring attention to the issue of low wages and the working poor in our community. The Miami-Dade County Commission unanimously passed a living wage ordinance in 1999. The ordinance provides that all County employees, employees of service providers who contract with the County, and employees of airport licensees must be paid at least \$8.56/hour (now \$9.44) with health benefits, and if no health benefits are provided, \$9.81/hour (now \$10.81). The living wage is adjusted annually with the CPI. This was the first living wage ordinance passed in Florida and the southeastern United States. As provided for in the ordinance, a commission has been established to review the implementation and compliance with the ordinance. FLS has been appointed to a seat on the Miami-Dade Living Wage Board. Thousands of workers have received pay increases of an average of \$2.50/hour.

**FLS Advocate:** Arthur Rosenberg

**Status:** FLS is now focusing on effective enforcement and enacting living wage ordinances in other municipalities. In April 2001, FLS secured the passage of a living wage ordinance in Miami Beach, which is substantially similar to Miami-Dade County's. Campaigns to enact living wage ordinances are ongoing in Coral Gables, and the City of Miami. In addition, FLS and the Coalition have been working with other community campaigns around the state to secure passage of living wage ordinances, serving as a resource and providing support and the expertise necessary to help with their campaigns. Orlando, Gainesville, and Broward have passed ordinances, and ongoing assistance is being provided to Jacksonville, Tampa and West Palm Beach. The Coalition has continued to receive small grants to support its work.

In addition to these efforts, the Coalition worked with ACORN in support of the effort to establish a state minimum wage of \$6.15 through a constitutional amendment. This measure passed on November 2, 2004. Efforts to assure implementation will follow.

## ***FAMILY***

### **ADMINISTRATIVE ADVOCACY AND LEGISLATIVE ADVOCACY**

#### **1. *Indigence Determination and Fees and Costs Payment Plans***

**Summary:** The Article V revision legislation eliminated the waiver of fees and costs for indigents and

established a new process for indigence determination and established payment plans for payment of fees and costs. The new legislation has been interpreted differently in each judicial circuit and the implementation by the clerks has had a very negative impact on our clients access to the courts. Petitioners are being denied indigence status if they own any car no matter how old or if they have any equity in any real estate even if it is their homestead. Payment amounts are being set based on a set time frame, full payment in 30 to 90 days, instead of being based on the persons ability to pay as provided in the legislation. The new requirements and procedures are also very harmful to low income pro se litigants. While the new laws impact all low income litigants initiating our action, the greatest impact for our client community is in the family law area..

**FLS Advocates:** Ann Perko, Kent Spuhler

**Other Advocates:** PDA Task force on Indigence

**Status:** It appears that there will be another Article V revision “glitch” bill which hopefully will provide the opportunity to fix the problems with indigence determination and payment plans for fees and costs. Senator Rod Smith has called meetings of all the interested parties on the new glitch bill and he is permitting us to participate. We are drafting legislative changes for him to consider.

## **OTHER ADVOCACY**

### **1. *Domestic Violence Legal Hotline (FLS)***

**Summary:** FLS is entering into a contract with the Florida Coalition Against Domestic Violence (FCADV) for a seventh year of funding in 2004; that contract has recently been extended for another 12 months to June 30, 2005. The funding for FLS is for the continued operation of the FLS Domestic Violence Legal Hotline which provides initial legal consultation and advice along with referrals for more extensive legal representation and for assistance from the domestic violence centers.

**FLS Advocates:** Ann Perko, Suzanne Estrella, Janet Anthony and Kent Spuhler

**Status:** The legal hotline served 3,789 callers from January 1, 2004 through December 28, 2004. The number of callers has increased steadily this year compared to last year. We saw a very slight increase in the number of calls from rural counties as a result of our outreach program. We are continuing to promote the availability of the hotline and exploring other avenues to create awareness of the services we provide. In October, Domestic Violence Awareness month, the hotline staff participated in the candle light vigil sponsored by Refuge House, the local Domestic Violence Center. At this event we distributed our brochure and a legal rights brochure prepared by FCADV. This type of community involvement helps us to connect with other advocates and service providers and promotes awareness of the hotline. We are continuing to identify statewide and regional issues and

working with FCADV and local legal services programs to address these issues. FCADV has requested to be notified of clients who may wish to file an appeal, specifically victims who have lost custody battles. We screen clients regarding these issues and make the appropriate referrals to FCADV. Because of the nature of the hotline it is often difficult to follow-up with Clients regarding the resolution of legal matters. We are exploring avenues for follow-up to assist us in addressing statewide and regional issues. The pro bono program continues to functioning well and is a tremendous asset to hotline staff. We continue to provide training for organizations and pro bono attorneys upon request.

## **2. *Florida Supreme Court Steering Committee on Families and Children in the Court***

**Summary:** This committee, whose members are primarily judges, is charged with making recommendations to the Florida Supreme Court on improving how the judicial system responds to families and children. Specifically, the committee is currently focused on implementing the unified family court, establishing standards for handling domestic violence cases and assessing the impact of the article V revisions on the court's handling of family, dependency and delinquency cases.

**FLS Advocate:** Kent Spuhler

**Status:** Chief Justice Pariente appointed a new committee in July 2004 and I was again appointed to serve on the committee. The committee is clarifying its priorities for the next two (2) years but implementation of the unified family court remains the top priority. The committee has agreed that pro se assistance and the determination of indigence and payment plans that were initiated in the Article V revision legislation are a priority for the committee to review.

## **3. *Florida Supreme Court Parenting Coordination Workgroup***

**Summary:** The Florida legislature in the 2004 session passed a parenting coordination bill that posed problems for victims of domestic violence and low income litigants. FLS joined with FCADV and was able to convince the Governor to veto the legislation. In his veto message, the Governor requested the Florida Supreme Court to develop an administrative order on parenting coordination. Chief Justice Pariente appointed a workgroup to develop the administrative order and I and a representative of FCADV are on the workgroup.

**FLS Advocate:** Kent Spuhler

**Status:** The workgroup is close to completing a proposed administrative order to present to Chief Justice Pariente for consideration. The proposed administrative order adequately deals with the concerns of FCADV and the legal services community. However, we know that the proposed order,

if adopted, will force changes in parenting coordination practices in several judicial circuit so opposition to the proposed order is expected.

## **HEALTH/SENIOR**

### **ADMINISTRATIVE ADVOCACY**

#### **1. Medicaid Super Waiver Advocacy**

**Number Affected:** Over 2 million current and future Florida Medicaid recipients

**Summary:** The Governor, Agency for Health Care Administration (AHCA) and legislators have expressed their interest in making significant changes to the Florida Medicaid program through the federal waiver process. Possible changes that have been discussed include a cap on funding, eligibility and service cuts as well as time limits. These waiver options, if implemented, would eliminate the entitlement protections of the current Medicaid program and inevitably lead to an increase in the number of uninsured Floridians.

**FLS Advocates:** Anne Swerlick, Miriam Harmatz

**Other Advocates:** Mathew Brinegar, LASOCBA, Human Services Coalition, CHAIN

**Status:** FLS is continuing its leadership role in pursuing various Medicaid advocacy strategies on multiple fronts. FLS was instrumental in organizing a July 12, 2004 Medicaid Reform Symposium which included presentations from national and state Medicaid experts and attracted more than 300 participants including legislators and legislative staff, the Secretary of AHCA and representatives of numerous provider and consumer organizations. The symposium was a springboard for press coverage of the pitfalls of block-granting the Medicaid program. Following the symposium, FLS in conjunction with Families U.S.A. sponsored a one day strategic planning meeting of representatives of key provider and consumer groups. That meeting was the genesis of a broad coalition of organizations (the Coalition for Responsible Health Care Reform) which has worked cooperatively over the past five months on coordinated Medicaid advocacy strategies. Bi-monthly conference calls have been organized and convened by FLS staff. The Coalition has developed a document called "Guiding Principles for Medicaid Reform" and over 100 organizations have signed on to the document.

FLS has also testified at multiple AHCA stakeholders meetings, met with key AHCA staff and provided written comments relating to Medicaid pharmacy services, behavioral health care services,

long term care, managed care and children's services.

To date, there has been no public disclosure of any specific plan for reform of the Medicaid program. Both AHCA and the Governor's office have indicated that a plan will be "rolled out" in early January. Meanwhile, FLS has filed multiple public records requests and most recently a FOIA request with the federal government.

## **2. EPSDT Advocacy on Behalf of Children in Care**

**Number Affected:** Thousands of children in the dependency and delinquency system

**Summary:** Participants at the April 2002 Florida Bar Foundation sponsored children's conference identified priority issues and created task-forces for follow-up work. One of the issues identified was the lack of health care services for children in state care. A task-force was formed to develop and implement strategies for enforcing Medicaid EPSDT rights in individual juvenile court cases.

**FLS Advocates:** Deborah Schroth, Anne Swerlick, Miriam Harmatz

**Other Advocates:** Susan Khoury & Heather Morcroft (LASOCBA); Stephanie Johnson LSNF); Robin Rosenberg (Holland & Knight), Barbara Briggs(LAPBC)

**Status:** Through a case being handled by LSNF the task force learned that the state is failing to provide notice required by the state APA, as well as federal Medicaid law when it denies children in foster care eligibility for specialized therapeutic foster care ("STFC") services. FLS and LSNF sent a public records request to both DCF and AHCA to obtain copies of any written agency policies relating to this issue. FLS also wrote to the state to request that it start providing notices which comply with federal Medicaid law when it denies eligibility for STFC services. On April 30, 2004 AHCA responded that it agrees such a notice must be provided and provided FLS a draft notice. On May 5, 2004, FLS provided comments on the draft notice and requested further information on how the agency plans to implement the new notice procedures. On June 24, 2004 AHCA sent a message to all of its field offices stating that they must provide a "form" written notice to the child in care, the foster parents, the child's attorney and guardian ad-litem (if one exists) if a child is determined not eligible to receive Medicaid-funded specialized therapeutic foster care services. FLS subsequently contacted AHCA to request that these notice requirements be expanded to other Medicaid-funded behavioral health care services which are subject to prior authorization before they can be provided to children in foster care and that these requirements be included in rule. (Draft language for the rule was also provided). In December 2004 AHCA published amendments to its Medicaid behavioral health care rule which did not include most of FLS' recommendations on the rule. FLS is working with advocates in the field to identify children adversely affected by AHCA's faulty notice procedures.

### **3. EPSDT Advocacy on Behalf of Children in the Developmental Disabilities Waiver Program (Region VII)**

**Number affected:** Over 7,000 children enrolled in the Developmental Disabilities Waiver program

**Summary:** In an effort to reduce costs, the state has imposed an increasingly restrictive prior authorization program for services provided under the Developmental Disabilities Medicaid Waiver program. This program is designed to provide home and community-based services in order to prevent institutionalization of persons with developmental disabilities. A number of children with severe disabilities are enrolled in the program and receive services such as private duty nursing and personal care. We are hearing more complaints from families and advocates that services to these enrollees are being cut or reduced when these services continue to be necessary in order to keep the children at home.

**FLS Advocates:** Anne Swerlick & Miriam Harmatz

**Other Advocates:** Liz Gonzales, LSGMI

**Status:** Through individual representation and input from advocates in the field, FLS has identified two major barriers to enrolled children getting the services they need. They are: 1) the state's overly restrictive definition of "medical necessity" and; 2) the state's failure to coordinate EPSDT services with DD Waiver services. Many of the children whose services are being cut should be able to get the same services under the EPSDT program. However, many waiver case managers are unfamiliar with EPSDT services. Also, the state is not providing any information to the families on the availability of these services or their hearing rights if these services are denied under the state plan. On June 15, 2004 FLS wrote to AHCA to advise them of these issues and the need to change its policies and procedures in order to conform with federal Medicaid law. On October 22<sup>nd</sup> and December 3<sup>rd</sup> FLS staff met with AHCA counsel and their program staff to address the "lack of coordination" issue and to discuss ways to ensure that families are informed of their notice and hearing rights when EPSDT services are denied. FLS is now waiting for AHCA's written proposal for resolving these issues.

### **4. KidCare Appeals Process**

**Number Affected:** Over 300,00 children enrolled in Florida KidCare

**Summary:** Florida's Title XXI program-Florida KidCare - provides health coverage to children and teens whose family income is at or below 200% of the poverty level. Federal law requires the state to have certain dispute resolution and appeals processes in place and to timely and adequately notify families of these procedures. Current KidCare form letters advising of "adverse" actions (such as proposed disenrollments due to non-payment of a premium) do not comply with the federal requirements.

**FLS Advocates:** Anne Swerlick & Miriam Harmatz

**Status:** The Florida Healthy Kids program convenes a “correspondence taskforce” which periodically reviews and modifies form letters used in the KidCare program. In May, 2004 FLS wrote to Healthy Kids staff to request that the form letters be modified to include the federal requirements. Healthy Kids staff indicated a willingness to work with us to revise the form letters. They have shared draft language with us and during December 2004 we provided written comments and edits on their most recent proposal. It is anticipated that revised form letters will start getting distributed early 2005.

**5. Medicaid HMOs/Mental Health Drugs: (Region III)**

**Number affected:** There are nearly 700,000 Medicaid recipients enrolled in Medicaid HMOs.

**Summary:** FLS has received complaints from community mental health providers and Medicaid beneficiaries that certain health maintenance organizations (HMOs) are denying and delaying coverage of drugs used to treat mental illness. The denials/delays result from the HMOs’ prior authorization requirements. This action violates the state law exempting drugs used to treat mental illness from prior authorization requirements or other restrictions. In addition, the HMO Contract with the state Medicaid agency specifically prohibits plans from placing limits on prescription drugs used to treat serious mental illnesses such as anti-psychotics and anti-depressants.

**FLS Advocates:** Miriam Harmatz and Anne Swerlick

**Other Advocates:** Jennifer Wimberly and Matthew Brinegar (LASOCBA)

**Status:** FLS was contacted by a community mental health center pharmacist about problems patients were encountering and the pharmacist provided some data which indicated that there may be systemic problems. FLS coordinated a meeting with the provider and Legal Aid of Orange County in order to discuss an intake system so that individual clients whose prescriptions were denied could be effectively referred and represented. FLS also provided the pharmacy with description of further data which would be helpful in determining the nature of any systemic issues and whether or not denials were unlawful.

**6. Community Health of South Dade (CHI) (Region VII)**

**Number affected:** Almost half a million county residents with incomes below 100 % FPL use CHI.

**Summary:** CHI, the major provider of health care for low income persons residing in the southern portion of Miami-Dade County, (including a large number of migrant and seasonal farm workers) has

intake policies and procedures which result in barriers to care. These policies include charging an encounter fee, regardless of whether or not the patient is below 100% of the federal poverty guidelines; refusing to accept a self-declaration of indigence for more than 30 days; failing to provide notice and the opportunity to appeal a financial classification; and a shortage of translator services. In addition, the clinic is failing to honor the terms of a 1976 Consent Decree regarding the composition of its Board.

**FLS Advocates:** Miriam Harmatz and Greg Schell

**Other Advocates:** Maria Rodriguez, Union of the Uninsured

**Status:** FLS and community representatives met with CHI officials in order to discuss the problems with intake procedures. The health center initially indicated a willingness to revise their printed policies so that they no longer violated federal requirements. However, after a series of draft exchanges, significant issues remain unresolved including the right to receive medically necessary non-emergency care even if patient is unable to pay for the service and the right to appeal an erroneous financial classification. FLS has asked the Union of Uninsured to refer any clients whose care is denied or delayed due to the objectionable policies.

## **7. Immigrant and Homeless Access to Health Care in Jacksonville (Region II)**

**Number affected:** Unknown

**Summary:** Shands Jacksonville, the publicly funded indigent care hospital in Duval County, is imposing requirements when determining eligibility for care which have an adverse effect on homeless and foreign born county residents. Advocates filed a Hill-Burton Community services complaint with the Regional Office of Civil Rights (OCR) almost a year ago. The complaint alleged that the hospital's durational residency and verification requirements, along with their policy of excluding undocumented immigrants from receiving subsidized care violates the Hill-Burton community services requirements.

**FLS Advocates:** Miriam Harmatz and Anne Swerlick

**Other Advocates:** Lynn Drysdale, Jacksonville Area Legal Aid (lead counsel)

**Status:** OCR provided an initial written response stating that they have sent a copy of the complaint to Shands and are in the process of reviewing it. However, after numerous calls and letters, OCR has failed to provide any response. Since administrative remedies have been exhausted, advocates are preparing to file a complaint.

## **8. City of Jacksonville Toxic Waste Incinerator and Dump Sites (Region II)**

**Number affected:** The Florida Times-Union estimated that 40,000 people live within one half-mile of the four contaminated sites.

**Summary:** In the 1940's and 1950's, the City of Jacksonville operated a number of municipal incinerators which burned both residential and industrial waste. The City's pattern and practice was to dump the resulting ash throughout the City in poor and minority neighborhoods. The City gave some of the polluted land to the School Board, for an elementary school. Florida's Department of Environmental Protection notified the City of these toxic waste problems, which chose to ignore the problem. The DEP then reported the situation to the United States Environmental Protection Agency. The EPA and the City reached a consent decree in this matter as to three sites known collectively as the "Jacksonville Ash Superfund Site."

**FLS Advocate:** Deborah Schroth.

**Co-counsel:** Legal Environmental Assistance Foundation [LEAF]

**Status:** These communities have been and continue to be subject to environmental injustice. Our client is North Riverside Community Association (NRCA), which secured the designation from the City and EPA as the community's representative in the clean-up process. Along with this designation, NRCA received a \$50,000 grant to hire its own scientific experts to review the data and its method of generation, and to keep the community members informed.

We achieved a written commitment from the City of Jacksonville to comply with the stricter Florida law rather than federal law in devising the appropriate clean-up standard. Florida law requires a clean-up standard of "ten to the minus six", which equates to a projected cancer risk from the contamination which is allowed to remain of one in one million. However, the federal standard is "ten to the minus four", which equates to a risk of one in ten thousand. We are pleased with this victory, as EPA has agreed to abide by the City's commitment.

The Superfund clean-up process has required vigilant and persistent advocacy through each stage. Through the comments of its experts, NRCA secured more data collection than originally proposed, in the first phase of determining the extent of the contamination of the soil and water.

The additional data collection significantly delayed the completion of the City's feasibility study, which was finally completed November, 2004. NRCA's experts will review this study, which sets forth the types and extent of discovered contamination, the assessment of the risks associated with the contamination, and the plan for remediation of the contamination. In all likelihood, after comments from NRCA's experts, the State DEP, and the federal EPA, there will be amendments to this study before the specific clean-up actions will be determined. In other words, the lengthy process continues.

## LEGISLATIVE ADVOCACY

### 1. Medicaid Reform

**Number affected:** Over two million current and future Medicaid beneficiaries

**Summary:** The Governor, Agency for Health Care Administration (AHCA) and legislators have expressed their interest in making significant changes to the Florida Medicaid program through the federal waiver process. Possible changes that have been discussed include a cap on funding, eligibility and service cuts as well as time limits. These waiver options, if implemented, would eliminate the entitlement protections of the current Medicaid program and inevitably lead to an increase in the number of uninsured Floridians. Under state law, the legislature must approve a federal Medicaid waiver or other significant changes to the Medicaid program before they can be implemented.

**FLS Advocates:** Anne Swerlick, Miriam Harmatz, Dorene Barker, Arthur Rosenberg

**Other Advocates:** Matthew Brinegar, LASOCBA, Human Services Coalition, CHAIN

**Status:** FLS staff has been visiting with state legislators (and their staff) on health care and appropriations committees to begin educating them about our concerns with a potential Medicaid block grant and other proposals to limit services or cut eligibility. The Guiding Principles for Medicaid Reform has been distributed to all state legislators and staff in the Governor's office. FLS has also been sharing information with legislative staff for the Florida Congressional delegation in anticipation of Medicaid reform activity on the federal level.

## LITIGATION

1. ***Hernandez et al. v. Medows***  
Case No. 02-20964 CIV-Gold  
U.S. District Court, Southern District of Florida

**Number affected:** The relief granted benefits to any of the state's 1.9 million Medicaid recipients whose request for prescription coverage is denied.

**Summary:** Plaintiffs successfully challenged the Medicaid agency's refusal to provide recipients with adequate written notice and hearing opportunities when prescription coverage is denied. Under the terms of the settlement, the state Medicaid agency, as well as each Medicaid HMO, must provide all class members with written notice that contains the information required by federal Medicaid regulations. Further, the settlement provides for the right to appeal a coverage denial, including the

right to a pre-termination appeal. Finally, the Settlement provides for creation of an Ombudsman office to assist in resolving coverage problems and for an award of attorneys fees to the plaintiffs.

**FLS Advocates:** Miriam Harmatz and Anne Swerlick

**Co-counsel:** Bill Fraser (LAPBC), Lourdes Rivera & Jane Perkins (NHLP)

**Status:** A hearing was held on attorneys fees in July. No decision has been issued. Most documents and procedures required under the Settlement Agreement were finalized and available on May 14, 2004 including notice/pamphlets and fair hearing request forms for recipients to use when prescription coverage is denied; a form for physicians to use when requesting coverage of multi-source brand name drugs; signs for pharmacies; instructions to pharmacists; policies and procedures for hearing officers, policies and procedures for the Ombudsman. Under the terms of the Settlement, the Agency is also required to incorporate the notice provisions in rule. FLS is working with the Agency on the rule development and has provided a draft rule.

FLS is continuing to monitor implementation of the Agreement, including spot checks of pharmacies and compiling data from public records requests. One of the major issues identified to date is that pharmacies are failing to post the required signs or distribute the notice/pamphlet when Medicaid prescription coverage is denied.

**2. *J.E. v. Agency for Health Care Administration* (Region IV)**

DCF Office of Appeal hearings, Appeal No.04F-3330

**Number affected:** unknown

**Summary:** J.E., a Hernandez class member who suffers from HIV related neuropathy, was denied refill of the prescription drug neurontin. The Medicaid agency's denial was made pursuant to 2004 legislation which restricted coverage for off label uses of certain drugs including neurontin. One of the Hernandez related issues affecting J.E. and other class members is whether their prescription denials should be resolved at individual fair hearings or through a rule challenge after the rule is promulgated.

**FLS advocates:** Miriam Harmatz and Anne Swerlick

**Co-counsel:** Felicia Jordan and Mary Anne Robertson, Coast to Coast Legal Services

**Status:** Through negotiations with AHCA lead counsel, FLS has obtained ongoing coverage for all

recipients whose prescription refills were terminated due to 2004 legislation pending development of the rule. A pharmacy expert is identifying and gathering evidence that supports legal and medical arguments that Neurontin should be covered for most nerve related chronic pain conditions. This information is being shared with AHCA officials as the rule is being developed.

3. ***C. F. v. Department of Children and Families;*** (Region IV)  
DCF Office of Appeal Hearings, Appeal No.03F-3583

**Number affected:** One child and his family

**Summary:** The client is a 9 year old child with a history of gross motor developmental delay, hyperactivity, speech delay and behavior disorder. He also suffers from asthma and other physical problems. The client is a Medicaid recipient and is enrolled in the Developmental Services Medicaid Waiver. He had been getting personal care assistance (PCA) for 6 hours a day, 7 days a week. Among other things, his personal care assistant drives him to various therapies and participates in those therapies with the child. The parent is unable to drive or participate since she suffers from sleep apnea and also has major depression. The therapies require that an adult caretaker participate in the sessions. Pursuant to a paper file review by the Department's utilization reviewer, Maximus, Inc., the child's PCA services were found to be not medically necessary and were cut to 4 hours per day. Advocates then asked the local AHCA program to provide the reduced hours pursuant to EPSDT, and AHCA failed to respond to this request. The mother filed an appeal of the reduction and attempted to join AHCA as a respondent. The motion to join AHCA was denied and the reduction of services was affirmed by the hearing officer.

**FLS advocates:** Miriam Harmatz and Anne Swerlick

**Co-counsel:** Lizel Gonzalez, LSGMI (lead counsel)

**Status:** At oral argument on December 7, the Court ordered that the DCF hearing officer's decision to reduce the client's services be stayed until further order of the Court, and that a status report be filed by the parties by February 15, 2005. The Court was clearly supportive of the client's position. The judges admonished the DCF attorney that since the only medical evidence in the record is that the child needs 6 hours a day of PCA services, these services should be provided by the state. Further, it was not the responsibility of the recipient to figure out which state agency should pay for which portion of the necessary services.

4. ***Miguel Mora Rodriguez v. Florida Department of Health***  
Division of Administrative Hearings, Case No. 04-4292RU

**Number affected:** approximately 30

**Summary:** The client is an undocumented farm worker who suffered a serious brain and spinal injury in a car accident. He has been hospitalized since March in Lee Memorial hospital. Although his medical condition is stable, he needs rehabilitative services in order to live in the community. The client applied for services through the Brain and Spinal Cord Injury program which is administered by the Department of Health (DOH). The state statute describing the program's eligibility requirements includes a requirement that the applicant be a "legal resident" of the state. However, the DOH policy manual further requires that the applicant be a U.S. citizen or have immigration status to remain permanently/indefinitely in the U.S. Advocates filed an administrative rule challenge alleging that the rule enlarges and modifies the state statute and contravenes state law regarding Florida residents since nothing in state law authorized DOH to limit eligibility for the program based on immigration status.

**FLS advocates:** Miriam Harmatz, Valory Greenfield and JoNel Newman

**Status:** A hearing has been scheduled for January 24, 2004. The DOH attorney admits that the rule is unpromulgated and advocates have been negotiating with the DOH lawyer in effort to resolve the ultimate dispute.

**5. M.I. v. DCF (Region I)**

DCF Office of Appeal Hearings, Appeal No. 04F-2534

**Number affected:** One teen in foster care \_\_\_

**Summary:** M. I. is a 17 year old male from Tallahassee with multiple mental health problems who was referred to the LSNF Team Child program. M.I. has a long history of involvement with both the dependency and delinquency systems. He was placed by DCF in a therapeutic group home in Tampa after his foster home parent asked for his removal due to his difficult behaviors. Prior to the group home placement, he had been determined ineligible for a Medicaid funded specialized therapeutic foster care (STFC) placement in Tallahassee. The client was provided no written notice of his Medicaid appeal rights.

**FLS Advocates:** Anne Swerlick and Miriam Harmatz

**Co-Counsel:** Stephanie Johnson (LSNF)

**Status:** FLS & LSNF wrote to AHCA and DCF requesting that M.I. be provided with a written notice specifying the reasons why he is not eligible for STFC services and advising him of his appeal rights. On March 2, DCF provided M.I. and his counsel a written notice denying him eligibility for these services. On May 27, 2004 a fair hearing request was filed challenging this decision. During July 2004 FLS and LSNF took depositions of key AHCA and DCF personnel and subsequently filed a Request

for Production of documents. DCF has failed to respond to the Request for Production and a Motion to Compel is pending with the hearing officer. In the meantime, DCF has moved M.I. back to Tallahassee from Tampa and his deteriorating behaviors have necessitated Medicaid-funded “crisis services.” Most recently the juvenile court ordered DCF to temporarily place the child in a Medicaid therapeutic foster home with a foster parent who has an excellent relationship with M.I.

## **TRAINING**

### **1. Florida Association of Rehabilitation Facilities**

On July 14, 2004 FLS presented at the Summer Quarterly meeting of the Florida Association of Rehabilitation Facilities. The presentation focused on Medicaid services for children with disabilities and legal strategies for enforcing their legal rights. The training was attended by professionals working with children with developmental disabilities.

### **2. Florida Association of Support Coordinators**

On October 7, 2004 FLS presented at the annual meeting of Florida Support Coordinators who work with persons with developmental disabilities throughout the state. The presentation focused on Medicaid fair hearing rights and strategies.

## ***HOMELSS***

## **ADMINISTRATIVE ADVOCACY**

### **1. Anti-homeless Ordinances**

**Number affected:** Thousands

**Summary:** A number of Florida municipalities are enacting ordinances that target and criminalize behavior that homeless persons engage in out of necessity. FLS continues its work with the Florida Coalition for the Homeless, local homeless advocates, and the ACLU to assure that homeless persons' civil rights are protected and that homelessness is not criminalized.

**FLS Advocates:** Arthur Rosenberg

**Status:** Working in conjunction with the Florida Coalition for the Homeless, we have set up a statewide criminalization taskforce to monitor, address and counteract the efforts of municipalities throughout Florida who have passed, or are attempting to pass, anti-homeless ordinances that criminalize and/or limit the activities and freedom of movement of homeless persons. These communities include Brevard County, Jacksonville, Key West, Orlando, Ocala, Miami Beach, Sarasota, and West Palm Beach. The taskforce will assist local communities: oppose or modify proposed ordinances; monitor the impact and implementation of ordinances that have passed; and explore possible litigation to address unconstitutional ordinances or implementation. The settlement reached in *Pottinger v. City of Miami* is being used as a model to preserve and respect the rights of the homeless within our communities. In addition the state Coalition and local homeless coalitions, FLS is working with the National Coalition for the Homeless, and the National Law Center for Homelessness and Poverty.

## **2. Labor Pool Act Implementation/Enforcement of Employment Rights**

**Numbers affected:** Thousands

**Summary:** FLS, along with LSGMI, was instrumental in securing the passage of the Labor Pool Act by the Florida Legislature. This act provides significant protections for day laborers who find work at labor pools. FLS is working with the Florida Coalition for the Homeless and advocates in various parts of Florida to provide education to labor pool workers about their rights, determine the extent of continued problems, and to assist workers and/or secure representation in the legal enforcement of their rights under the law.

**FLS Advocate:** Arthur Rosenberg

**Status:** FLS is working with LSGMI to conduct clinics for both staff and residents of homeless shelters. We are also working with the Florida Coalition for the Homeless, and advocates in Jacksonville, Orlando, and Broward to assist labor pool workers and assure implementation of the law.

## **3. State Office on Homelessness**

**Number affected:** Thousands

**Summary:** FLS has worked with the Florida Coalition for the Homeless (FCH) for the creation of a statewide commission to identify and address issues and challenges facing the homeless in Florida. In the 2000 session, a bill was passed to create such a Commission. FLS worked to secure passage of this legislation. The commission proposed legislation in 2001 to create a state Office on Homelessness within the Department of Children and Families and a 15 member Council to advise the Office. The bill was enacted and provided almost \$12 million for new or expanded efforts to help homeless people, and addressed a variety of public policy issues relating to homelessness

**FLS Advocates:** Arthur Rosenberg and Dorene Barker

**Status:** FLS continues to work with FCH to monitor implementation and provide input and direction to the work of the Office and Council.

## **LEGISLATIVE ADVOCACY**

### **1. Incarceration of homeless offenders**

**Number affected:** Thousands

**Summary:** SB 1376 (the Homeless Misdemeanor Offender Act) was filed in the 2004 legislative session to require mandatory minimum sentences of six months to 1 year for individuals who have been found guilty of five misdemeanors within a 12-month period. This bill was the creation of the Jacksonville Sheriff's Association. It appears to have been proposed in anticipation of the 2005 Super Bowl to be held in Jacksonville, for the purpose of removing homeless, and other unwelcome persons, from the streets. While the bill was presented as a humanitarian effort to secure mental health and treatment services for these individuals, no money was appropriated to provide any services. FLS opposed the bill along with, among others, the Florida Coalition for the Homeless, the Florida Public Defenders Association, ACLU, the Florida Association of Counties, the Florida Alliance for the Mentally Ill.

**FLS Advocates:** Arthur Rosenberg and Dorene Barker

**Status:** At FLS's request, Sen Campbell offered a number of amendments on the floor of the Senate. With Senators Aronberg and Smith co-sponsoring it, Sen. Campbell secured the addition of an amendment making the "mandatory" minimum sentence discretionary on the part of the Court. Judges can waive the mandatory sentence if they determine that it would be in the best interest of the community and the defendant to do so. The bill passed both houses with this

amendment attached. While still bad legislation, the amendment will significantly lessen the intended impact of the law.

FLS is working with the Florida Bar's PILS Ad Hoc Homeless Committee to educate attorneys and the public about the law, monitor its implementation, and review options for possible revision.

## **HOUSING**

### **LITIGATION**

**1(a) *Reese et Al. V. Miami-Dade County Housing Agency, et al.* (Region VII)**  
Case No. 01-01-3766 Civ-Highsmith  
U.S. District Court, Southern District Fla.

**Summary:** This is a class action on behalf of African American families living in Scott Homes public housing project and on behalf of African American households on the waiting list challenging the planned demolition and "revitalization" of the Scott Homes project as part of a HOPE VI grant. The action challenges the Housing Authority's actions as well as U.S. HUD's on numerous grounds, including Fair Housing Act violations and violations of the Housing and Community Development Act.

**FLS Advocates:** Chuck Elsesser and JoNel Newman

**Co-Counsel:** Todd Espinosa (National Housing Law Project); Ben Reid (Carlton Fields)

**Status:** The court denied defendants' motion to dismiss the resident plaintiffs for lack of standing and granted the defendants' motion to dismiss the organizational plaintiff and the waiting list plaintiffs for lack of standing. The court has certified the class and denied defendants' motion to dismiss the HCDA and QHWRA claims. In early December the court affirmed the Magistrate's Report and Recommendation denying plaintiffs' request for a preliminary injunction. Plaintiffs have appealed to the 11th Circuit and the 11<sup>th</sup> Circuit affirmed the trial court's denial. The case was set for trial but was taken off the trial calendar on the defendants' motion pending the court's decision on the pending motions for summary judgment and jurisdictional motions.

**1(b) *Reese et Al. V. Miami-Dade County Housing Agency, et al.* (Region VII)**

**Summary:** We are also representing numerous individual households that resided in, or are currently residing in Scott Homes with respect to relocation appeals.

**FLS Advocates:** Chuck Elsesser

**Status:** Representation is ongoing. We are negotiating with the County with respect to the individual cases.

**2. *Hill V. Stefan* (Region VI)**  
Circuit Court - Broward County

**Summary:** This client was fraudulently induced to sign a deed by Stefan when she was attempting to secure a loan on her property. The new owner secured a mortgage and then disappeared. Our client filed Counterclaim, cross complaint and Third Party complaint in the mortgage foreclosure action

**FLS Advocate:** Chuck Elsesser

**Co-Counsel:** Shawn Boehringer (LASBC)

**Status:** Service has been effected and discovery begun.

**3. *Hialeah Housing Authority* (Region VII)**

**Summary:** We are working with Legal Services of Greater Miami and Florida Justice Institute to investigate the possibility of a challenge - either administrative or through litigation - to the practices of Hialeah Housing Authority of failing to provide due process in termination of assistance, appeals and similar actions against recipients of assistance.

**FLS Advocates:** Chuck Elsesser

**Co-Counsel:** Legal Services of Greater Miami, Inc. and Florida Justice Institute, Inc.

**Status:** We are reviewing further actions in light of the response to the public records act request.

**4. *Mimms, Georgia vs. CO Group, Blue Chip Lending Services, Thomas Bowman***  
**(Region V)**

**Summary:** We are working with Legal Aid Society of Palm Beach County to assist a homeowner. Client purchased a house from a speculator. The home had repairs that were not done to code, including a new roof and damage to the interior roof beams. The house has been appraised and estimates obtained for repair work. A complaint has been filed against all involved in the initial purchase.

**FLS Advocates:** Chuck Elsesser

**Co-Counsel:** Legal Aid Society of Palm Beach County - Shahar Pasch

**Status:** Complaint is being served. Discovery is ongoing and settlement discussions are underway.

### **OTHER ADVOCACY**

#### **1. *In re Fort Myers Hope VI* (Region V)**

**Summary:** We are assisting advocates at Florida Rural Legal Services, Inc. in Fort Myers in negotiating regarding a proposed HOPE VI project which would demolish an existing family public housing project without full replacement housing.

**FLS Advocate:** Chuck Elsesser

**Co-Counsel:** Michelle Trunkett and Chris Larson (FRLS)

**Status:** The Housing Authority of the City of Fort Myers applied for the HOPE VI grant in 2004 and it was rejected. They are developing an application for the current grant cycle for the same project. FRLS is currently working with tenants in analyzing the proposed application.

#### **2. *In re Southwest Ranches* (Region VI)**

**Summary:** The newly incorporated Town of Southwest Ranches in Broward County was seeking to amend its Comprehensive Plan to provide for affordable housing by simply entering into an interlocal agreement with a city over ten miles away that purportedly had an excess of affordable housing. With the significant assistance of Jaimie Ross of A Thousand Friends we intervened and effectively halted approval.

**FLS Advocate:** Chuck Elsesser

**Co-Counsel:** Jaimie Ross (Thousand Friends of Florida) and Janet Riley

**Status:** Southwest Ranches has adopted a funding proposal whereby they will contribute substantial funds to the development of affordable housing in the local area. Their proposal was challenged in a Fair Housing lawsuit by a local attorney.

**3. Miami Workers Center/LIFFT (Region VII)**

**Summary:** We are assisting the Miami Workers Center on a number of issues as outlined below:

**A. Reduction of PHA Vacancies** - We are representing MWC/LIFFT in advocacy before the Miami Dade Housing Agency (MDHA) to require them to reduce the extremely high number of vacant public housing units.

**FLS Advocate:** Charles Elsesser

**Status:** LIFFT has proposed a modification of the public housing procedure so that applicants are given a choice of all vacancies instead of just one unit. After the PHA rejected that proposal we appeared before the County Commission which voted to have an independent consultant analyze the proposal. After analysis of the LIFFT proposal by an independent consultant, MDHA has accepted the consultant's report and modified its procedures to provide fourteen separate units to each applicant.

**B. 7<sup>th</sup> Ave Bus Terminal - (Region VII)** - We are representing MWC/LIFFT in advocacy to open up the planning process for the Intermodal Transit Terminal at 7<sup>TH</sup> Ave and 62<sup>nd</sup> St. to the community.

**FLS Advocate:** Charles Elsesser

**Status:** The client is organizing a community coalition which will interface with decision makers to create a community charrette planning process and guarantee a right of return for neighborhood businesses, and jobs for local residents. This work is ongoing.

**C. Anti-gentrification Campaign - (Region VII)** - We are representing MWC/LIFFT in a number of separate issues that are part of an anti-gentrification campaign in Liberty City. This project was recently funded by the Racial Justice Collaborative.

**FLS Advocate:** Charles Elsesser

**Status:** The client, with our assistance, is currently developing information on the loss of housing in the Liberty City area. The focus includes the loss of public housing, the loss of private housing through public initiatives such as Model Cities Homeownership Trust, and the loss of affordability through gentrification.

**4. *Villa Maria Apartments* (Region VII)**

**Summary:** FLS and LSGMI are representing the tenants of an apartment building on Miami Beach which is threatened with demolition. The building has a project based Section 8 contract.

**FLS Advocate:** Chuck Elsesser, JoNel Newman

**Co-Counsel:** Clare Casas, Barbara Lanshe (LSGMI)

**Status:** A Miami Beach CDC has offered to buy the building and entered into a contingent contract. The negotiations are proceeding. We are also representing the residents before the Unsafe Structures Board.

**5. *Jimenez v. FEMA***

**Summary:** FLS has requested that FEMA change its policies with respect to the eligibility of noncitizen aliens for noncash FEMA benefits, particularly FEMA trailers.

**FLS Advocate:** Chuck Elsesser, JoNel Newman

**Status:** FLS has written to FEMA requesting the change and is awaiting their response.

## ***IMMIGRATION***

### **ADMINISTRATIVE ADVOCACY**

**1. *Confusion Over Special Immigrant Juvenile Dependency Proceedings***

Along with a number of immigration and children's advocates around the state, FLS has sent a letter to all Florida circuit court judges assigned to juvenile, family and probate divisions discussing: (a) the strict confidentiality requirements of federal and state law governing abuse and neglect investigations and dependency court proceedings; (b) the provisions of federal immigration law that delegate to state dependency court judges, the duty to protect undocumented immigrant children from parental abuse or neglect, and the corollary responsibility to make determinations regarding their eligibility for status as special immigrant juveniles; © the authority of state law enforcement agencies and state court judges to enforce federal civil

immigration law; and (d) the important policy considerations of ensuring that confidential information about undocumented children not be disclosed by state dependency court judges to federal immigration agencies. Copies available upon request.

**FLS Advocate:** JoNel Newman

**Co-Counsel:** Gerard F. Glynn, Florida’s Children First!, Inc.; Timothy P. Keohane, American Friends Service Committee; Joanna Markman, Barry University School of Law; Randall McGrorty, Catholic Charities Legal Services; Virginia Coto, Church World Service; Matthew Dietz, Florida Bar Public Interest Law Section; Cheryl Little and Lisa Frydman, Florida Immigrant Advocacy Center, Inc.; Melissa Buckner, Lawyers for Children America (Miami); David Bazerman, Legal Aid Service of Broward County, Inc.; Bernard P. Perlmutter, University of Miami School of Law

**Status:** We are continuing to pursue these issues through administrative advocacy, judicial education and strategic litigation and appeals.

**LITIGATION**

1. ***In Re FLM, a Minor Child*** (Region V)  
Case No. 4D04-3163  
Fourth District Court of Appeal

**Summary:** This is an appeal of a trial court’s refusal to consider an alien child’s dependency petition without a letter of consent from immigration authorities. In this case, the child was undocumented and had never been in immigration custody or proceedings. Immigration authorities do not issue consent letters in such cases so the trial court’s refusal to consider the child’s petition completely denied him access to the court.

**FLS Advocate:** JoNel Newman

**Co-Counsel:** David Shahoulian (Holland & Knight, Pro Bono)

**Status:** The case has been fully briefed. Oral argument is scheduled for February 2, 2005.

2. ***Sainz-Sanchez v. Bulger*** (Region VII)  
Case No. 04-23176-CIV-COOKE  
U.S. District Court, Southern District of Florida

**Summary:** This action was filed on behalf of a Cuban refugee. Mr. Sainz-Sanchez entered the country in late 1996, a few months after the sweeping welfare and immigration reforms of August 1996. An elderly and ill former Cuban political prisoner, Mr. Sainz-Sanchez's only income was Supplemental Security Income (SSI). Because he entered the country after August 1996 his eligibility for SSI benefits terminated seven years after he entered. He applied for citizenship in April 2003. His SSI benefits terminated in January 2004. He was interviewed for citizenship in March 2004. No decision has been made on his naturalization. Federal law requires that naturalization decisions be made within 120 days of the interview. Mr. Sainz-Sanchez has sued to get a decision.

**FLS Advocate:** JoNel Newman

**Co-Counsel:** Mary Gundrum (FIAC)

**Status:** We have just filed this case and are hoping it will be resolved quickly.

## ***MIGRANT FARMWORKER***

### **ADMINISTRATIVE ADVOCACY**

1. ***Santiago Sain v. Outsource 2000*** (Region V)  
Case No. 02-004405PSL  
(Office of the Judge of Compensation Claims, Port St. Lucie District)

**Number of Farmworkers Affected:** 1 (Okeechobee County)

**Summary:** An undocumented worker suffered debilitating back injury while pulling corn in November 2001. The insurer paid workers' compensation benefits for lost wages based on Sain's actual earnings, rather than on those of a similarly-situated worker, as required by Florida statute. When Sain returned to his home in southern Mexico because of a family emergency, the insurer discontinued all medical and indemnity benefits, based on Sain's inability to attend scheduled medical appointments in West Palm Beach. The insurer refused to authorize medical treatment near Sain's home in Mexico. In the fall of 2004, Sain returned to the United States, where he sought to recommence his medical treatment and therapy.

**FLS Advocates:** Greg Schell and Sol Couto

**Status:** A hearing has been requested on the insurer's failure to provide medical care once Sain departed Florida. The insurer contends that Sain's return to Mexico terminated its obligation to provide medical care. Previously, a hearing had been requested regarding the compensation rate at which Sain was to be compensated for his lost wages.

**2. *Gender discrimination and sexual harassment education project***

**Number of Farmworkers Affected:** 60,000 (statewide)

**Summary:** An estimated 20 percent of Florida farmworkers are women. Many farmworker women receive pay unequal to their male counterparts, denied promotions and higher paying jobs, and are constantly sexually harassed by supervisors and co-workers. Most of these women are unaware of their rights and fear retaliation for complaining about the discrimination that they are experiencing.

**FLS Advocate:** Mónica Ramírez

**Status:** FLS has been awarded a two-year fellowship by Equal Justice Works and the Florida Bar Foundation to implement this project. During the first year of the project, a comprehensive set of informational brochures regarding sexual harassment, gender discrimination and pregnancy discrimination were prepared in three languages and distributed to organizations assisting farmworker women. The project assisted a fledgling group organize to provide leadership development and support for farmworker women in northeast Florida. The project has provided formal training on sexual harassment and gender discrimination to farmworker advocates and service providers throughout Florida. The project has also filed charges of discrimination with the Equal Employment Opportunity Commission for several female workers, alleging sexual harassment or discriminatory treatment.

**3. *Post-hurricane housing project* (Region V)**

**Number of Farmworkers Affected:** 35,000 (DeSoto, Hardee, Polk and Lee Counties)

**Summary:** Hurricane Charley swept through the heart of central Florida's citrus belt in August, 2004, destroying much of the available migrant housing and leaving thousands of farmworkers without shelter. Besides creating an extreme short-term emergency in the farmworker communities in the area, the destruction resulting from the hurricane threatened future harvests by

removing much of the housing needed to accommodate the seasonal workforce to harvest the region's citrus and vegetable crops.

**FLS Advocate:** Rob Williams

**Status:** The destruction of the existing housing stock by the hurricane offers an opportunity to replace it with better quality housing that more adequately meets the needs of the occupants. Following the hurricane, MFJP partnered with Design Corps, a non-profit group whose mission is to identify strategies to provide quality, affordable design services to low-income communities, including farmworkers. Design Group has previous experience in constructing farmworker housing in Pennsylvania, Virginia and South Carolina. The goal is to design a manufactured housing unit specifically designed to meet the needs of Florida's farmworkers at a cost of between \$40,000 to \$50,000 per unit (this compares with a cost of \$80,000 to \$100,000 per unit for traditionally constructed farmworker housing).

Input into the plans has been provided by growers, non-profit groups experienced in operating farmworker housing and from the farmworkers themselves. The federal Department of Housing and Urban Development has indicated an interest in funding a prototype through a grant to the University of Florida. Potential sites in the area impacted by the hurricane are being reviewed for construction of several units as a demonstration project.

## **LEGISLATIVE ADVOCACY**

### **1. *Agricultural Guest Worker Legislation***

**Number of Farmworkers Affected:** 300,000 (statewide)

**Summary:** On behalf of its client, the United Farm Workers union, the MFJP assisted in the drafting of the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJOBS). AgJOBS would provide for the legalization of many undocumented farmworkers and make major revisions in the existing H-2A agricultural guest worker program. AgJOBS is a compromise bill resulting from years of negotiations between the UFW and major agribusiness employer organizations. It has the support of almost all of the nation's farmworker unions and advocacy groups, as well as the principal organizations of agricultural employers.

**FLS Advocate:** Rob Williams

**Status:** During the 108<sup>th</sup> Congress, AgJOBS attracted 63 co-sponsors in the Senate and over 100 co-sponsors in the House. The bill was scheduled for floor action in the Senate during August, 2004, but the White House pressured the Senate leadership to delay any vote until after the November, 2004 election. Plans are being made to re-introduce AgJOBS or similar legislation in the 109<sup>th</sup> Congress, which opens in January, 2005. Substantial support remains for AgJOBS in both houses, and it is expected to be a model for any guest worker legislation offered in the new Congress.

## **2. *Alfredo Bahena Act***

**Number of Farmworkers Affected:** 300,000 (statewide)

**Summary:** Shortly before the close of the 2004 legislative session, in response to an horrific in St. Lucie County killing nine farmworkers and major series in several Florida daily newspapers chronicling the abuse of the state's farmworkers, Governor Jeb Bush directed his staff to prepare farmworker legislation. After a complex series of negotiations with the industry lobbyists and farmworker advocates, a compromise legislative package emerged which provided for a number of new substantive protections for Florida farmworkers, including:

- Prohibiting farm labor contractors from overcharging workers for food and housing
- Making violations of Florida's Farm Labor Contractor Law which result in economic or physical harm to farmworkers a third degree felony
- Increasing maximum civil money penalties for violations of the Farm Labor Contractor Law from \$1,000 to \$2,500.
- Prohibiting retaliation against farmworkers who complain about violations of the Farm Labor Contractor Law
- Eliminating a provision of Florida's workers' compensation statute that discriminated against residents of Mexico and other countries with respect to death benefits
- Reactivating the Legislative Commission on Migrant Labor
- Reenacting the Florida Agricultural Worker Safety Act which had expired.

**FLS Advocate:** Rob Williams

**Status:** Governor Bush signed the legislation on May 14, 2004. The new law is named after Alfredo Bahena, a longtime organizer for the Farmworker Association of Florida who died in an auto accident while the legislation was still being considered. Mr. Bahena made many trips to Tallahassee to lobby for the bill and other farmworker legislation. The legislation is the most

significant farmworker bill to pass the Florida Legislature since 1993. Its provisions became effective in July, 2004.

### 3. *Florida Minimum Wage*

**Number of Farmworkers Affected:** 300,000 (statewide)

**Summary:** In November, 2004, Florida voters approved an amendment to the Florida Constitution providing for a state minimum wage of \$6.15 per hour, with provisions for automatic increases based on inflation. The amendment prohibits retaliation against workers seeking to enforce their right to the state minimum wage and provides a civil remedy for recovery of unpaid minimum wages, including express authorization for class actions (traditional class actions are unavailable to enforce the federal minimum wage law set out in the Fair Labor Standards Act).

**FLS Advocate:** Rob Williams

**Status:** The MFJP is working with the authors of the amendment to oversee implementation of the provision and to guard against legislative or administrative attempts to weaken the law. A major education effort is being planned in conjunction with religious, labor and social service groups as the amendment's effective date of May 2, 2005 approaches.

### LITIGATION

1. *Montejo Gaspar Montejo v. Martin Memorial Medical Center, Inc. (Region V)*  
Case No. 4D03-2638  
Fourth District Court of Appeal

**Number of Farmworkers Affected:** 300,000 (statewide)

**Summary:** An undocumented landscape worker suffered serious head injuries during an automobile accident in 2000. Following the accident, the worker was hospitalized at Martin Memorial Hospital, because he required 24-hour nursing care. Because the alien had no insurance and qualified for only limited assistance under Medicaid, the hospital sought an order returning him to his native Guatemala. The worker's guardian presented evidence that there are few public health services in Guatemala for indigents, and that alien's condition would almost certainly suffer upon repatriation. The circuit court granted the hospital's request. While the alien's petition for a stay was pending, the hospital had him airlifted during the early morning hours to Guatemala.

Within a few weeks, the alien was discharged from the sole public hospital available and left in the care of his impoverished family, with no medical treatment.

**FLS Advocate:** JoNel Newman

**Co-counsel:** Michael Banks, Stuart, Florida

**Status:** The Fourth District Court of Appeal unanimously reversed the circuit court's ruling. 874 So.2d 674 (Fla. 4<sup>th</sup> DCA 2004). The appeals panel held that the lower court lacked jurisdiction to order the removal of the alien from the United States, because federal law pre-empted immigration-related questions of this sort. In addition, the appellate court found that there was no substantial evidence to support the circuit court's ruling and that the hospital's actions in discharging the alien violated Medicare provisions. The hospital is seeking review by the Florida Supreme Court.

- 2. *Ricardo Cagnoli v. Tandem Staffing and Specialty Risk Services, Inc.***  
Case No. 1D03-5563  
First District Court of Appeal, Florida

**Summary:** An administrative law judge struck a petition for worker's compensation benefits filed by an undocumented farmworker because the worker did not provide a social security number on the claim form as required by Fla. Stat. § 440.192(2). The alien appealed and the MFJP filed an amicus brief along with, and on behalf of, the National Employment Law Project, the Farmworker Coordinating Council of Palm Beach County and the Coalition of Florida Farmworker Organizations, claiming that requiring social security numbers on applications violates the Federal Privacy Act and defeats the clear intent of Florida law to provide benefits to all injured workers, irrespective of immigration status.

**FLS Advocate:** JoNel Newman

**Status:** In November, 2004, the appeals court reversed the administrative law judge's decision. 2004 WL 2481366, 29 Fla. L. Weekly D2500. The appellate court's opinion was based primarily on the Privacy Act arguments present in the MFJP amicus brief. The state Division of Worker's Compensation has petitioned for rehearing, arguing that the state's procedures are exempt from the provisions of the Privacy Act.

- 3. *Marisol Ponce-Rubio, et al. v. North Brevard, Inc.* (Region III)**  
Case No. 6:03-cv-738-ORL-31KRS  
U.S. District Court, Middle District of Florida, Orlando Division

**Number of Farmworkers Affected:** 50 (Brevard County)

**Summary:** Class action initiated by four women who were employed as H-2A workers for a hydroponic tomato producer near Cocoa between 1999 and 2003. The women were paid substantially less than the minimum wage, sometimes receiving less than \$3.00 per hour. In addition, the employer failed to comply with its obligation to reimburse the workers for their transportation costs between their home villages and Florida. The employer restricted the women's movements, and locked them into the labor camp during their non-working hours, refusing to allow them to even attend church services, actions the Plaintiffs contend violate a number of international protocols.

**FLS Advocates:** JoNel Newman and Monica Ramirez

**Status:** Following the court's denial of class certification, the matter was settled through mediation.

**4. *Rubia Mejicanos, et al. v. Sanwa Specialty Herbs, Inc.* (Region IV)**

Case No. 8:03-cv-2530-T30-EAJ

U.S. District Court, Middle District of Florida, Tampa Division

**Number of Farmworkers Affected:** 300 (Hillsborough County)

**Summary:** Class action to recover unpaid overtime wages due workers employed in a Hillsborough County packing house that handled produce for a number of growers. Because the packinghouse operates year-round and the workers were employed well over 40 hours in almost every week, the amount of overtime pay at issue is substantial. Over 50 workers are pursuing individual claims for overtime wages and liquidated damages under the Fair Labor Standards Act while the overtime wages for the remaining workers are being sought under the wage payment provisions of the Migrant and Seasonal Agricultural Worker Protection Act.

**FLS Advocates:** JoNel Newman, Monica Ramirez, Greg Schell,  
Manuel Avalos and Raul Barrera

**Status:** The plaintiffs have moved for class certification. The parties are completing limited discovery on the issue of the workers' entitlement to overtime pay, after which the Defendant is expected to move for summary judgment. Mediation is scheduled for January, 2005.

**5. *Salvador Jimenez-Garcia, et al. v. Sorrells Brothers Packing Co., Inc., et al.* (Region V)**

Case No. 04-12748-B and 04-13424-BB

U.S. Court of Appeals, Eleventh Circuit

**Numbers of Farmworkers Affected:** 112 (DeSoto, Hardee and Highlands County)

**Summary:** Six Mexican H-2A workers who were recruited for nine months of work during the 1999-2000 citrus harvest brought suit to recover contract damages after the company terminated them less than two weeks into the season. The claims were originally part of a larger action seeking back wages for 120 harvest workers employed during the 1999-2000 or 2000-01 harvests. The portion of the case relating to wages was settled, leaving for the court the six workers' contract claims.

**FLS Advocates:** Greg Schell and Raul Barrera

**Co-Counsel:** Lisa Butler, Christine Larson and  
Rachel Micah-Jones, Florida Rural Legal Services

**Lead Appellate Counsel:** Hala Sandridge, Fowler, White, Boggs, Banker, P.A.,  
Tampa, Florida

**Status:** In December, 2003, the six workers' claims were tried to the district court. The court ruled in favor of the workers and awarded them damages. The court denied the plaintiffs' request for costs and attorney's fees under Fla. Stat. § 448.08, which covers actions to recover wages. The Plaintiffs appealed the court's ruling on costs and fees, arguing that the damages under the so-called "3/4 guarantee" are "wages" within the meaning of the Florida statute.

6. ***Mario Lopez-Diaz v. Pero Family Farms, Inc.*** (Region V)  
Case No. 2-80008-Huck  
U.S. District Court, Southern District of Florida, West Palm Beach Division

**Number of Farmworkers Affected:** 2,000 (Palm Beach and Hendry Counties)

**Summary:** Class action against one of the nation's largest growers of bell peppers, claiming violations of the AWPAs' wage payment, recordkeeping, wage statement and vehicle safety provisions between 1998 and 2002. The Plaintiff contended the workers were paid less than the minimum wage for their work and that most of the money withheld from their wages for Social Security purposes were never paid to the government. Pero Farms claimed that it did not "employ" the workers and therefore is not liable for any violations of law which may have occurred.

**FLS Advocates:** Greg Schell, Raul Barrera and Karis Engle

**Status:** The class settlement was approved by the district court in July, 2003. In addition to a monetary payment to the class, the proposed settlement provided for major changes in Pero's business practices, including direct payment of harvest workers by Pero and implementation of an electronic timekeeping system. These changes have been implemented, with Pero adopting some of the most sophisticated recordkeeping procedures of any agricultural employer in America. The class settlement moneys will be distributed in the coming months. In addition, under the settlement, Pero will fund a two-year worker education program in the geographic area of the company's operations. Claims against the settlement fund are presently being processed, with the final portion of the settlement funds scheduled to be distributed in early 2005.

7. ***Eloy Renteria-Marin, et al. v. Ag-Mart Produce, Inc., et al.*** (Region II)

Case No. 3:01-cv-1392-HLA-MMH

U.S. District Court, Middle District of Florida, Jacksonville Division

***Marino Perez-Alvino, et al. v. Ag-Mart Produce, Inc.***

Case No. 3:02-cv-627-HLA-MMH

U.S. District Court, Middle District of Florida, Jacksonville Division

**Number of Farmworkers Affected:** 2400 (Hamilton County)

**Summary:** Consolidated class action suits by 19 migrant workers against the nation's largest producer of the newly-developed "grape tomato" arising out of the 2001 and 2002 harvests near Jennings, Florida. Hundreds of the company's workers were housed in overcrowded motel rooms, many without beds. None of the workers was provided with access to cooking or food storage facilities, forcing the workers to purchase their meals from restaurants or itinerant taco wagons. The workers were each charged \$25 weekly for these accommodations. The defendants contend that because the workers were housed in motels, the AWPA's housing provisions are inapplicable.

**FLS Advocates:** Greg Schell, JoNel Newman, Raul Barrera and Manuel Avalos

**Status:** The case was tried to the court in May, 2004. At the conclusion of the trial, the court directed the parties to mediation. The mediation proved unsuccessful and the parties presented their post-trial pleadings to the court in December, 2004.

8. ***Delma Luz-Carranza, et al. v. Mecca Farms, Inc., et al.*** (Region V)

Case No. 01-9013-Civ-Ryskamp

U.S. District Court for the Southern District of Florida, West Palm Beach Division

**Number of Farmworkers Affected:** 2000 (Palm Beach and Martin Counties)

**Summary:** Class action by seven migrant farmworkers on behalf of field workers who harvested tomatoes and peppers between 1997 and 2001 for Mecca Farms, then one of the nation's largest vegetable producers. The workers contended that they were not paid the minimum wage, were not compensated at all for some buckets of produce picked, and were transported to the job site in unsafe vehicles. In addition, the workers claimed that incomplete payroll records were maintained on their work and that only a small portion of the Social Security taxes due on their earnings was actually deposited with the government. Several of the plaintiffs were seriously injured while being transported to work in an unsafe and uninsured van. Mecca Farms claimed that because it did not "employ" the harvest workers within the meaning of the AWPAs and the FLSA, it was not liable for the violations of law.

**FLS Advocates:** Greg Schell, Raul Barrera and Karis Engle

**Status:** After extensive discovery, the parties settled the matter. Distribution of the settlement proceeds to the class members is underway and will conclude in May, 2005.

**9. *Carmelina Martinez, et al. v. Mecca Farms, Inc., et al. (Region V)***

Case No. 01-9096-Civ-Middlebrooks

U.S. District Court for the Southern District of Florida, West Palm Beach Division

**Number of Farmworkers Affected:** 1000 (Palm Beach and Martin Counties)

**Summary:** Class action by four migrants on behalf of workers employed between 1996 and November 2001 at Mecca Farms' Palm Beach County packing houses. The workers contended that they were not paid for all of their compensable hours of work. Although the workers checked in and out from work using punch cards and a time clock, Mecca did not pay the workers for all of the elapsed time shown on the time cards. In addition, Mecca did not pay the workers for short meal breaks of less than 30 minutes, contrary to Department of Labor regulations. The workers were also not paid overtime wages for their work. Finally, most of the Social Security taxes withheld from the workers' wages were never deposited with the government, but were simply retained by the company's farm labor contractors. Mecca Farms contended that it did not employ the packinghouse workers and, instead, they were solely employed by the labor contractors.

**FLS Advocates:** Greg Schell, Raul Barrera and Karis Engle

**Status:** The district court granted the plaintiffs' class certification motion, rejecting Mecca's argument that undocumented aliens are not protected under the AWPAs. 213 F.R.D. 601 (S.D. Fla. 2002). After protracted negotiations, the parties settled the matter. Distribution of the settlement proceeds to the class members recently began and is scheduled to be completed in May, 2005.

**10. *Kelroy McDonald v. Okeelanta Corporation* (Region V)**  
Case No. 91-3105-AO  
Palm Beach County Circuit Court

**Number of Farmworkers Affected:** 2,700 (Palm Beach County)

**Summary:** Class action on behalf of sugar cane cutters who worked during the 1988-89 season for Okeelanta Corporation, one of the state's largest sugar growers. Under their work contracts, the cane cutters were promised work from November 1 through April 30, with a provision guaranteeing at least 3/4 of this work. Some workers were sent home by the company in late January, while the remaining class members remained until the end of the harvest on March 8. Okeelanta refused to pay the workers any money under "3/4 guarantee," relying on a provision in the contract permitting Okeelanta to unilaterally cancel the contracts upon a 10-day advance written notice of an early completion date for the harvest. The Plaintiffs contend that the 10-day notice provision was not validly invoked, is contrary to federal regulation and violates public policy.

**FLS Advocate:** Greg Schell

**Lead Counsel:** David Gorman, North Palm Beach

**Status:** The case was tried to the court in July, 2004. In October, the court ruled in favor of Okeelanta, ruling that the company had properly utilized the 10 day notice and that any claims of the workers terminated in January, 1989 were barred by a settlement reached between Okeelanta and the United States Department of Labor. The case is now on appeal in the Fourth District Court of Appeal.

**11. *Charles Martin v. Roy C. Arnold* (Region V)**  
Case No. 04-14000  
U.S. Court of Appeals, Eleventh Circuit

**Number of Farmworkers Affected:** 1 (Okeechobee County)

**Summary:** Actions on behalf of a middle-aged farmworker who was employed by an Okeechobee County farmer for over 20 years picking citrus, planting pasture grass and performing various maintenance tasks on the grower's farm. The grower failed to pay any Social Security taxes on the plaintiff's labor or to keep any payroll records regarding his work. Because of these practices, the plaintiff is unlikely to qualify for old-age Social Security retirement benefits.

**FLS Advocate:** Greg Schell

**Co-Counsel:** Rachel Micah-Jones, Florida Rural Legal Services

**Status:** The district court granted the defendant’s motion for summary judgment and ruled that he was exempt from the AWPAs because of the relatively small scale of his operations. The farmworker has appealed, contending that the grower failed to “plainly and unmistakably” establish his entitlement to the exemption and pointing to disputed factual issues that should have barred entry of summary judgment in this case.

**12. *Saul Lopez-Mendoza, et al. v. Richard Kenda, et al.* (Region II)**  
Case No. 4:03cv321-RH/WCS  
U.S. District Court, Northern District of Florida, Tallahassee Division

**Number of Farmworkers Affected:** 200 (Madison County)

**Summary:** Class action by 14 migrant workers employed on a Madison County vegetable farm during 2003. The workers were not paid all of their wages, were housed in a dilapidated, unpermitted migrant labor camp and transported in uninsured vehicles. The farm had previously been cited by the United States Department of Labor for serious violations of the AWPAs.

**FLS Advocates:** Greg Schell, Raul Barrera and Sol Couto

**Status:** The court has certified a class of all farmworkers residing at the farm’s labor camp in 2003. Discovery has been hampered by the defendants’ decision to burn all of its business records following the filing of the suit and the refusal of the farm owner to be deposed. Trial is scheduled for September, 2005.

**13. *Wilio Morales-Meza v. Falkner Farms, LLC, et al.* (Region IV)**  
Case No. 8:03-cv-2402-T17-MAP  
U.S. District Court, Middle District of Florida, Tampa Division

**Number of Farmworkers Affected:** 400 (Manatee and Hillsborough Counties)

**Summary:** Class action against major pickle cucumber grower for recordkeeping and wage statement violations, as well as failing to compensate workers for time spent on non-picking activities. In addition, the plaintiff seeks damages for the unpermitted, severely substandard trailer in which he was housed for two years.

**FLS Advocates:** Greg Schell and Raul Barrera

**Status:** The parties have reached a tentative settlement of the case.

- 14. *Celedonio Silva, et al. v. Texas Express, Inc.* (Region V)**  
Case No. 2:03-cv-690-FtM-29SPC  
U.S. District Court, Middle District of Florida, Fort Myers Division

**Number of Farmworkers Affected:** 300 (Hendry and Collier Counties)

**Summary:** Class action against a major lemon-harvesting company for unpaid waiting time. The employer routinely transported the workers to the jobsite early in the morning, where they were required to wait up to four hours until the lemons were dry prior to beginning picking. The company failed to compensate the workers for this time and did not include it on the firm's payroll records and wage statements.

**FLS Advocates:** Greg Schell, Raul Barrera and Manuel Avalos

**Status:** The district court granted class certification. 222 F.R.D. 684 (M.D. Fla. 2004). Discovery is continuing.

- 15. *Nicanor Salas-Santiago, et al. v. Jesus B. Ochoa* (Region V)**  
Case No. 03-14357-Civ-Graham  
U.S. District Court, Southern District of Florida, Fort Pierce Division

**Number of Farmworkers Affected:** 40 (Highlands County)

**Summary:** Action by H-2A guestworkers employed during the 2002-03 citrus harvest to recover additional wages due them. Among other things, the employer refused to reimburse the workers' transportation, visa and border crossing expenses as required by the Eleventh Circuit's decision in *Arriaga v. Florida-Pacific Farms LLC*.

**FLS Advocates:** Greg Schell and Raul Barrera

**Status:** The district court certified the class of guestworkers. 2004 WL 1824124, 2004 U.S. Dist. LEXIS 16454 (S.D. Fla. 2004). The court has approved a settlement that allows the workers to reclaim all of the expenses they incurred for visas and travel to the United States.

- 16. *Luis Avila-Gonzalez, et al. v. Maria R. Barajas, et al.* (Region V)**  
Case No. 04-cv-567-Ft.M.-33-DNF

U.S. District Court, Middle District of Florida, Fort Myers Division

**Number of Farmworkers Affected:** 200 (DeSoto County)

**Summary:** Class action by H-2A guestworkers employed during the 2000-01, 2001-02, 2002-03 or 2003-04 citrus harvests for contractual breaches. Despite being guaranteed free housing, the workers were charged weekly for their accommodations. In addition, the employer failed to supplement the workers' piece-rate earnings so as to ensure that they were paid at least the applicable adverse effect wage rate. The employer also failed to reimburse the workers' transportation, visa and border crossing expenses as required by the Eleventh Circuit's decision in *Arriaga v. Florida-Pacific Farms LLC*.

**FLS Advocates:** Greg Schell and Raul Barrera

**Status:** Suit was filed in November, 2004. Once the defendants answer, the Plaintiffs will file for class certification.

**17. *Gregorio Sanchez-Carranza v. Lionel Barajas* (Region V)**  
Case No. 04-14326-Civ-Moore  
U.S. District Court, Southern District of Florida, Fort Pierce Division

**Number of Farmworkers Affected:** 100 (Highlands County)

**Summary:** Class action by a former H-2A guest worker on behalf of Mexican nationals employed as citrus pickers during the 2002-03 or 2003-04 citrus harvests. The suits seeks damages for wage underpayments by the defendant, a Lake Placid farm labor contractor. The workers were not paid the adverse effect wage rate applicable to their labor because of the employer's pervasive falsification of payroll records. The workers also were never reimbursed for their housing expenses despite being guaranteed free housing, the workers were charged weekly for their inbound transportation, visa and border crossing expenses as required by the Eleventh Circuit's decision in *Arriaga v. Florida-Pacific Farms LLC*.

**FLS Advocates:** Greg Schell and Raul Barrera

**Status:** Suit was filed in November, 2004. The Plaintiff will file for class certification within the 90-day period set out by local rule.

**18. *Pedro Alejo, et al. v. Salvador Barragan* (Region V)**

Case No. 04-14232-Civ-Middlebrooks  
U.S. District Court, Southern District of Florida, Fort Pierce Division

**Number of Farmworkers Affected:** 400 (Highlands County)

**Summary:** Class action against a major central Florida farm labor contractor for pervasive minimum wage violations during the 2003-04 citrus harvest. The employer failed to supplement the workers' piece-rate earnings to boost them to the minimum wage. In addition, the employer unlawfully withheld large amounts from the workers' wages for housing and fees paid to alien smugglers ("coyotes"). The contractor also violated the recordkeeping, wage statement and wage payment provisions of the Migrant and Seasonal Agricultural Worker Protection Act.

**FLS Advocates:** Greg Schell, Raul Barrera and Manuel Avalos

**Status:** Suit was filed in November, 2004. A class certification motion will be filed in February, 2005.

**19. *Macario Villatoro, et al. v. Rafael Ysasi, Jr., et al.* (Region V)**

Case No. 04-81093-Civ-Middlebrooks

U.S. District Court, Southern District of Florida, West Palm Beach Division

**Number of Farmworkers Affected:** 400 (Palm Beach County)

**Summary:** Class action against a farm labor contractor who furnishes labor to one of the largest vegetable farms in the United States. The suit seeks to recover unpaid minimum wages and damages under the Migrant and Seasonal Agricultural Worker Protection Act for work during the 2003-04 tomato season.

**FLS Advocates:** Greg Schell and Manuel Avalos

**Status:** Suit was filed in November, 2004. A class certification motion will be filed in February, 2005.

**20. *Immacula Henry, et al. v. Produce, Inc.* (Region VI)**

Case No. 2:04-cv-511-FtM-29DNF

U.S. District Court, Middle District of Florida, Fort Myers Division

**Number of Farmworkers Affected:** 5 (Collier County)

**Summary:** Suit on behalf of five Haitian packinghouse workers who found their employment during the 2003 Virginia tomato harvest. Although the workers were promised employment throughout the harvest, they were terminated a month early and their crew, comprised entirely of Haitian nationals, was replaced by an Hispanic crew. The Plaintiffs contend that their termination violated Title VII of the Civil Rights Act of 1964. They also contend that Produce, Inc., a wholly-owned subsidiary of one of the nation's largest tomato growers, violated the disclosure and working arrangement provisions of the Migrant and Seasonal Agricultural Worker Protection Act.

**FLS Advocate:** Greg Schell

**Status:** Suit was filed in October, 2004. An amended complaint, adding the claims under the Migrant and Seasonal Agricultural Worker Protection Act, was filed in December, 2004.

## ***PUBLIC BENEFITS***

### **ADMINISTRATIVE ADVOCACY**

#### **1. Due Process for Cash Assistance Participants in a Privatized Welfare System**

**Number affected:** Potentially thousands

**Summary:** Florida transferred administrative responsibilities in the welfare program to Workforce Florida, Inc., and Regional Workforce Boards. However, neither Workforce Florida, Inc., nor the regional workforce boards are traditional governmental entities. And neither has issued formal written policy acknowledging that TANF recipients must be afforded reasonable and fundamental fairness consistent with the due process that they were provided in the old AFDC program. Indeed, Workforce Florida, regional workforce boards and the multitude of private contracted providers who directly deliver TANF services in Florida are, for the most part, completely oblivious to due process requirements.

**FLS Advocates:** Cindy Huddleston and Valory Greenfield

**Co-counsel:** Due Process Task Force

**Status:** In early 2000 FLS began working with the staff of the Miami Workers Center (the Center) and the members of the grass roots organization Minority Families Fighting Against WAGES (MFFAW) as the latter group compiled a list of complaints against the Miami-Dade/Monroe WAGES Coalition. FLS designed a “know-your-rights” curriculum and went to the Worker Center each month in order to train low income participants on their right(s) to support services. FLS, together with The Miami Workers Center applied and was approved for funding from the Dade Community Foundation to produce a video version of the Know Your Rights training to be used at The Mimi Worker Center and to be made available to other community groups. As a result of litigation that sprang from this regional advocacy (see consolidated cases Hepburn v. AWI and Hepburn v. South Florida Regional Workforce Board in prior litigation dockets), a well-drafted grievance policy was put into place for South Florida TANF participants. FLS convened a statewide due process task force to assist advocates in ensuring that their local RWBs around the state put grievance policies into place which provide at least the due process found in the South Florida policy. The task force is working on a model grievance policy and two model notices which each task force member will endeavor to get his/her regional workforce board to approve and implement.

## **2. Elimination of In-person Assistance for Unemployment Compensation Claimants**

**Number affected:** Potentially thousands

**Summary:** Effective July 1, 2001, the Agency for Workforce Innovation (AWI) which oversees administration of the Unemployment Compensation (UC) program, eliminated in-person assistance for claims taking and processing. The entire state switched-over to a system in which claims can only be initiated by mail, fax, or Internet filing. Follow-up requests for information are facilitated by phone call to claimants and claimants report on their work search activities by telephone using an automated menu with recorded voice prompts. Upon implementation, this new system began causing problems for the low literacy and limited English proficient (LEP) clients served by Florida Rural Legal Services (FRLS) many of whom were migrant workers in need of immediate assistance. Neither applications nor instruction booklets were available in Spanish or Creole and the phone lines and operators who answered the lines, although theoretically able to handle inquiries in these two languages, were overloaded, technically inadequate, and unable to handle the volume of calls coming in.

**FLS Advocates:** Cindy Huddleston, Val Greenfield, and Arthur Rosenberg

**Status:** FLS and FRLS staff met with AWI to review our concerns. As a result of this meeting, AWI assigned additional temporary bilingual staff to several of the One-stop offices serving unemployed migrant workers until the phone line service could be improved. AWI also agreed to promptly translate the UC application forms and instruction booklets into Spanish and Creole. In a follow-up letter, FLS requested among other items: statewide telephonic claims filing

(for illiterate persons who are unable to complete a written application by mail and who are without access to fax and Internet); translation of all printed materials; and a reevaluation of the decision to eliminate in-person assistance. AWI failed to respond,. An effort to have the Department of Justice and the Department of Labor address the problem with Florida failed. AWI did publish guidance for delivery of services to LEP persons, but translations of vital information are not available statewide in either printed form nor on the web. In the spring 2003, UC began accepting filings of claims via telephones statewide. FLS conducted “tester-trials” of the telephonic UC claims filing system in various languages to determine whether free interpreters make services accessible statewide to LEP phone filers. In early September 2003, FLS met with officials of the UC program in Tallahassee and pointed out to the UC officials the many significant deviations between the actual practices of their program and their written guidance on delivery of UC services to LEP claimants. In January 2004, AWI informed FLS of some changes it plans to make. However, many questions still remain, for instance timetables for implementation of changes. FLS has decided not to continue with agency negotiation in favor of pursuing litigation strategies. See *Fernandez v. Westwind and UAC* and *Fernandez v. AWI* in the Public Benefits Litigation Section below.

### **3. Compromise of Food Stamp Over-issuance Claims for Current Food Stamp Participants**

**Number affected:** Potentially Thousands

**Summary:** The law requires that food stamp recipients have the right to have DCF consider his/her request to “compromise” his/her food stamp overpayment if the economic circumstances of the household indicate that it is not likely the claimant would be able to repay the overpayment within three years. Notwithstanding these provisions, claimant Roesch was denied consideration of his compromise request on the basis that he is a currently a food stamp recipient.

There is no such limitation in law.

**FLS Advocates:** Cindy Huddleston and Valory Greenfield

**Co-Counsel:** Food Stamp Compromise Task Force

**Status:** In March 2003 DCF signed a letter of agreement indicating that the agency would: disseminate a policy transmittal explaining that current food stamp recipients are eligible for compromise consideration, that a written decision will be issued to those who request compromise, and that a fair hearing will be afforded to those who disagree with the agency’s determination of their compromise request; prepare a more detailed memo and update the Collections Manual to reflect this clarification by May 2003; determine Mr. Roesch’s request for compromise and issue a written decision notifying him of his appeal rights. On March 12, 2003, DCF denied Mr. Roesch’s compromise request. Mr. Roesch was represented by Withlacoochee

Area Legal Services with technical assistance from FLS in an appeal fair hearing, which was unsuccessful. In June 2003 DCF published a revised compromise policy. Between October 2003 and January 2004, the newly formed task force on food stamp compromise participated in analyzing and suggesting changes to this revised DCF compromise policy inter alia, asking for the ability to seek extensions of time to comply with the compromise process based on good cause for missing deadlines and asking that a denial of compromise not act as permanent res judicata in the event of a worsening in the client's financial circumstances affecting the future ability of the client to repay the claim. As of yet, DCF has failed to fully respond to the task force's requests. Negotiations continue.

#### **4. Region 7 Cuban/Haitian Entrant (Region VII)**

**Number of potential recipients:** Hundreds

**Summary:** Under welfare reform (1996's PRWORA as amended by the Balanced Budget Act of 1997), Cuban/Haitian Entrants (C/H E), as defined under the Refugee Education Assistance Act (REAA), are eligible for Supplemental Security Income (SSI) disability benefits. The definition of C/H E includes those who are paroled into the U.S., those who apply for political asylum, and those who acquire any other "special status subsequently created" for Cubans or Haitians. Until recently, SSA counted Cubans who adjust to lawful permanent resident status under the Cuban Adjustment Act (CAA) among those considered to be C/H E's. In addition, there is another group of special Cubans who entered the country and have been residing since December 1995. These immigrants are eligible to adjust to lawful permanent residency under the Nicaraguan and Centra American Relief Act (NACARA) and can be considered to be C/H E's because they meet the last prong of the definition of C/H E under REAA, that is, they acquired a special status subsequently created. Similarly, Haitians who adjust under the Haitian Refugee Immigration Fairness Act (HRIFA) meet the same C/H E special subsequent status part of the REAA definition. Notwithstanding that all the aforementioned groups meet the definition of Cuban/Haitian Entrant, and that Cubans adjusters under CAA and NACARA have prevailed in SSI hearings in which ALJs have been persuaded that these persons are either refugees or C/H E's, the local SSA field offices have failed to implement the ALJ decisions and failed to pay these persons their SSI benefits. Instead, the local field offices have referred these cases to Atlanta Regional SSA office for review. Review has resulted in a reversal at the Appeal Council level or an indication that reversal is imminent. In addition, for many other C/H E's, including bona fide parolees and asylum applicants, the local SSA field offices have started refusing to accept applications for Social Security Numbers (SSN), applications for SSI, and/or requests to appeal denial decisions.

**FLS Advocate:** Valory Greenfield

**Co-Counsel:** Region 7 Subcommittee on "Barriers to receipt of SSI for Cuban/Haitian Entrants" including Tom Zamorano (FIAC) and Jose Fons, Lizel Gonzalez,

and Eli Poupko (LSGMI). This subcommittee operates under the auspices of the Region 7 Litigation Committee. Committee co-chaired by FLS advocate Chuck Elsesser and LSGMI advocate Leslie Powell.

**Status:** FLS convened meetings of interested persons in Region 7 for the purpose of reviewing the facts of individual cases, researching relief, and making recommendations on how to proceed. For two NACARA adjusters who won their SSI claims at their ALJ hearings but got reversed by the Appeals Council, LSGMI pursued appeals in federal district court. FLS assisted with oral argument preparation in those two cases. Both cases were successful at the district court level. For the CAA cases, LSGMI successfully argued these cases in a consolidated hearing at SSA's Office of Hearings and Appeals. The ALJ issued favorable decisions in all the cases. It is anticipated that the Appeals Council will review same, on its own motion, and reverse, thus necessitating judicial review in federal district court. FLS will continue to assist LSGMI with these cases as needed. The University of Miami Children and Youth Law Clinic is representing a disabled Haitian juvenile in her SSI appeal to federal district court. UM will be assisted by FLS and LSGMI with the briefing in this case as needed. UM reports that it has secured the pro bono services of an expert in immigration and benefits law who is a faculty member of FIU's law school and who has agreed to submit an affidavit to the federal court on UM's client's behalf. Advocate Jennifer Wimberly at Legal Aid Society of the Orange County Bar Association has taken on the representation of a CAA-adjustee who was denied SSI by SSA and denied Medicaid by DCF. FLS put her in touch with advocates at LSGMI so that research and pleadings could be shared. In addition, FLS secured the agreement of UM's expert witness in their HRIFA case to submit an affidavit in Jen Wimberly's DCF fair hearing.

#### **5. DCF Failure to Notify Food Stamp Applicants and Recipients of the Availability of Free Legal Assistance**

**Number of potential recipients:** Thousands

**Summary:** FLS was approached by LSGMI concerning whether DCF is including a single statewide toll free phone number for participants to call to get information about free legal services. in its Food Stamp notices. LSGMI posted a query on the public benefits umbrella list-serve to enlist other advocates interested in this issue to call the toll-free number at various times of day and record and report the results of their efforts. This volunteer effort resulted in about twenty random calls being made to the toll-free number. LSGMI compiled the results which were as follows: about 60% of the time the call went unanswered (this includes getting a recording but getting no call back to a message left on the recording); about 25% of the time the correct legal services referral information was provided; and about 15% of the time bad information (bad information includes wrong information such as "legal services will not handle the case" or "you don't need a lawyer") was provided. Based on these results and the volume of interest in this issue a Food Stamp Notice Task Force was formed to work on systemic strategies to redress the problem.

**FLS Advocates:** Cindy Huddleston and Valory Greenfield  
**Co-Counsel:** Food Stamp Notice Task Force

**Status:** FLS convened the first conference call of the Food Stamp Notice Task Force. As a result of that call, members of the task force drafted and sent a letter to their DCF District Administrator about, inter alia: capacity of the toll-free line to accept messages; response time on the toll-free line; DCF not having full and complete information on legal services offices to give out; and the sufficiency of the training received by phone staff. Subsequently, DCF asked that a spokesperson for our state group work with the General Counsel's office about this issue. Lizel Gonzales and Nancy Sutton of LSGMI agreed to be our group's representative along with FLS. Discussions with DCF to date have not resolved our concerns. We will continue to push this in 2005.

## **6. DCF's Modernization Project: In Re M. R.**

**Number affected:** millions

**Summary:** On April 23, 2004, DCF announced in the Florida Administrative Weekly that it planned to "modernize" its application process for TANF, Medicaid and Food Stamps. Although the notice was vague, DCF stated that, among other things, it intends to devise new application/reapplication forms and procedures as well as streamline the entire application process. This is of great concern to us because Legal Services has fought long and hard for many of the existing procedures currently in place that protect our clients. As allowed by the APA, we requested a workshop on behalf of M.R.

**FLS Advocates:** Valory Greenfield and Cindy Huddleston

Status: DCF held its workshop on May 11, 2004. They had no draft rule, form or any plan for what procedures would be changed. They said that they only published the notice so that they could go directly to "proposed rulemaking" (instead of "rule development") when they wanted to move forward. DCF has now developed a plan but have not provided it to FLS so FLS is now pursuing a public records request. FLS remains interested in all viable advocacy avenues impacting upon privatization/modernization issues. In view of state legislation passed at the close of the 2004 session, FLS additionally decided to pursue litigation. See Reed v. Gallagher et al. in the Public Benefits Litigation Section below. Further, FLS has sent DCF a Public Records Act request for details of their modernization plan.

## **LEGISLATIVE ADVOCACY**

## 1. 2004 Unemployment Compensation Issues

**Number of people affected:** Thousands

**Summary:** FLS continued its work during the 2004 session to expand UC eligibility for Florida's low wage workers. FLS's work focused on three issues. The first was to enact the Alternate Base Period, which would require the consideration of an employee's recent work history in determining if they qualify for UC. Present UC law automatically excludes a worker's most recent work history in determining eligibility for UC. This most impacts low wage, intermittent and contingent workers, and recent entrants into the workforce, such as individuals leaving WAGES and women returning to work from maternity leave or family leave, who most commonly need their most recent work history to be considered in order to qualify. The second was to correct a 1999 amendment to Florida law which deprives many part time workers of needed UC benefits. Prior to 1999, workers who continued to work a part time job after termination from their full time job could continue to receive UC at a reduced rate. This would continue even if they later voluntarily quit their part time job. The 1999 amendment resulted in the termination of all UC benefits after any voluntary quit. FLS sought to eliminate the 1999 amendment and restore the pre-amendment practice. Finally, as part of this bill, FLS also sought to prevent the recoupment of non-fraud UC overpayments to claimants in cases where recoupment would be inequitable or against good conscience.

**FLS Advocates:** Arthur Rosenberg and Dorene Barker

**Status:** None of these bills passed. However, one UC expansion, which FLS supported, did pass this session. The new law will enable voluntary quit military spouses to be eligible for UC when the quit is a result of a military transfer. This expands the good cause exception. During the session, working with the National Employment Law Project and the Institute for Women's Policy Research, FLS issued a report written by these two national organizations and joined them in a press conference critical of Florida UC system. The report detailed numerous deficiencies in the way the UC system is presently structured and presented suggestions for improvement for low-wage, women, and minority workers in Florida.

### LITIGATION

1. **Roesch v. DCF (Region III)**  
Case No. 1D03-4805  
Fla. District Court of Appeal, First District

**Number of potential recipients:** Thousands

**Summary:** Under federal law and state rule a food stamp recipient has the right to have DCF consider his/her request to “compromise” his/her food stamp overpayment if the economic circumstances of the household indicate that it is not likely the claimant would be able to repay the overpayment within three years. Notwithstanding these provisions, claimant Roesch was denied consideration of his compromise request on the basis that the state could not reasonably determine that his economic circumstances would prevent him from repaying the claim within three years. He appealed the denial to a fair hearing (represented by WALs advocates) where the hearing officer found that his expenses exceed his income but nevertheless upheld the Department’s denial on the basis that the federal regulation says the state “may” compromise these debts. The Hearing Officer ruled that the Department does not have to exercise its discretion concerning compromise.

**FLS Advocates:** Cindy Huddleston and Valory Greenfield

**Status:** Appeal was filed with the 1<sup>st</sup> DCA. We had hoped to get the Court to issue a decision discussing the need for an agency to explain its exercise of discretion. However, on October 4, 2004, the 1 DCA issued a PCA decision affirming the decision below.

**2. Fernandez v. Westwind Group and Unemployment Appeals Commission (Region V)**  
DCA Case No. 4DO4-960  
Fla. District Court of Appeal, Fourth District

**Fernandez v. Agency for Workforce Innovation**  
DOAH Case Nos. 04-4566RU, 04-4567RU, 04-4568RU Consolidated  
Division of Administrative Hearings

**Number affected:** potentially thousands

**Summary:** Client, a Spanish-speaking fast food worker, was terminated from her job. She applied for unemployment compensation (UC) benefits on a Spanish application. Nevertheless, she received a determination notice in English denying her claim for UC. She was unable to understand its content and ultimately filed her appeal late. This determination notice has not been promulgated pursuant to the Administrative Procedure Act (APA). When she appealed, the notice of hearing, which was in English-only, directed Ms. Fernandez to let the hearing office know if she could not find her own translator for the hearing. The hearing notice form has not been promulgated. After the hearing, the referee issued a written hearing decision, in English-only, in which he dismissed the appeal based on lack of jurisdiction because the appeal was filed late. The hearing decision directs Ms. Fernandes to get the document translated on her own. The hearing decision form has not been promulgated. The Unemployment Appeals Commission upheld the decision

Ms. Fernandez appealed to the 4 DCA. On appeal, the issue is whether the referee's decision that the request for a hearing was filed late is supported by competent substantial evidence and in accordance with law.

**FLS Advocates:** Valory Greenfield and Cindy Huddleston  
Isidro "Sid" Garcia, Private Counsel in Court Case

**Status:** FLS filed an amicus brief in the 4<sup>th</sup> DCA appeal. The brief discusses the growing number of immigrants in the workforce, the numbers of LEP workers in Florida, their contributions to Florida's economy, the purpose of the UC program, the legal authority underlying the right to language access for LEP UC claimants, and the public policy considerations therefore. FLS also filed three rule challenge petitions with DOAH against the Agency for Workforce Innovation seeking to invalidate the AWI's rules and forms which: permit it to send English-only claims determinations notices containing vital appeal rights information to limited English proficient (LEP) UC claimants; permit it to direct LEP UC claimants to bring their own interpreters to hearings; and direct LEP UC claimants to get their hearing decision notices translated on their own. These challenges have been consolidated and settlement negotiations are underway.

**3. Reed v. Gallagher et al.**

Case number SC04-1679

Supreme Court of Florida

transferred to Circuit Court, Case number 2004-CA-1679

Circuit Court of the Second Judicial Circuit in and for Leon County

**Number affected:** hundred of thousands

**Summary:** The 2004 Florida Legislature passed two appropriation provisions in the state budget which change substantive law by allowing DCF to privatize eligibility determinations for food stamps, Medicaid, and temporary cash assistance. In addition, the Legislature simultaneously passed a substantive law which also included a provision to outsource the economic services eligibility determinations. This authorization was buried in a bill which dealt with a completely different subject, developmental services, mental health and the protection of the mentally ill and developmentally disabled from sexual misconduct.

**FLS Advocates:** Cindy Huddleston, Anne Swerlick, Val Greenfield

**Status:** In August 2004 Taxpayer Milton Reed filed a petition for mandamus in the Supreme Court of Florida seeking a ruling that these legislative provisions are unconstitutional because they violate the single subject requirement of the Florida Constitution. The Supreme Court transferred

the petition to the Circuit Court in Leon County in September 2004 DCF initiated settlement and the parties agreed to abate the case based on DCF's agreement that it does not intend to privatize eligibility determinations.