

*FLORIDA LEGAL SERVICES, INC.*



*DOCKET*

*January 2007*

## **TABLE OF CONTENTS**

<u>CONSUMER</u> .....	3
<u>EDUCATION/JUVENILE</u> .....	4
<u>EMPLOYMENT</u> .....	10
<u>FAMILY</u> .....	13
<u>HEALTH/SENIOR</u> .....	15
<u>HOMELESS</u> .....	26
<u>HOUSING</u> .....	27
<u>MIGRANT FARMWORKER</u> .....	36
<u>PUBLIC BENEFITS</u> .....	43

# CONSUMER



## LEGISLATIVE ADVOCACY

### 1. *Payday Loans*

**Summary:** Seven years ago FLS was instrumental in passing landmark legislation regulating payday loans in Florida. Since that time, the industry has found ways to avoid certain aspects of the law, other states have passed more stringent legislation, and the federal government has passed impressive legislation applying to the military. FLS decided the time was right to revisit this area and seek more restrictions on this predatory industry.

**FLS Advocates:** Alice Vickers, Dorene Barker, Arthur Rosenberg

**Other Advocates:** Lynn Drysdale, Jacksonville Area Legal Aid, Inc.

**Status:** We are currently seeking sponsors for our legislation. We continue to work with Elizabeth Renuart, NCLC, to fine tune our language.

## LEGISLATIVE AND ADMINISTRATIVE ADVOCACY

### 1. *Florida Consumer Advocacy Group*

**Summary:** Many organizations in Florida advocate for consumer rights, including FLS. However, the diverse groups have only worked together on individual topics and never organized as a group. FLS brought together the interested organizations, including the National Association of Consumer Attorneys, FLPirg, ACORN, AARP, FCAN, Consumer Federation and individuals to seek a unified front on consumer related issues.

**FLS Advocates:** Alice Vickers

**Other Advocates:** Lynn Drysdale, Jacksonville Area Legal Aid, Inc.

**Status:** It has proved difficult to maintain momentum of the group outside of the legislative session. We are hoping that by working on issues this year we will be able to move forward.

# EDUCATION/JUVENILE



## ADMINISTRATIVE ADVOCACY

### 1. *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:** FLS continues work with LSGMI and the Miami Coalition for the Homeless to assure adherence to the requirements of the McKinney Vento Act. Improvement has been made. Monitoring and evaluation is ongoing.

### 2. *Dept. of Children and Families: Promulgation of Florida Administrative Code Rules Concerning the Independent Living Program.*

**Numbers Affected.** Estimated to be approximately 5,000

**Summary:** Former foster youth between the ages of 18 and 23 may receive various services from DCF's "Independent Living" program, including the "Road to Independence Scholarship". The Department drafted policies and mandated they be followed by the contracted agencies that administer this program. However, these policies violate the implementing statute, § 409.1451,

F.S., in that they do not properly assess the living needs of the benefit recipients, and cap the amount of benefits that can be received.

**A. *Merritt, et al, v. DCF*, DOAH Case No. 05-2905 RU**

**FLS Advocates:** Deborah Schroth with Valory Greenfield and Cindy Huddleston

**Co-Counsel:** Treena Kaye, Community Legal Services of Mid-Florida, Inc., and White & Case, Miami, Florida. With assistance from Florida's Children First.

**Additional Information:** This case is an APA challenge asserting that the policies used by DCF to calculate the awards to former foster youth constitute an un-promulgated rule.

**B. *Barnes, et al, v. DCF*. DOAH Case No. 05-4380 RP**

**FLS Advocates:** Deborah Schroth, with assistance from Valory Greenfield and Cindy Huddleston.

**Co-Counsel:** Treena Kaye, Community Legal Services of Mid-Florida, Inc.; Nancy Wilkov, Attorney at Law; and Doug Halsey, White & Case, Miami.

**Additional Information:** In response to the un-promulgated rule challenge described above, DCF began the rule promulgation process. Advocates participated in the public hearing and provided extensive comments - largely ignored by the Department. Advocates filed this APA challenge to the proposed rule, asserting that the proposed rule is an invalid exercise of delegated legislative authority.

**Status of both cases:** After extensive discovery and negotiations, these cases were settled in late April. DCF published its Notice of Change to the proposed rules, using negotiated language; rules were formally adopted in July, 2006. While these rules are not perfect, they provide much better calculations for awarding Road to Independence Program benefits to former foster youth, and remove the departmental caps on the amount of assistance a former foster youth is eligible to receive from the other Independent Living programs.

Although this project has been formally completed, FLS continues to monitor the provisions of these rules, and to work with DCF to ensure compliance. On October 12, 2006, at the invitation of DCF, Deborah Schroth gave a two hour presentation at the statewide quarterly meeting of the Independent Living Coordinators on the new rules. This presentation drew a very negative response towards compliance with the rule as to when foster youth aging out of the system are to receive their first Road to Independence payment. This discussion resulted in a memorandum from DCF to each of the IL coordinators in Florida advising them of their duty to comply with

that rule, as written and as explained by FLS. FLS also continues to electronically discuss these issues with other CLS grantees.

### **3. *Affordable Housing for Former Foster Youth and Former Delinquent Youth.***

**Summary:** One of the biggest obstacles for a former foster youth to maintaining stability and continuing an education is the significant lack of affordable housing (i.e., low-income housing) for these youth. Many of them attend their local junior colleges, which generally do not provide any dormitory housing. Florida has been losing its low-income housing due to a number of governmental policies, with the loss exacerbated by hurricane damage in the past two years. There is a limit to how much money these youth can receive through the Chaffee Act. Further complicating matters are two federal policies: (1) that youth aging out of foster care are not included in the definition of “homeless”, and (2) that full-time students (these are the youth who qualify for the Road to Independence Program by DCF) are ineligible for affordable housing that is created using low-income tax credits. Youth who age out of the Delinquency system face an even greater obstacle in that their criminal history often precludes them from renting anywhere, even if they find housing they can afford.

**FLS Advocate:** Deborah Schroth

**Status:** FLS had initially planned to work with staff at the Environmental Law Institute (ELI) in Washington, D.C., who would be working with FLS through a matching funds grant, to explore the possibility of developing Brownfields as housing for these populations. ELI did not secure its matching grant, so FLS lost the environmental law expertise it needed to go forward with this proposal.

In anticipation of this project, FLS began working with the local Emergency Services and Homeless Coalition. A new task force has been formed, to concentrate on homeless families and children. This task force consisted of many interested and helpful agencies; however, this group is now in hiatus due to the resignation of the ED of the Coalition in November.

Attending a national conference, FLS learned of one man’s effort to circumvent the low-income tax credit program’s prohibition on these housing units being occupied by full-time students. FLS plans to market this particular interpretation of the tax code to managers and developers of these low-income projects, and to explore the possibility of requesting a private letter ruling, or a rule challenge to the federal regulations, to get governmental approval for this positive interpretation.

### **4. *Master Trust issues*** ***(Region II)***

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

**Summary:** FLS has discovered significant and extensive 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, GALs 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. Further, for youth who receive SSI benefits, there are further complications and mis-management of funds due to the federal government's cap of \$2000 on accumulated assets.

**FLS Advocate:** Deborah A. Schroth

**Co-Counsel:** Carlton Fields - Tampa office is currently providing technical assistance

**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.

During the past several months, DCF has begun delegating the administration of the Master Trust accounts to the community agencies that provide the foster care services. This delegation affects our ability to challenge the state's obligations through a state-wide class action.

5. ***K.M. v. DCF*** (a DCF administrative fair hearing)

**Summary:** FLS has been representing a foster youth who will age out of the system in July. One of her issues is that she is an SSI recipient, who had never been advised that she had the right to request DCF to set aside some or all of her SSI benefits for her use when she ages out of the system. FLS filed a request for a fee waiver, as provided by statute, asking for both a prospective and retrospective fee waiver, on the theory that she was entitled to a retroactive waiver consideration due to DCF's failure to notice her of this right. The fee waiver request, heard by an *ad hoc* committee of DCF District 4 staff, was denied. FLS appealed the denial, requesting DCF to send the issue to the Division of Administrative Hearings (DOAH). The Agency Clerk denied this request, but the specially appointed hearing officer, another district's general counsel, granted FLS' motion for reconsideration of this particular issue, sending the case to DOAH. Shortly before trial, DCF agreed to return all the money it had paid itself for K.M.'s cost of care, \$ 7,112.00. This capitulation affirms FLS' belief in this cause. We continue to discuss this issue with the statewide Guardian ad Litem program, as well as individual advocates, as we do know that the Master Trusts continue to be mis-managed around the State.

**FLS Advocate:** Deborah A. Schroth

## **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 approximately \$3,000 for state resident students (in-state) and \$12,000 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 and other advocacy groups, FLS continues towards legislation 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.

## **OTHER ADVOCACY**

### **1. *Participation in National Governor's Association Policy Academy.***

The National Governor's Association (NGA) brings together teams of experts from different states to participate in "best practices" policy academies. One of this year's NGA best practices academies concerns Youth Transitioning Out of Foster Care. DCF applied to participate in this academy, and chose Deborah Schroth as one of its core team members. The Florida team has met together twice, and the entire policy academy has met for two sessions of three-day meetings. The purpose of the Academy is to assist the participating states in developing policies and procedures that will improve the outcomes of youth transitioning out of foster care. DCF anticipates its core team members will develop new policies, and then work on legislative and administrative changes to implement those new policies. FLS has been able to more effectively advocate in some areas of the rule implementation since this academy began.

One of the workgroups to come out of the policy academy is a focus on housing for former foster youth. FLS will be participating in this workgroup, and has learned of one developer's courage in using federal tax credits for former foster youth, which FLS hopes to develop into a training module for low-income developers around the state.

## **TRAINING**

### **1. *Independent Living Fair Hearings.***

FLS has begun to help individual advocates, primarily through technical assistance, on requesting and conducting fair hearings for former foster youth who are substantially affected by eligibility or payment decisions for any of the post-18 Independent Living programs. During the first six months of 2006, FLS conducted a training for attorney staff of the statewide Guardian ad Litem program, and wrote a chapter for the GAL on-line manual to be published shortly on the Independent Living program. FLS has created a task force on this issue, which has been used by attorneys in the field for a limited dialogue on issues facing them in their representation of older and former foster youth. This work is interesting because it combines elements of children's advocacy and public benefits advocacy.

FLS continues to provide technical assistance to advocates through its Yahoo group website, and now through its newly-created in-house website, at <http://www.fladvocate.org/childrenslegalservices/index.cfm>. FLS is in the process of convincing CLS grantees to join this website.

DCF Training. As mentioned above, Deborah Schroth also conducted a training on the new Independent Living F.A.C. rules for the Independent Living Coordinators, working state-wide, at the request of DCF staff.

### **2. *McKinney-Vento Act***

**a. *Victims of Disasters.*** FLS was asked to present a segment of the Florida Bar Foundation's Disaster Legal Assistance Manual Training on how the McKinney-Vento Act should be used to assist students who are victims of disasters. The training segment was well-received, and FLS hopes to be able to provide technical assistance on this issue should the need arise in the future.

**b. *Local Training.*** Deborah Schroth gave a two-hour presentation on McKinney-Vento rights to a group of approximately 35 case managers working for service agencies who are members of the Emergency Services and Homeless Coalition of Duval County. Attendees included homeless advocates, school board employees, and children's welfare agency employees. FLS has fielded a few follow-up calls from this training.

### **3. *Master Trust.***

In its continuing efforts to help the Guardian ad Litem program work on Master Trust issues themselves, and to refer appropriate cases to us, Deborah Schroth did a focused training on master trust issues to attorneys from each region of the statewide GAL program, in Orlando, Florida, at the request of the GAL program. FLS has fielded a few phone calls since this training, but has not yet been able to secure any clients as a result.

#### **4. *Housing for Former Foster Youth***

Due to FLS' work on HB 7173 last year, Deborah Schroth was invited by Casey Family Programs, to speak at the National Association for the Education of Homeless Children and Youth' annual conference on foster youth and housing issues.



## **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 \$10.27) with health benefits, and if no health benefits are provided, \$9.81/hour (now \$11.76). 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 and improvement and revision to the Ordinance have been initiated and made through this 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. In April 2006, the City of Miami passed a living wage ordinance requiring payment of \$10.58/hour if the employer provides health insurance and \$11.83 if they do not. The ordinance took effect on October 1, 2006. A campaign to enact a living wage ordinance is ongoing in Coral Gables and one is beginning in Hialeah. 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 in Jacksonville, Tampa and Orange County. The Coalition has continued to receive small grants to support its work.

While FLS and CCLW pursue additional Living Wage Ordinances, more attention is being shifted to assuring proper implementation in both Miami Beach and the newly enacted City of Miami ordinance, which unlike Miami-Dade County do not have specific commissions to oversee implementation and enforcement.

## **OTHER ADVOCACY**

### **1. *WeCount! (Homestead, FL)***

**Summary:** FLS is supporting the work of WeCount!, a grassroots membership organization in Homestead, FL, in a number of matters including: representation of low-wage workers in order to recover unpaid and under-paid wages under the Florida Minimum Wage Amendment and the Fair Labor Standards Act; assistance in the development of an intake system and referral network for the organization's worker rights initiative; consulting on issues related to police harassment of day laborers; and consulting on a number of the organization's corporate issues.

**FLS Advocate:** José Javier Rodríguez, Chuck Elsesser (co-counsel)

**Status:** WeCount! will be opening Miami-Dade County's first workers' center in the Spring of 2007.

### **2. *American Friends Service Committee (Miami, FL)***

**Summary:** FLS is assisting American Friends Service Committee, a non-profit social justice advocacy agency in South Dade, by conducting workers rights education.

**FLS Advocate:** José Javier Rodríguez, Chuck Elsesser (co-counsel)

### **3. *City of Miami Living Wage***

**Summary:** FLS is supporting a grassroots membership organization in Little Havana with matters involving the enforcement of the City of Miami's Living Wage, which went into effect in October 2006.

**FLS Advocate:** José Javier Rodríguez, Chuck Elsesser (co-counsel)

### **4. *Institutional Attention to the Non/Under-payment of Wages***

**Summary:** FLS is consulting on enforcement initiatives around wage and hour laws with the Florida Immigrant Coalition, with Florida International University's Research Institute on Social and Economic Policy, and with the South Florida Interfaith Committee for Worker Justice and one of its member congregations in Miami.

The group is at the beginning stages of researching low wage industries. The group plans on targeting research and enforcement initiatives on five industries in So. Florida and has initially chosen to focus on nurseries in South Dade.

**FLS Advocate:** José Javier Rodríguez, Chuck Elsesser (co-counsel)

### **5. *Region III Employment Law Project***

**Summary:** FLS assisted the programs in Region III with the development and initiation of a collaborative regional project on employment advocacy. FLS provided initial basic training on employment law and facilitated the development of a strategic plan for the project. The project is focusing initially on wage issues and unemployment compensation with directed outreach in Brevard County.

**FLS Advocates:** Rob Williams, Arthur Rosenberg, Kent Spuhler

# FAMILY



## ADMINISTRATIVE ADVOCACY AND LEGISLATIVE ADVOCACY

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

**Summary:** FLS has worked to have bills filed in the 2007 Florida Legislature to return waiver of civil filing fees for indigent people (SB 914 (Crist) and HB 1009 (Planas)). In addition, many legal aid programs are pursuing litigation of filing fee cases against clerks all over the state.

**FLS Advocates:** Ann Perko, Kent Spuhler, Dorene Barker, Arthur Rosenberg

**Other Advocates:** PDA, Board Members, and Legal Aid lawyers

**Status:** FLS is working hard to get the bills moving through the Legislative process and will continue to seek co-sponsors and look for other bills to use as vehicles. FLS will continue to advocate for this issue on Legal Aid Day with the support of all the visiting advocates. All of the Regions in the state are gathering information on clerk policies and procedures, are filing for judicial review where necessary, and are reporting the status back to FLS so that we can inform the legislature of the problems in implementation of the filing fee bill and convince them to return to full waiver of fees.

### 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, examining the court's role regarding youth aging out of the foster care system, mental health issues in the justice system, public information on the dependency system, confidentiality of court records in family cases, standardized child support orders, and judicial case management in domestic violence cases.

**FLS Advocate:** Kent Spuhler

**Status:** The new committee appointed by Chief Justice Fred Lewis for a two year term has divided into sub-committees to cover the topics listed above. Second Circuit Judge Nikki Clark is chairing the committee. The sub-committees have expanded membership beyond the committee members. Kent Spuhler is serving on the mental health sub-committee, Kris Knab is serving on the youth aging out of foster care subcommittee, and Penny Crandall of FCADV is serving on the judicial case management in domestic violence cases sub-committee. The sub-committee are to

develop recommendations for consideration by the full committee for presentation to the Florida Supreme Court.

## **OTHER ADVOCACY**

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

**Summary:** FLS entered into a contract with the Florida Coalition Against Domestic Violence (FCADV) for a tenth year of service. 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 is also now receiving some funding for the hotline from the FACLA grant.

**FLS Advocates:** Ann Perko, Suzanne Estrella, Dionne Meyers, Amy Guinan, Janet Anthony and Kent Spuhler

**Status:** The legal hotline served 2,190 callers from January 1, 2006 through December 31, 2006. FLS continues to identify statewide and regional issues and is 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. Hotline staff screen clients regarding these issues and make the appropriate referrals to FCADV. FLS hired two new staff attorneys who have been trained to answer calls from the hotline as part of their duties.

### **2. *Sexual Violence Project***

**Summary:** FLS entered into a contract with the Florida Council Against Sexual Violence in October, 2006 to provide civil legal assistance to sexual violence victims in a pilot area. FLS has subcontracted with Jacksonville Area Legal Aid for them to provide services to clients in their service area. FLS hopes this project will identify significant areas of need where sexual violence victims need legal assistance. FLS will work with FCASV to pursue systemic change where civil legal issues become evident.

**FLS Advocates:** Ann Perko, Suzanne Estrella, Dionne Meyers, Amy Guinan, Janet Anthony and Kent Spuhler

**Status:** FLS staff have received training and have begun receiving referrals and assisting clients in the Leon and Gadsden county areas. FLS has met with Refuge House staff on determining priorities, referral and intake procedures, and with FCASV staff on grant restrictions and reporting requirements. JALA staff have received training and have established a referral system with the Women's Center in Jacksonville.

# HEALTH/SENIOR



## ADMINISTRATIVE ADVOCACY

### 1. *Medicare Part D*

**Number affected:** Over 300,000 Medicaid recipients

**Summary:** The Medicare Modernization Act of 2003 creates a new prescription drug program which went into effect January 1, 2006. This change has significant implications for low income aged and disabled Floridians, including over 300,000 dual eligibles-those individuals who have both Medicare and Florida Medicaid coverage. On January 1, 2006 these Medicaid recipients lost Medicaid coverage for prescriptions. They automatically qualified for the Part D Low Income Subsidy ( LIS) which pays the full Part D premium and coinsurance. Also, individuals getting the LIS have no gaps in coverage (e.g. “the doughnut hole”) and are responsible for just small co-payments of \$1-\$5 per drug.

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

**Status:** Over 40,000 low income Medicare beneficiaries in Florida have been notified by the federal government that they will be losing their Part D Low Income Subsidy (LIS) effective January 1, 2007. A number of people losing the LIS are “medically needy” individuals whose income is too high to qualify for the full LIS, but they have substantial medical bills due to their poor health. In order to maintain their Medicaid eligibility under the medically needy program they must meet their share of cost (like an insurance deductible) for at least one month during July through December 2006. Most affected beneficiaries are very confused about, or totally unaware of their potential loss of the LIS. In anticipation of this problem, FLS wrote to the state Medicaid agency to encourage them to send a letter to these individuals explaining that if they met their share of cost during 2006 they would qualify for the LIS for all of 2007. FLS also encouraged state officials to set up a toll-free number that these individuals could contact for assistance. FLS also sent an advice letter about this issue to over 200 Medicare eligible individuals who had previously contacted our Prescription Helpline (see “Other Advocacy section). Although the state did send a letter to the affected beneficiaries, it did not include the critical information we recommended and the state did not agree to set up a toll-free helpline. In order to provide counsel and advise to future Prescription Helpline callers with these LIS problems, (see **Other Advocacy**).

Starting in August 2006, FLS in collaboration with JALA and TRLS implemented a Region 2 Healthcare Access Project. One component of this project is focusing on Medicare Part D,

including: education of low income seniors and persons with disabilities about their rights under Medicare Part D and; assistance to individuals facing coverage problems under Part D. FLS is providing ongoing counsel, technical assistance and other support to TRLS staff on this project.

## **2. *Florida Medicaid Reform***

**Number affected:** Over 2 million current and future Medicaid beneficiaries

**Summary:** During the December 2005 special session, the Florida Legislature authorized the Agency for Health Care Administration (AHCA) to implement Medicaid reform pilot projects in Duval and Broward counties starting July 1, 2006.

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

**Status:** Since implementation of the new law, FLS has identified serious problems with reform implementation that adversely impact beneficiaries. These problems include the failure to provide necessary information about plan benefits, the potentially catastrophic impact of plan benefit caps on individuals at risk of institutionalization, flaws with the transitional coverage requirements and the lack of due process. A key issue is the disconnect between the promise that Medicaid reform will enhance consumer empowerment by providing consumers with the information they need to make the best possible health care choices for themselves and their families and the actual reality. In reality, choice counselors (and thus recipients) have not been provided with the information necessary to make informed choices. For example, the Agency has failed to ensure provision of information on the following: which drugs are on the plans' preferred drug lists (PDL); plans' utilization policies and procedures for approving drugs not on the PDL; plans' standards are for approving prior authorizations for other capped benefits (e.g. home health care); or how recipients can ensure transitional benefits. FLS has written a series of letters to the Medicaid Director documenting each of these problems and is regularly sharing this correspondence with members of the legislature.

FLS is also working with other grass roots organizations in ongoing advocacy over the lack of information provided to consumers and on other systemic issues. As a member of the steering committee of the Medicaid Reform Advocates Committee (MRAC), FLS participates in conference calls and meetings with other advocates, consumers and state officials, and have written the new governor and members of the legislature regarding consumer concerns.

FLS also continues to advocate with AHCA regarding the prescription drug benefit under Medicaid reform. This has included efforts to gain information, through public records requests, and advocating for specific data collection that will enable FLS to determine if a plan is violating the federal Medicaid statute prescription coverage requirements and /or the terms of the *Hernandez* settlement.

Starting in August 2006, FLS, in collaboration with JALA & TRLS, implemented a Region 2 Healthcare Access Project. One component of this project focuses on the Medicaid Reform pilot

project in Duval and surrounding counties. FLS has been providing ongoing technical assistance, support and training to JALA staff working on this project. FLS developed in conjunction with JALA staff client brochures on Medicaid reform and in conjunction with the Northeast Florida Healthy Start Coalition helped organize two focus groups of public housing residents to provide feedback on drafts of these brochures. Through these meetings we identified Medicaid recipients willing to provide ongoing information to FLS & JALA about how they are being impacted by Medicaid reform. FLS is also assisting JALA in the preparation of written client stories/declarations about their experiences with Medicaid reform which FLS will be using for legislative and policy advocacy work. FLS and JALA have also prepared articles on Medicaid reform for publication in the Florida Academy of Family Physicians newsletter and the MATCH bulletin newsletter for Jacksonville pediatricians.

### **3. Florida Senior Care Medicaid Waiver Proposal (Regions I and III)**

**Number affected:** Thousands of Medicaid recipients 60+ in the Panhandle & Central Florida region

**Summary:** In 2005, the Florida Legislature directed AHCA and the Department of Elder Affairs(DOEA) to submit a federal Medicaid waiver request in order to develop a capitated long term care Medicaid pilot project targeted towards Medicaid beneficiaries sixty and older. The intent is for the state to contract with managed care providers who would be responsible for delivering to seniors a continuum of Medicaid and Medicare funded services (from nursing home to home and community-based care). The Legislature has directed that the pilot projects be implemented in the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Seminole, Brevard, Orange and Osceola. However, the pilots cannot be implemented without further legislative approval once the federal government approves the final terms of the proposals.

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

**Status:** In January, 2006 AHCA submitted two Medicaid waiver proposals to the federal government (CMS). On February 24, 2006 FLS submitted detailed written comments to AHCA and CMS on these proposals. Among other items, FLS urged the agencies to proceed slowly and cautiously, particularly in light of all of the health care changes low income seniors are currently encountering with the Medicare Part D changes. On September 13, 2006 the federal government approved the state's proposals. Implementation of these proposals are pending legislative approval. FLS continues to work with Florida AARP on legislative strategies to ensure protections for low income seniors if these proposals are approved by the Legislature.

### **4. EPSDT**

**Number affected:** Over 1 million Medicaid-eligible children/youth

**Summary:** Federal Medicaid law requires states to provide comprehensive screening and treatment services for Medicaid-eligible children/youth ages 0-21. This benefit is called the Early

and Periodic Screening Diagnosis and Treatment (“EPSDT”) program. Federal EPSDT law requires the state to provide services necessary to “correct or ameliorate” physical or mental health conditions. In the *C.F. v. AHCA* case (see Litigation section) the Third District Court of Appeal holds that Florida’s medical necessity rule used by Medicaid to determine the need for children’s services is overly restrictive and violates federal EPSDT law. That decision was final in August 2006.

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

**Status:** On August 30, 2006, FLS wrote to the Deputy Secretary of Medicaid requesting that AHCA amend the state EPSDT and medical necessity rules to incorporate the federal EPSDT standards. On September 22, 2006, FLS again wrote to the Deputy Secretary in reference to a newspaper article about children in foster care not getting developmental disabilities services and FLS asked for a meeting to discuss the need for better coordination of Medicaid EPSDT services and services provided by the Agency for Persons with Disabilities (APD). In an August 30<sup>th</sup> phone conversation with AHCA’s Medicaid counsel, FLS was advised that AHCA was looking at specific language to amend the rule. FLS subsequently provided AHCA proposed amendments to the EPSDT and medical necessity rules and a proposed implementation memo for use by AHCA and other state agencies providing children’s services. In an October 24<sup>th</sup> letter from the Deputy Secretary he stated that the agency was reviewing our suggestions. In a subsequent meeting in November 2006 with the Medicaid counsel and Assistant Deputy Secretary for Medicaid, FLS was informed that the Agency is still considering what to do. To date, the state EPSDT rules have not been amended and FLS staff are analyzing various litigation options.

##### **5. *Citizenship Requirements under the Deficit Reform Act (DRA)***

**Number affected:** Approximately 2 millions current and future Medicaid beneficiaries

**Summary:** As part of the Deficit Reduction Act of 2005, Medicaid recipients and applicants who are United States citizens (either born in the U.S. or naturalized) are no longer able to declare citizenship during eligibility determinations. Instead, under the new law, individuals must now provide proof of U.S. citizenship and identity. This new law creates an eligibility barrier for a number of individuals.

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

**Status:** Prior to the law’s implementation on July 1, 2006, FLS consulted with national experts, obtained copies of the state’s proposed and actual operational policies and advocated for the most liberal interpretation of the new law. FLS has also obtained public records data showing that approximately 3500 Florida applicants per month are denied due to the new law and approximately 850 Florida recipients per month are terminated. FLS has also submitted comments on the state’s proposed rule, again advocating for the most liberal interpretation possible under the law. FLS is continuing to monitor implementation of the law and share problems with

national experts in support of national advocacy aimed at remedying the unintended and adverse impacts of the law.

## **7. *KidCare Rules***

**Number affected:** Approximately 250,000 low income children

**Summary:** Florida's KidCare program was created in 1998. However, to date, the state has adopted no rules for the program.

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

**Status:** After the lack of rules was criticized in a November 2005 Auditor General report, AHCA initiated the rule process in 2006 and held a rule development workshop on November 20, 2006. FLS participated in the workshop and subsequently submitted detailed written comments to the agency. The comments urged AHCA to adopt a more "family-friendly" simplified grievance process than the current process which is very difficult for families to understand or navigate. To date, the agency has not yet published proposed rules which is the next step in the rule-making process.

## **8. *Developmental Disabilities Fair Hearing Process***

**Number affected:** APD states that it receives 100 Medicaid fair hearing requests per month

**Summary:** FLS and other organizations (Florida Association for Retarded Citizens-FARC, Florida Children First- FCF, the Advocacy Center for Persons with Disabilities & Florida Association of Rehabilitation Facilities-FARF) are hearing a number of complaints about the Medicaid Fair hearing process before the Department of Children and Families (DCF) for matters relating to services for persons with developmental disabilities. For example, the Agency for Persons with Disabilities (APD) has contracted with the Attorney General's office to represent APD on these hearings, even when the family is unrepresented. (This is not typical for other state agencies subject to fair hearing requirements). Many families, even those with legal representation, feel very intimidated by the A/Gs at these hearings and perceive that they are not getting to tell their side of the story and that the hearing officers always side with the state. Further, many lawyers are dissatisfied with the fair hearing process before DCF because the hearing officers are not attorneys.

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

**Status:** In August 2006, *JM v. APD*, 938 So. 2d 535 (1<sup>st</sup> DCA, 2006) was decided which requires APD to give families the option of pursuing a Medicaid fair hearing before the Division of Administrative Hearings (DOAH) instead of DCF. After the decision was rendered, FLS in conjunction with other interested organizations met with the Administrator of the DCF Office of Appeal Hearings and the General Counsel for APD to make recommendations concerning

implementation of the *JM* decision, how to improve the fair hearing process for families and to ensure compliance with federal Medicaid fair hearing law. APD subsequently decided to refer all hearing requests to DOAH and not give families the option for a DCF fair hearing. FLS and other organizations then met with the Chief Judge of DOAH to discuss the transition of these cases from DCF and make recommendations to ensure preservation of federal Medicaid fair hearing rights in the DOAH arena. FLS is also currently working with FCF and FARC to create an attorney handbook to encourage more pro bono attorneys to provide representation in these cases.

## 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 ensured due process to any of the state's 2.1 million Medicaid recipients whose request for prescription coverage is denied.

**Summary:** Since the Settlement was implemented in May 2004, there has been an ongoing failure on the part of many pharmacies to post the requisite sign and provide the requisite notice/pamphlet whenever Medicaid coverage for a prescription is denied. In spite of numerous corrective actions which were implemented by the Agency in December 2005, we continue to hear reports of pharmacy noncompliance.

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

**Status:** The Agency's response regarding pharmacy noncompliance was that they cannot enforce the *Hernandez* settlement *vis a viz* the pharmacies until a rule was promulgated regarding the requisite sign and notices. The rule has now been promulgated. We negotiated with the Agency regarding protocol for reporting and have been encouraging local legal aid programs to report noncompliance.

2. ***Edmonds et al v. Levine*** **(Region III, VI)**  
Case No. 05-21215 CIV-Gold  
U.S. District Court, Southern District of Florida

**Number affected:** 6,000

**Summary:** Under federal Medicaid law, states are required to cover prescription drugs for "medically accepted indications," which the statute defines as uses approved by the FDA (on label) or "off-label" uses that are supported by citation in one of three Congressionally specified compendia. In 2004 the legislature authorized AHCA to implement prior authorization of the off-label uses of the prescription drug Neurontin and its generic equivalent Gabapentin. The drug is

widely used to treat various forms of neuropathic pain and other intractable pain conditions and is also used for psychiatric disorders. The most current and detailed of the Congressionally specified compendia, DRUGDEX, cites over 40 therapeutic uses of the drug which AHCA is refusing to cover. Without exception AHCA is only covering the two FDA approved uses and two off-label uses. A number of clients and providers contacted FLS and field programs regarding the adverse effects of this policy. After over 6 months of advocacy with the Agency regarding this policy, Plaintiffs filed a class action requesting a preliminary injunction, along with permanent injunctive and declaratory relief against AHCA.

**FLS advocates:** Miriam Harmatz

**Co-counsel:** Shawn Boehringer, Broward Legal Aid, Jennifer Wimberly, Legal Aid Society Orange County Bar Assoc; Jane Perkins, National Health Law Program; Neil Kodsi, Carlton Fields

**Status:** In February 2006, the District Court entered a final order granting Plaintiffs' Motion for Summary Judgment and Class Certification and Entering a Permanent Injunction ordering all of the relief requested in our complaint. AHCA appealed to the Eleventh Circuit and oral argument is scheduled for February 27, 2007. In the meantime, the Agency is covering Gabapentin (the generic equivalent of Neurontin) and is also covering Neurontin with proper prior authorization. The Agency also notified providers of the change in policy.

3. *C. F. v. Department of Children and Families;* (Region VII)  
Case No. 3D04-1147  
Florida Third District Court of Appeal

**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 had been getting personal care assistance (PCA) for six hours per day, seven days per week. Pursuant to a desk review by the state's utilization reviewer, Maximus, the amount of PCA services provided to the child were determined not to be medically necessary and were cut to 4 hours per day. Advocates then asked the local AHCA program to provide the extra hours needed through the EPSDT program. AHCA failed to respond to the 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

**Status:** At oral argument on December 7, 2004 the Court, persuaded by the medical evidence in the record, ordered that the DCF hearing officer's decision to reduce the client's services be stayed until further order of the Court. Thus, the client's six hours daily of PCA was restored

pending a decision by the court. On December 28, 2005 the court entered an order reversing the DCF hearing decision. The reversal was based on the Court's conclusions that: 1) the state's definition of medical necessity for children's services does not comply with federal Medicaid law; 2) the state's definition of personal care assistance does not comply with federal Medicaid law; 3) the state failed to give proper deference to the opinion of the child's treating physician; and 4) the state did not meet its burden of proof to justify the reduction in services.

The state subsequently filed a motion for rehearing and rehearing *en banc* and a motion to certify questions of great public importance to the Florida Supreme Court. The motions were fully briefed as of February 2, 2006. On August 10, 2006, the court denied the state's motions and the court's December 28<sup>th</sup> decision became final.

**4. *Duarte v. Signature Rx Pharmacy Services (Cigna)***

Case No. 1-81827908

Department of Health and Human Services, Office of Medicare Hearings and Appeals  
Southern Region

**Number affected:** One individual

**Summary:** Ms. Duarte, a low income Medicare Part D beneficiary who suffers from MS, was denied coverage of her medication by her Part D plan. As a dual eligible Ms. Duarte was changed from Medicaid prescription coverage to Medicare Part D on January 1, 2006. Her MS drug, Alferon N, is approved by the FDA for uses other than MS., and had been prescribed to her "off-label" for over 11 years. The drug was covered by Medicaid and was successful in eliminating her brain and spinal cord lesions and eliminating her vision, balance and motor impairments. Ms. Duarte selected Cigna because she was told by the plan that Alferon N is on their formulary.

However, after covering the drug through the transition period, the plan then denied Ms. Duarte's drug coverage on the grounds that the drug was being prescribed "off label." The notice stated that the plan would cover the off-label use if it was supported by citation in one of three congressionally specified drug compendia or in 2 peer reviewed articles. FLS produced 5 articles supporting the off label use to treat MS, but coverage was still denied. FLS filed an administrative appeal of this decision. The Independent Reviewing Entity, Maximus, upheld the denial on the grounds that the drug was not medically necessary for MS and that use for MS does not meet the definition of a "medically accepted indication." After being without the drug since March 2006, Ms. Duarte's lesions and symptoms reappeared.

**FLS Advocate:** Miriam Harmatz

**Status:** A hearing was held before an ALJ on December 7, 2006. In the brief and at the hearing, FLS argued that Congress intended that plans must cover FDA approved drugs that are medically necessary (which was undisputed by the evidence in this case) and that the Medicare statute (as opposed to the regulation) does not foreclose coverage of off-label uses not supported by the compendia. Additionally, under the principles of due process, contracts and promissory estoppel,

the plan ought to be held to their standard of coverage. The ALJ issued a fully favorable decision in less than a week.

- 5. J.C. v. AHCA,** *(Region I)*  
DCF, Office of Appeal Hearings, Case No. 05F-2495  
First District Court of Appeal, Case No. 1DO6-12

**Number affected:** one individual

**Summary:** J.C., an individual on the Brain and Spinal Cord Injury Medicaid Waiver program (BSCIP), was notified in April 2005 by the Department of Health (DOH) (the agency which administers this waiver program) that his companion care hours would be reduced and his request for additional companion care hours was denied because these hours exceeded Medicaid guidelines. J.C. lives with his wife and the companion care hours are used when she is not available (due to work, errands and other family obligations), sometimes for more than 24 hours. J.C. has quadriplegia and needs significant assistance with activities of daily living and cannot be left unattended.

**FLS Advocates:** Anne Swerlick and Cindy Huddleston

**Co-counsel:** Andrea Costello, SLC, Leslie Powell, LSNF

**Status:** A Medicaid fair hearing request was filed, a hearing was held on October 30, 2005 and an adverse decision rendered on December 5, 2005. The decision turned on the hearing officer's conclusion that J.C. was using his companion care hours as respite care and respite care is not covered by the BSCIP waiver. An appeal was filed and briefed to the First District Court of Appeal and oral argument is scheduled for February 20, 2007. Appellant contends that the state's decision is based on an unlawful interpretation of the waiver terms and conditions and also violates state APA requirements.

- 6. Situ v. Leavitt**  
U.S. District Court  
Northern District of California  
Case No. CO6-02841 THE

**Number Affected:** 6.4 million low income Medicare beneficiaries

**Summary:** This nationwide class action is filed on behalf of low income Medicare beneficiaries against the federal government for its failure to protect their rights under the Medicare Part D prescription drug program. The cases raises the systematic failures of the government's computer system which is causing unreasonable delays in enrolling low income Medicare beneficiaries into the Part D low income subsidy (LIS). The LIS provides coverage for Part D monthly premiums and coinsurance.

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

**Class counsel:** National Senior Citizens Law Center (NSCLC) and the Center for Medicare Advocacy(CMA)

**Status:** FLS identified a low income Medicare beneficiary in Tallahassee, Florida (J.G.) who has had Part D enrollment problems since the beginning of the program in January 2006. FLS shared this information with NSCLC and CMA and at their request, J.G. agreed to become a named plaintiff in the lawsuit. FLS assisted in the preparation of J.G.'s declaration and an FLS staff attorney has also provided a supporting declaration filed with the court. On December 20, 2006 the court denied the government's motion to dismiss the case and held that J.G. and other named plaintiffs have standing to bring the case.

## **TRAINING/PRESENTATIONS**

### **1. *Florida Medicaid Reform***

On November 2, 2006 FLS made a presentation on Florida Medicaid reform to a variety of consumer and provider based organizations from the Southeast at a conference sponsored by Pfizer, Inc.

In December 2006 FLS, with national 1115 waiver expert Joan Alker, presented a training at the National Health Law Program's Health Advocate's Conference on Florida's 1115 Medicaid Reform Waiver. FLS focused on what advocates could do if a similar waiver is developed in their state.

### **2. *Medicare Part D Appeals***

In December 2006 FLS, with national Medicare experts Vicki Gottlich and Sally Hart, presented a training at the National Health Law Program's Health Advocate's Conference on Medicare Part D appeals. FLS' presentation concerned the issue of off-label coverage appeals.

## **OTHER ADVOCACY**

### **1. *Kaiser Commission Part D Study***

The Kaiser Commission on Medicaid and the Uninsured (KCMU) commissioned a study of the implementation of Part D in three states including Florida. The study focused on the needs and experiences of dual eligible beneficiaries. KCMU contracted with Northwest Health Law Advocates and various state partners, including FLS, to identify key state informants, conduct the interviews and compile data. Identification of Florida informants and surveys were conducted by

FLS during August and September 2006. It is anticipated that the study will be published in early 2007.

## **2. Florida Prescription Access Helpline**

**Number affected:** Over 2 million Medicaid and low income Medicare beneficiaries

**Summary:** In 2005, the legislature imposed significant new restrictions on Medicaid prescription drug access. As a result, tens of thousands of recipients were unable to get their prescriptions after the law was implemented July 1 2005. Moreover, recipients did not receive the due process they are entitled to under the Settlement Agreement in *Hernandez et al v. Medows*. In September, 2005, FLS established a toll-free Helpline dedicated to providing assistance to recipients facing problems getting Medicaid coverage for medically necessary medications. In January 2006 the Helpline expanded to provide assistance to dual eligibles whose Medicaid coverage for prescriptions ended and was shifted to Medicare Part D.

**FLS Advocates:** Shirley Spuhler, Staci Johnson, Anne Swerlick, Miriam Harmatz

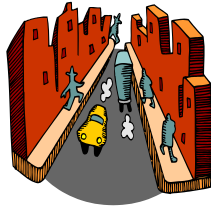
**Status:** From July- December 2006 , the Helpline has provided counsel and advice to approximately 70 Medicaid beneficiaries. Most of these callers were able to get their medication after getting advice and assistance from the Helpline staff. During this time, 2 individual cases have been referred to field programs throughout the state for further assistance with Medicaid fair hearings.

From July - December 2006, the Helpline has provided counsel and advice to 61 low income Medicare beneficiaries. FLS also wrote to over 200 previous Helpline callers who are at risk of losing their Part D low income subsidy in 2007 and provided advice on how to maintain their subsidy for 2007.

On September 22, 2006 FLS staff met with the Director of the SHINE program (the state health insurance counseling program) to provide information about the Helpline and to facilitate more coordinated work between the two organizations. FLS staff also met with SHINE staff and volunteers on November 1, 2006 in Tampa and December 14, 2006 in St. Augustine to share information about the Helpline. FLS staff have also distributed over 300 Medicaid and Medicare brochures to local organizations in Leon, Wakulla & Gadsden counties.

Through the Helpline, FLS continues to gather information on systemic Part D enrollment and coverage problems which is shared with the Center for Medicare Advocacy and the National Senior Citizen's Law Center for their national policy and legislative advocacy work.

# HOMELSS



## LEGISLATIVE ADVOCACY

### 1. *Anti-homeless Ordinances (Regions II, III, IV, V, VII)*

**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, FLS has 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 is assisting 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.

## OTHER ADVOCACY

### 2. *Labor Pool Act Implementation/Enforcement of Employment Rights (Regions II, III, VI, VII)*

**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 the Florida Coalition for the Homeless, and advocates in Jacksonville, Orlando, Miami, and Broward to assist labor pool workers and assure implementation of the law.



## ***HOUSING***

### **ADMINISTRATIVE ADVOCACY**

#### ***1. APA and Termination of FEMA Shelter Benefits***

**Number affected:** Thousands

**Summary:** Many clients affected by the hurricanes of the 2005 storm season have been living in leased trailers (manufactured homes) provided by FEMA at no expense to the disaster victims. For a variety of reasons FEMA has recently determined that several of these clients are no longer eligible for this housing assistance. In these cases, the clients are sent letters advising them of the terminations of their leases and offering an appeal process which can be exercised within 60 days of the date of the letter's receipt. However, the letter also includes a separate date of lease termination, which falls much sooner than the 60 day deadline. After the lease termination date has passed, the clients are served with a demand notice asking for immediate surrender of the leased premises. The demand letter states that eviction proceedings will be initiated by the U.S. Attorney's Office if the premises are not immediately vacated. Notwithstanding the notices, in many cases no administrative determination is issued on the appeal and no legal eviction

proceedings are commenced. Instead, clients are coerced into moving, persuaded to sign agreements to buy the trailers or pressured to agree to pay market rent.

FEMA's criteria for determining under what circumstances and through what processes clients' housing benefits are terminated are unknown. Similarly unknown are the policies and procedures concerning notification, appeals determinations, and actualization of lease terminations. FEMA's conduct is often arbitrary and capricious. In one case, after the demand notice was posted, FEMA removed and disposed of the clients belongings while she was away from her trailer.

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

**Co-counsel:** Leslie Powell and Eli Friedman, Legal Services of North Florida  
Lisa Carmona, Florida Equal Justice Center

**Status:** Counsel drafted a Freedom of Information Act (FOIA) request to FEMA Headquarters in D.C. The agency responded to this request by determining that FLS' request would not be in the public interest and denied FLS' request for waiver of the fee for searching and copying the records. Instead FEMA determined that FLS' request fell into the "commercial" category and would be billed at the highest rate. FEMA also notified FLS in its response that its determination is appealable.

Rather than appeal, counsel gathered data and redrafted the FOIA in order to better demonstrate that FLS has the ability and intent to disseminate the requested information to the public and that said dissemination will enhance the public's understanding of the information to a significant extent. The revised FOIA was sent in mid-June. When FEMA promptly denied this request (using the same form letter again), FLS appealed. In October, FLS received a letter from FEMA acknowledging receipt of our August appeal. While this appeal remains pending, many Florida clients have benefitted from FEMA's numerous extensions of termination deadlines, FEMA's agreements with local municipalities to take over the trailers, and/or other housing arrangements. In related Texas litigation, the federal court found FEMA's termination notices deficient and ordered notices to be re-issued. FEMA has appealed that ruling.

In the interim, FLS and LSNF met with the Division of Emergency Management about shelter termination criteria and were able to get some information through that resource.

## **2. *FarmWorker Association of Florida vs. FEMA* (Region VI)**

An Administrative Complaint has been filed with FEMA alleging that poor Hispanic victims of Hurricane Wilma have received a different level of assistance from FEMA than the non poor, non-Hispanic victims of Hurricane Wilma. This complaint focuses specifically on treatment of farmworkers who have seen abusive and disrespectful behavior by FEMA contractors.

**FLS Advocate:** Chuck Elsesser

**Status:** After a significant delay, FEMA has initiated a formal investigation and an inspector has begun to contact farmworker victims of Hurricane Wilma who were harmed by FEMA's treatment and/or by FEMA's inability to provide Spanish speaking assistance.

**3. *Young v. Miami Dade Housing Agency* (Region VII)**

**Summary:** Ms. Young is a relocatee from Scott Homes who was placed in a home ownership unit. Her payments for her mortgage, taxes and insurance greatly exceed 30% of her income. FLS initiated an appeal regarding her relocation benefits to insure that she does not pay more than 30% of her income in rent.

**FLS Advocates:** Chuck Elsesser

**Co-counsel:** Jeff Hearne, Legal Services of Greater Miami, Inc.

**Status:** FLS and Legal Services of Greater Miami filed an appeal of the relocation benefit determination. FLS and co-counsel have attempted to resolve the matter informally but are now proceeding to the administrative hearing on behalf of Ms. Young.

**4. *Section 8 One Strike Terminations* (Region VII)**

**Summary:** FLS is assisting LSGMI in challenging several hundred terminations of Section 8 Housing Choice vouchers based on a cross check between the voucher households and criminal records. Section 8 vouchers appear to have been terminated based solely on arrest records with out any corroborating evidence of the commission of a crime by a household member.

**FLS Advocates:** Chuck Elsesser

**Co-counsel:** Jeff Hearne, Legal Services of Greater Miami, Inc.

**Status:** FLS and LSGMI conducted extensive review of the County's terminations and numerous errors were found Pursuant to FLS and LSGMI demands, the County housing authority has restored all the residents who were identified as improperly terminated. Unfortunately, some have not been able to be located and notified of the County's action.

**5. *Granados v. Miami-Dade Housing Authority***

**Summary:** The client was being evicted from a project based Section 8 unit for having an unauthorized guest (her daughter) living with her. She was referred to FLS by LSGMI due to an conflict with another LSGMI client. FLS represented her at her second hearing to establish that her daughter was not in fact living with her.

**FLS Advocates:** Purvi Shah, Chuck Elsesser

**Status:** The Eviction was held in abeyance while client pursued administrative appeal. After initially losing her administrative appeal, she requested reconsideration and was granted a rehearing. At the rehearing she was represented by FLS and the administrative law judge restored her to Section 8 benefits.

## **LEGISLATIVE ADVOCACY**

### **1. *Community Benefits Coalition***

***(Region VII)***

FLS is working with a Community Coalition that is developing a strategy for combating the impacts of the surge of new development in the City of Miami on poor minority neighborhoods. The Coalition is currently exploring several options, including a City or County initiative campaign and local ordinances.

**FLS Advocate:** Chuck Elsesser, Arthur Rosenberg

**Status:** FLS has taken several ideas proposed by the Coalition and incorporated those ideas into potential ordinances or Charter amendments. The Coalition is currently reviewing those drafts and considering next steps.

### **2. *POWER U Center for Social Change , et al. v. City of Miami, et al.* ***(Region VII)*** **Major Use Special Permit****

**Summary:** FLS is representing POWER U, a community organization organizing against gentrification in the Overtown neighborhood of Miami with respect to a major development proposed for publicly owned land. In addition to the federal litigation, FLS is representing POWER U and several community members in opposing the granting of a Major Use Special Permit, which could permit the project to proceed.

**FLS Advocate:** Chuck Elsesser

**Co-counsel:** JoNel Newman, University of Miami School of Law

**Status:** The City Commission issued the Major Use Special Permit - **(see Litigation #4)**.

### **3. *In Re: Rancho Margate Mobile Home Park***

***(Region VI)***

**Summary:** FLS is working with Legal Aid Service of Broward County in representing the residents of a mobile home park that has been sold to a developer. The new developer needs a change to the Comprehensive Plan of the City of Margate and on behalf of the residents, FLS is raising our objections as the to the proposed changes to the Comprehensive Plan. is processed.

**FLS Advocates:** Chuck Elsesser

**Co-counsel:** Janet Riley, Legal Aid Service of Broward County, Inc.  
Jaimie Ross, 1000 Friends of Florida

**Status:** The Comprehensive Plan change was passed at first reading and has been submitted to Department of Community Affairs. The Department of Community Affairs requested additional information which was provided by the City and the Plan change was ultimately not objected to by the Department of Community Affairs. FLS is considering possible legislation to provide additional rights to mobile home park residents when their parks are sold.

## LITIGATION

**1** *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 Purvi Shah

**Status:** Motions for Summary Judgment remain pending. Investigation regarding the County's performance of the grant conditions is being pursued. FLS has submitted public records act requests and obtained supplemental documentation. FLS is also reviewing the studies of County performance in light of the Miami Herald's "House of Lies" series.

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

**Summary:** The complaint alleges that client was fraudulently induced to sign a deed by a mortgage loan broker 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:** The case has been resolved with respect to lender. The client has refinanced her home and FLS is undertaking final discovery before proceeding to trial with respect to mortgage loan broker.

**3. *POWER U Center for Social Change , et al. v. City of Miami, et al.* (Region VII)**  
05-21963-CIV-King (S.D. Fla.)

**Summary:** FLS is representing POWER U, a community organization organizing against gentrification in the Overtown neighborhood of Miami, with respect to a major development proposed for publicly owned land. FLS filed complaint alleging failure to update Environmental Assessment done upon purchase of the land which assessment envisioned a very different project than that currently contemplated.

**FLS Advocate:** Chuck Elsesser

**Status:** The Court denied Defendants' Motion to Dismiss. Thereafter, Defendants agreed to perform Supplemental Environmental Assessment (SEA). Plaintiffs moved to dismiss the case as moot which was granted. The SEA has been completed and received and is being reviewed.

**4. *POWER U Center for Social Change , et al. v. City of Miami, et al.* (Region VII)**  
Circuit Court 11<sup>th</sup> Judicial Circuit, Miami Dade County, Appellate Department

**Summary:** FLS represented POWER U, a community organization organizing against gentrification in the Overtown neighborhood of Miami, with respect to their opposition to a Major Use Special Permit for a major development proposed on publicly owned land. The City Commission issued the permit. FLS has now filed a writ of certiorari appealing the City's decision as violative of due process and because the City failed to proceed according to law.

**FLS Advocate:** Chuck Elsesser

**Status:** The petition for Writ of Certiorari has been filed. The city of Miami and the developer have both filed responses. FLS is drafting the response on behalf of POWER U.

**5. *COFFO, FWAFF v. FEMA, 06-80143 Civ. Ryskamp (S.D. FL.)* (Statewide)**

**Summary:** FLS is representing Coalition of Florida Farmworker Organizations and Farm Worker Association of Florida in an action challenging FEMAs' policy with respect to the eligibility of non-citizen aliens for noncash FEMA benefits, particularly FEMA trailers following a disaster.

**FLS Advocate:** Chuck Elsesser, Greg Schell (MFJC), Mary Gundrum (FIAC)

**Status:** The court denied Defendants' Motion to Dismiss. FLS is currently conducting discovery. Motions for summary judgment are due on May 31, 2007.



**Co-Counsel:** Lisa Carmona (lead counsel) Florida Equal Justice Center,  
Tequisha Myles, Legal Aid Society of Palm Beach County

**Status:** The complaint has been filed and the City has answered. Plaintiffs and defendants have commenced discovery. The case has been set for trial in October 2007.

## **OTHER ADVOCACY**

### **1. *Miami Workers Center(MWC)/Low Income Families Fighting Together (LIFFT) (Region VII)***

**7<sup>th</sup> Ave Bus Terminal** - FLS is representing MWC/LIFFT in advocacy to open up to the community the planning process for the Intermodal Transit Terminal at 7<sup>TH</sup> Ave and 62<sup>nd</sup> St. The MWC/LIFFT have developed a plan to utilize the Transit Terminal for lower income housing, local businesses and community supportive uses.

**FLS Advocate:** Charles Elsesser

**Status:** Florida Legal Services is assisting MWC/LIFFT with the proposed development plans and with the business relocation plan. The plans are being drafted to implement recommendations contained in the Business Study conducted by the Miami Workers Center, FIU, the Univ of Illinois and Neighbors and Neighbors, Inc. (a Liberty City business advocacy group). Negotiations have slowed due to changes in personnel in the County Department of Transportation.

### **2. *Miami Workers Center/LIFFT***

**Summary:** FLS challenged a HOPE VI project on behalf of African American families living in Scott Homes public housing project challenging the planned demolition and "revitalization" of the Scott Homes project. Numerous households that relocated from Scott Homes due to the HOPE VI have lost their relocation housing benefits (principally Section 8 vouchers) and have been "lost" to the system. The Miami Workers Center/LIFFT have undertaken a campaign to find these families. FLS is advocating administratively to restore those families that have been located back to public housing.

**FLS Advocates:** Chuck Elsesser, Purvi Shah

**Status:** FLS is meeting weekly with the County Housing Agency to discuss clients' cases. The Housing Agency has agreed to restore benefits to all relocatees who lost the benefits due to economic or social hardships.

### **3. *Long Term Disaster Housing Response Efforts* (Regions V, VI, VII)**

Summary: FLS is assisting in forming a collaboration of advocates to respond to the victims of Hurricane Wilma with a particular emphasis on housing issues.

**FLS Advocates:** Chuck Elsesser, Purvi Shah

**Co-counsel:** Lisa Carmona(FEJC) -Lead  
Hurricane Wilma Disaster Response advocates

**Status:** The Miami Office of FLS' work in this effort has been the litigation and administrative advocacy that is described above in #5 and #12.

#### **4. *FLABAR Affordable Housing Committee***

**Summary:** The Florida Bar Affordable Housing Committee is developing a Community Land Trust (CLT) legal manual adapted from the Institute for Community Economics (ICE) manual specifically for Florida. FLS is participating on the Committee with the drafting of the manual - particularly with respect to protections for eventual CLT home owners.

**FLS Advocates:** Chuck Elsesser

**Co-counsel:** Jaimie Ross, 1000 Friends of Florida

**Status:** The Community Land Trust Manual update is completed. Manual sections regarding protections for CLT homeowners were also converted into an article for the Florida Housing Coalition Journal and the manual is also being used as a training module by the Florida Housing Coalition.

#### **5. *Southern Defense Network***

**Summary:** FLS is working to develop a network of legal services providers and community organizations throughout the Gulf area to respond to hurricane disasters as well as related attacks on low income communities.

**FLS Advocates:** Purvi Shah

**Status:** FLS has been communicating with several groups throughout the Gulf to discuss coordination

#### **6. *Environmental Justice and Affordable Housing***

Florida Legal Services, Inc., in partnership with Nicole Kibert, of Carlton Fields, Jeanne Zokovitch, of Wildlaw, Leslie Powell of Legal Services of North Florida, Rocky Cabagnet, Legal Services of North Florida and Three Rivers Legal Services, Marilyn Kershner, of Florida Community Loan Fund, Randall Webster, of Sapient Consulting Group, and Kelly Samek,

Environmental & Land Use Law Section of The Florida Bar, designed an Environmental Justice training model focusing on the link between EJ and affordable housing. This program was designed to be replicated throughout the State of Florida, and includes a local component, featuring EJ activists who can explain the specific EJ problems in their communities. This model was debuted in September in Pensacola. Although the attendance was small, FLS believes it sparked interest in that community on EJ and housing issues.

## **MIGRANT FARMWORKERS**



### **ADMINISTRATIVE ADVOCACY**

- 1. *Frantz Pierre v. Seaside Farms, Inc.*** **(Region VI)**  
Case No. 0307954  
South Carolina Worker's Compensation Commission

**Number of Farmworkers Affected:** 25,000 (statewide)

**Summary:** A migrant farmworker recruited in south Florida traveled to South Carolina for work in a packing house. The worker tripped over a curb at the farm's migrant labor camp and fractured his ankle. The employer refused to provide worker's compensation benefits, contending that the accident did not arise out of or in the course of employment. The claimant argues that South Carolina should apply the "bunkhouse rule," an interpretation of worker's compensation law adopted in a number of states under which injuries in employer-provided housing are covered by worker's compensation, with the housing facilities treated as an extension of the workplace. Adoption of the "bunkhouse rule" would benefit thousands of Florida-based farmworkers employed each year in South Carolina.

**FLS Advocate:** Greg Schell

**Lead Counsel:** Andrew Turner, Southern Poverty Law Center

**Status:** The South Carolina worker's compensation review panel affirmed the hearing officer's determination that the accident was not compensable. Circuit court review is underway, with the final appeal lying with the South Carolina Supreme Court.

## **2. *Joint Legislative Commission on Migrant and Seasonal Labor***

**Number of Farmworkers Affected:** 250,000 (statewide)

**Summary:** The 2004 legislature created a commission to examine housing, employment, health care, safety and transportation of farmworkers throughout the state. The MFJP testified before the Commission, with many of its proposals being adopted in the Commission's February, 2006 Report to the Legislature. Among the FLS recommendations endorsed by the Commission were increased state funding for affordable farmworker housing, enforcement of pesticide handling laws and a state law requiring seat belts in farm labor transportation vehicles.

**FLS advocate:** Rob Williams

**Status:** The Commission's report served as the basis for several important pieces of farmworker legislation passed during the 2006 session. The MFJP is continuing to work with the Commission, its staff and farmworker advocates to develop additional legislative proposals for presentation to the 2007 Legislature.

### **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 drafting 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:** With minor modifications, AgJOBS was adopted as part of the comprehensive immigration legislation passed by the United States Senate in June, 2006. Because the House of Representatives refused to appoint members to a conference committee to reconcile its enforcement-only bill with the Senate, the legislation expired with the conclusion of Congress in December, 2006. AgJOBS will be reintroduced early in the new session of Congress scheduled to commence in January, 2007.

## LITIGATION

1. ***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

***Perez-Alvino, et al. v. Ag-Mart Produce, Inc.*** (Region II)  
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 has been filed. Hundreds of the company's workers were housed in overcrowded motel rooms, many without beds. None of the workers were 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 AWPAs' housing provisions are inapplicable.

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

**Status:** The case was tried in May, 2004. At the conclusion of the trial, the court directed the parties to mediation. The mediation proved unsuccessful. The Court heard additional closing arguments in the case in June, 2006. The matter remains pending before the Court, awaiting its decision.

2. ***Morales-Cervantes v. Ag-Mart Produce, Inc.*** (Region II)  
Case No. 3:05cv1275-J-25HTS  
U.S. District Court, Middle District of Florida, Jacksonville Division

**Number of Farmworkers Affected:** 3600 (Hamilton County)

**Summary:** Challenge to the employer's continued practice of housing its migrant workforce for its north Florida harvest in substandard motel units during the 2003, 2004 and 2005 growing seasons. As in the *Renteria-Marin* and *Perez-Alvino* cases, the employer argues that motel accommodations are exempt from the AWPAs' housing provisions.

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

**Co-counsel:** Alejandro Reyes, Gulf Coast Legal Services, Inc.

**Status:** The plaintiffs' motion for class certification remains pending. Discovery is underway and trial is scheduled for June, 2007.

3. ***Lennon v. Osceola Farms Co.*** (Region V)  
Case No. 06-SC016043  
Palm Beach County Court, Small Claims Division

***Achord v. Osceola Farms Co.*** (Region V)  
Case No. 06-SC016044  
Palm Beach County Court, Small Claims Division

**Number of Farmworkers Affected:** 1500 (Palm Beach County)

**Summary:** West Indian canecutters admitted under the H-2A program challenge the payment practices of their employer during the sugar cane harvests between October, 1987 and March, 1993. The workers contend that Osceola failed to pay them the adverse effect wage rate for their work and systematically falsified payroll records to conceal the underpayments. The workers also argue that the terms of their employment contracts required Osceola to pay a much higher piece-rate than actually offered.

**FLS Advocates:** Greg Schell and Beth Krzyzkowski

**Co-Counsel:** David L. Gorman, North Palm Beach  
James K. Green, West Palm Beach

**Status:** After a class action brought in state court was decertified in June, 2005, a total of 1048 cane cutters refiled the class claims in federal court, invoking federal jurisdiction under the newly-enacted Class Action Fairness Act as well as general federal question jurisdiction under 28 U.S.C. § 1331. In a precedent-setting decision, the district court held that the workers' claims could proceed under the court's jurisdiction over federal questions. 408 F.Supp.2d 1275 (S.D. Fla. 2005). In August, 2006, the district court reversed its earlier ruling and dismissed the case for lack of federal court jurisdiction.

A total of 1528 former cane cutters re-filed their claims before the county court. Because of the relatively small size of the individual claims, the companion cases have been assigned to the small claims division. The small claims court will schedule the matters for trial at a January, 2007 hearing.

4. ***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 and Manuel Avalos

**Status:** After certification of the class by the district court, the parties settled the case through mediation. Under the settlement, the class members will share in a monetary settlement. In addition, the defendants have agreed to a comprehensive and detailed injunction which is designed to insure future compliance with applicable provisions of the AWPAs and the Florida migrant labor housing law. The district court approved the settlement in July, 2005. The United States Department of Labor has also filed suit against the Kendas, based in large part on the testimony of MFJP clients, with a trial scheduled for early 2007.

**5. *Dawkins, et al. v. Picolata Produce Farms, Inc., et al.* (Region II)**  
Case No. 3:05-cv-559-J-32MMH  
U.S. District Court for the Middle District of Florida, Jacksonville Division

**Number of Farmworkers Affected:** 14 (St. Johns County)

**Summary:** Action by 14 migrant workers who were employed in the potato harvests in Florida or Maryland as members of a crew headed by farm labor contractor Ron Uzzle. The workers were housed in substandard conditions and paid far less than the minimum wage for their work. Large deductions were made from the workers' wages for meals, debts and pay advances, with usurious interest rates charged for loans. When one of the plaintiffs complained regarding his meager wages, he was beaten by the labor contractor's henchmen. The plaintiffs contend that these practices violated the AWPAs, the FLSA and the Racketeer Influenced and Corrupt Organizations Act ("RICO").

**FLS Advocate:** Greg Schell

**Lead Counsel:** Lisa Butler, Florida Rural Legal Services, Inc.

**Status:** The plaintiffs have moved for partial summary judgment on the issue of the growers' liability under the FLSA and the AWPAs. Trial is set for the summer of 2007. A second case, involving four farmworkers, has been filed and is proceeding in tandem with the initial suit, *Calicut v. Picolata Produce Farms, Inc.*, No. 3:05-cv-559 (M.D. Fla.)

**6. *Figueroa-Cardona, et al. v. Sorrells Brothers Packing Co., Inc.* (Region V)**  
Case No. 2:05cv601-FtM-33SPC  
U.S. District Court, Middle District of Florida, Fort Myers Division

**Number of Farmworkers Affected:** 500 (DeSoto County)

**Summary:** Class action case contending that Sorrells Brothers, a large citrus harvesting firm and the state's largest employer of H-2A workers, underpaid its workers during the 2003-04 and 2004-05 harvest seasons. The lead Plaintiff also claims that he and his son were blacklisted by the company because of truthful testimony he provided as a witness in an earlier lawsuit against Sorrells Brothers.

**FLS Advocates:** Greg Schell, Victoria Gavito and Manuel Avalos

**Status:** The plaintiffs have moved for class certification. Discovery is underway, much of it in Mexico. The trial in the matter, originally scheduled for May, 2007, is likely to be delayed because of the transfer of the case to a new judge.

7. *Fernandez-Chavez v. Romero Harvesting, Inc.* (Region V)  
Case No. 05-14386-Civ-Graham  
U.S. District Court, Southern District of Florida, Fort Pierce Division

**Number of Farmworkers Affected:** 80 (Okeechobee County)

**Summary:** Class action on behalf of H-2A workers employed during the 2004-05 citrus harvest. The workers were paid far less than the adverse effect wage rate for their work and found the job terms inferior to those described at the time of recruitment. The employer held the workers' passports in an effort to keep them from leaving for other jobs.

**FLS Advocates:** Greg Schell

**Status:** After one of the defendants pled guilty to federal charges of cocaine trafficking, the case was settled, with the 18 plaintiffs receiving the remaining assets of the now defunct harvesting corporation, along with a monetary payment. The plaintiffs have received \$33,000 in damages, as well as being assigned the rights of the defendant in a pending lawsuit against the harvesting company to whom it furnished the plaintiffs and other workers during the 2004-05 citrus harvest.,

8. *Equal Employment Opportunity Commission, et al. v. Gargiulo, Inc.* (Region VI)  
Case No. 2:05cv460-JES  
U.S. District Court, Middle District of Florida, Fort Myers Division

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

**Summary:** In response to charges of discrimination filed by clients of the MFJP, the Equal Employment Opportunity Commission brought suit against a large tomato grower and packer for sexual harassment of its female packinghouse employees. This is believed to be the first sexual harassment suit the EEOC has brought in Florida on behalf of farmworker women.

**FLS Advocate:** Greg Schell

**Lead Counsel:** Monica Ramirez, Southern Poverty Law Center, Montgomery, AL

**Co-Counsel:** Carla Von Greiff, EEOC

**Status:** The court granted the MFJP's motion to intervene on behalf of its four clients, who filed the original charges that prompted the EEOC to file suit. The MFJP serves as local counsel for the four plaintiffs. After extensive discovery, the case is scheduled for mediation prior to a trial in mid-2007.

**9. *Michua-Aldama v. Jesus Oliveros*** (Region V)  
Case No. 05-14357-Civ-Marra  
U.S. District Court, Southern District of Florida, Fort Pierce Division

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

**Summary:** Action for damages by H-2A citrus worker who was fired midway through the 2001-02 harvest season in retaliation for his complaining of wage violations to a legal services attorney. As a result of his unlawful termination, the Plaintiff was forced to return to his home in Mexico prematurely and lost four months of employment.

**FLS Advocate:** Greg Schell

**Status:** The matter settled shortly before trial, with the plaintiff receiving \$6,000.

**10. *Gavino v. Chavez*** (Region V)  
Case No. 05-14375-05-14375-Civ-Martinez  
U.S. District Court, Southern District of Florida, Fort Pierce Division

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

**Summary:** Class action for farm labor contractor's failure to pay minimum wages and comply with various provisions of the AWPFA during 2002-03 Florida citrus harvest. The farm labor contractor withheld most of the Plaintiff's wages to defray charges for smuggling him into the United States.

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

**Status:** The case settled prior to class certification with both the labor contractor and the harvesting company that employed him contributing to the confidential settlement amount for the plaintiffs.

# PUBLIC BENEFITS



## ADMINISTRATIVE ADVOCACY

### 1. *Elimination of In-person Hearings for Unemployment Compensation Claimants*

**Number affected:** Potentially thousands

**Summary:** Effective June 1, 2005, the Agency for Workforce Innovation (AWI) which oversees administration of the Unemployment Compensation (UC) program, began eliminating in-person hearings for unemployment compensation claimants in favor of conducting telephone hearings statewide as the norm. The agency states the reason for this change is to protect the safety of hearing participants. The agency claims it will phase in telephone hearings for South Florida and continue to monitor the effects of the change. The agency states it will permit in-person hearings whenever the parties request same and no party objects. The agency contacted FLS to advise us of its plans and to solicit our feedback.

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

**Status:** Based on significant feedback from advocates in the field as well as a survey of existing case law, law review articles, and studies, FLS prepared extensive written comments and suggested amendments to the hearing rules which essentially set forth that in-person hearings should be granted for good cause over the objections of any party. AWI met to consider the in-person hearing inadequacies we brought to their attention. The agency indicated that: it had conducted a training with its hearing officers to direct them once again, as it has in the past, to make adjustments, including in-person hearings, on a case-by-case basis to ensure that all hearings provide due process; it would continue to monitor the use of in-person hearings; it wanted FLS to encourage advocates to request rulings from hearing officers on due process issues including in-person hearings or other hearing accommodation; and the Unemployment Appeals Council would examine the administrative rules for hearings to determine if additional changes are needed to ensure due process. While AWI filed a Notice of Proposed Rules amending claims filing rules in December 2006, nothing in these proposed amendments changes the telephone hearing rule pursuant to FLS' suggestions. FLS will continue to monitor due process in the UC program and consider taking further action in the interest of clients adversely affected by being deprived of in-person hearings should same occur.

## 2. *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, DCF is limiting the circumstances under which a “compromise” will be considered.

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

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

**Status:** After several years of advocacy, with the Food Stamp Compromise Task Force making comments on proposed rules and participating in a negotiated rule making process, DCF published a proposed rule that limits the use of compromise to resolve pending litigation or bankruptcy proceedings. FLS requested public records and did research to determine whether the proposed rule adequately satisfies APA mandates and whether this rule is subject to challenge upon this or any other grounds. Research revealed that the form of the rule published in FAW was not the form codified in FAC. Indeed, the final rule adopted permits consideration of pending litigation and bankruptcy proceedings in the determination of whether to grant compromise but, by its terms, does not restrict compromise to those situations. Thus, compromise remains an available remedy to poor people who, although overpaid food stamp benefits, can not afford to repay the debt. In the interim, several field advocates notified FLS that the Benefit Recovery (BR) office of DCF began denying compromise to claimants who failed to request the remedy within 30 days of being notified of the overpayment. Research revealed that there was no legal basis upon which to time-limit a compromise request. In November FLS contacted District Counsel and requested that the Department notify BR that it could not restrict the right to compromise in this manner and DCF is considering request. We continue providing technical support to advocates with affected clients to lay the groundwork in the record below for appeals and/or rule challenges should an adverse fair hearing result in these cases.

## 3. *DCF’s Modernization Project and ACCESS Florida:*

### I. **Modernization survey: Number affected:** millions

**Summary:** Modernization is DCF’s term for Florida’s initiative to rely almost exclusively on technology and community partners to handle most aspects of the application and recertification process in public benefits programs, including Medicaid and TANF. ACCESS Florida, a critical component of Modernization, is DCF’s revolutionary on-line application. With Modernization, the majority of TANF and Medicaid applicants and recipients in Florida, many of them with disabilities and/or of limited English proficiency, (LEP), are being forced to access benefits through a computer (ACCESS Florida) or other technology. When DCF proposed two rules

concerning its new web-based interactive online application, FLS filed two petitions challenging these proposed rules. See Clark v. DCF in the Public Benefits Litigation Section of previous dockets. Notwithstanding a successful resolution of these challenges, which resulted in some improvements to the online program, many of the unique technological barriers that keep these families from accessing benefits have not been removed. Unfortunately, Florida's modernization technology model is being touted throughout the nation by the federal government as a stellar example of efficiency and customer service.

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

**Status:** In late April 2006, FLS sent questionnaires to every legal aid and legal service program in the state in an effort to identify systemic problems with Modernization. By late 2006, FLS had collected more than 200 completed questionnaires. In November 2006, FLS used these questionnaires to compile statistics and anecdotal stories about problems with modernization to include in a comprehensive complaint letter FLS made to federal and state public assistance officials about the access barriers created by modernization, the complexity of DCF's new web-based application, the adverse impact of office closings, and the inadequacies of the call centers. FLS will meet with Civil Rights officials from HHS in January 2007 concerning ADA and Title VI implications. Also, a response from the Federal Nutritional Service is pending.

FLS also used the compiled data and stories to provide input to the federal General Accounting Office (GAO), which contacted FLS based on testimony provided to USDA about recurring problems with modernization. GAO is investigating and making recommendations to improve technology-based innovations in the delivery of public assistance. FLS input included advocacy for specific improvements, including but not limited to new hires for call centers, publicizing accurate local DCF application sites (both on the internet and at specific locations in the community), providing special assistance to persons with disabilities, requiring One Stop Centers to allow applications on site, and other more minor improvements.

In addition, based on issues we identified in these surveys (in particular: inadequate call center capabilities, failure to comply with the ADA in application processing, inadequate distribution of application site information, failure to assist applicants in verifying certain information, failure to inform CSE-sanctioned applicants what steps they can take to establish eligibility, and inadequate application sites) FLS is working with advocates across the state in identifying affected clients and strategizing about litigation and administrative advocacy to address these issues.

## **II Modernization Complaint Initiative With Local Programs:**

**Number affected:** millions

**Summary:** See description of Modernization. Because federal and state officials insist that they are unaware of Modernization problems, FLS developed and distributed an advocacy guide for legal services practitioners in 12/2006 summarizing 1) what complaints (generic access as well as civil rights issues) they should be filing with federal and state officials when they encounter clients with Modernization problems and 2) where and how to file those complaints.

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

**Status:** FLS is actively encouraging advocates to file Modernization complaints and plan to monitor any/all complaints filed.

#### **4. *Planning for Disaster-related Public Benefits***

**Number affected:** Millions

**Summary:** In the summer of 2005 Florida experienced Hurricanes Dennis, Katrina, and Wilma. National Disaster Declarations for Dennis and Wilma triggered the authorization of such public benefits as disaster food stamps and disaster unemployment assistance (DUA) for Florida residents. Experiences demonstrated a need to be involved in disaster policy advocacy on a continuing basis, especially before the storm season starts. At the end of the 2005 storm season, FLS approached the Department about modifying its tip sheet and application documents for the 2006 disaster food stamp program.

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

**Status:** DCF contacted FLS to solicit our feedback on application documents for the (potential) 2006 disaster food stamp program. DCF accepted FLS' suggestions to: bold the text stating that SSNs were not necessary; collapse three individual eligibility criteria questions into one question framed in the alternative; and add a parenthetical explaining how liberal identity verification can be. DCF rejected our suggestion to add "without regard to immigration status" to its anti-discrimination statement at the top of the application which describes that applicants will be considered "without regard to race, color, sex, disability, religion, national origin or political belief." Additionally, it was suggested that DCF make applications for disaster benefits available through the Internet as part of its ACCESS Florida economic self-sufficiency computer program. After studying FLS suggestion, DCF responded by developing a Food for Florida Pre-Registration site on DCF's Internet web page with a link from its disaster pages. The Food for Florida pre-registration simplifies the on-site verification of identity and issuance of an EBT card when a disaster occurs. Pre-registration gets activated when DCF gets approval from the feds at Federal Nutritional Services to operate a disaster food stamp program at a given time in specified areas after a disaster.

### **LITIGATION**

- 1. *Ferris v. Department of Children and Family Services and Courts v Department of Children and Family Services* : Medicaid Waiver and Accompanying APA Issues  
Florida First District Court of Appeal  
1 DCA Case Nos 05F-4875 and 1 O6-12 respectively**

**Number affected:** potentially thousands

**Summary:** The Agency for Health Care Administration has begun informally restricting the hours it will approve for Medicaid services under the Home and Community-Based Waiver (Med-Waiver), which provides in-home care for persons with disabilities to allow them to remain at home instead of being institutionalized.

***Ferris v. DCF:*** In the Ferris case, Mr. Ferris is a mentally challenged adult who has a long work history as well as a long history of receiving Med-Waiver benefits. Recently, Mr. Ferris applied for and was denied Social Security benefits solely because of his income (his earnings are high enough so that he is de facto technically ineligible for SSA as “not disabled”). Although it is undisputed that Mr. Ferris is severely mentally retarded, AHCA determined that it was bound to terminate Mr. Ferris’ Med-Waiver benefits for the sole reason that he applied for and was denied Social Security benefits as “not disabled.” This is true even though the Med-Waiver program has a higher income limit than SSA. And Mr. Ferris’ income is under that Med-Waiver income limit.

Mr. Ferris challenged AHCA’s imposition of SSA’s lower income limit on his case, which made him Med-Waiver ineligible. He lost at hearing, which was conducted by DCF by contract with AHCA, as are all Med-Waiver hearings, and appeal was taken to the 1<sup>st</sup> DCA.

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

**Lead counsel:** Megan Wall, St. Johns County Legal Aid

**Status:** The First DCA ruled against Mr. Ferris. However, because of the lawsuit, AHCA is considering a legislative initiative to change state law to protect Mr. Ferris and others like him.

***Courts v. DCF:*** In Courts, Mr. Courts’ Med-Waiver benefits were denied even though 1) in the past, AHCA had approved the same benefits for the same purpose and nothing in the law has changed; and 2) AHCA, through DCF’s Hearing Officer, approved the benefits of a fellow applicant on the same day for the same exact benefits with no reasonable explanation for the different outcomes. This raises several APA issues, including the duty of the agency to treat persons the same and the duty of the agency to provide an explanation for deviating from past conduct.

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

**Lead counsel:** Andrea Costello, Southern Legal Counsel

**Status:** The First DCA has set the case for oral argument in 2/2007.

**2. *Grau v. Department of Children and Family Services***  
DOAH Case Nos.  
Division of Administrative Hearings

**Number affected:** potentially thousands

**Summary:** A Department of Children and Families (DCF) hearing rule (Rule 65-2.056(3), Fla. Admin. Code) states that at fair hearings DCF hearing officers are charged with determining whether the agency's action was correct "at the time the action was taken." This rule violates Florida's Administrative Procedure Act, Chapter 120 et seq., at 120.57(1)(k) which requires that administrative hearings with disputed issues of material fact are conducted de novo. Case law states that conducting a de novo hearing means that the presiding officer should consider relevant evidence of current circumstances in order to formulate final agency action. In contrast, DCF's hearing rule limits the presiding officer to reviewing agency action taken earlier and precludes the claimant from submitting relevant evidence and testimony not previously considered by the agency when it first determines the claimant's substantial interests.

S.G. is a mentally retarded and mentally ill young man who applied to participate in the Developmental Disabilities Home and Community Based Services Medicaid-Waiver Program. The Agency for Persons with Disabilities, part of DCF, denied his application based on his lack of eligibility, specifically not having an IQ demonstrating mental retardation. At hearing, he attempted to submit documentary medical evidence from his physician and testimony from his case worker and the supervisory case manager concerning his IQ. The hearing officer segregated this evidence and stated on the record that it could not be considered because it post-dated the date the agency acted – it had not been part of the agency's denial determination – and the hearing officer was restricted to only looking at whether the agency's action was correct at the time it was taken (i.e. based on the information the agency had at that time).

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

**Co-counsel:** Laurie Yadoff, Coalition for Independent Living Options

**Status:** In late May 2006, FLS and co-counsel filed a Petition to Challenge the Invalidity of Rule 65-2.056(3) as well as requests for admissions and interrogatories. DCF counsel contacted us and offered to delete the phrase "at the time the action was taken" from Rule 65-2.056(3). By mid-June, DCF sent a Notice of Proposed Rule Development to Florida Administrative Weekly for publication. The parties filed a joint motion for continuance of the final hearing and postponement of discovery pending continuation of good faith rule-making. This motion was granted. As part of the settlement, DCF agreed to amend the contested rule. FLS participated in both a rule development workshop and a public hearing on the proposed rule. The final amended version of Rule 65-2.056 of the Florida Administrative Code on December 8, 2006 states:

(3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

DCF's failure to hear cases de novo has been a long-standing problem affecting countless legal services practitioners and low-income families, and advocates are delighted to have settled this case so favorably.

## LEGISLATIVE ADVOCACY

### **1. *Relative Care Giver Amendments***

**Number affected:** thousands

**Summary:** During the 2006 legislative session, DCF proposed amendments to Fla. Stat. 39.5085 amending the Relative Caregiver (RC) Program to encompass families in which the related child is placed in the relative's home pursuant to certain new designated statutory sections. While the intent of the RC program was left intact, the amendments had the unintended effect of eliminating coverage for children placed pursuant to long-term custody arrangements under Fla. Stat. 39.622 prior to July 1, 2006.

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

**Status:** The FLS amendments preserving RC eligibility for these children were adopted into the final bill (SB 1080). Upon codification, FLS' amendments became part of Fla. Stat. 39.5085 effective July 2006.

## PROGRAM/CLIENT EDUCATION

In October 2006, Valory Greenfield addressed about 50 community advocates at the Dade County Alliance for Human Services's 4<sup>th</sup> Annual Institute in Miami Florida. At the "Immigration Session" she was a panel presenter discussing the "Impact of Immigration Status Rulings on Public Benefits Access and Eligibility" specifically providing information about the Citizenship Verification Changes Effective July 1, 2006 based on the Deficit Reduction Act.