

FLORIDA LEGAL SERVICES, Inc.

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Community Economic Development

1. *Gadsden Saves Project*

(Region I)

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

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

FLS Advocate: Alice Vickers

Status: LSNF is no longer working on this project. FLS is investigating the status of the project with local community groups involved in the project.

EDUCATION/JUVENILE

ADMINISTRATIVE ADVOCACY

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

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

Summary: As DCF has privatized its foster care and related services, many of the community-based care agencies have resisted compliance with the department’s internal operating procedures that govern all aspects of the provision of child welfare services. To ensure compliance, DCF has drafted proposed rules that will incorporate current operating procedures, but that will also change many of the current policies and procedures.

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

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

Status: DCF finally began the rule promulgation process, scheduling rule development workshops around the state in January and February, 2005. Members of the group working on this project attended these various workshops, and thereafter wrote extensive, comprehensive comments to the Department. (Some members of the group submitted their comments directly; others submitted comments to FLS for coordination.) However, as we anticipated, we have now been waiting for months beyond DCF's own deadline for the Department to publish its Notice of Rule Promulgation.

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

Number affected: Hundreds in Miami-Dade County

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

FLS Advocate: Arthur Rosenberg, with LSGMI

Status: Working with the Homeless Unit at LSGMI, FLS and LSGMI met with the superintendent of the Miami-Dade County School Board and his chief of staff to advise them of the Board's failure to comply with the requirements of the McKinney Vento Act and to request that the Board immediately adhere to the specific provisions of federal law. The Miami Coalition for the Homeless also attended the meeting. Improvement has been made. Monitoring and evaluation will be ongoing.

3. *Challenge to the Needs Assessment Instrument FOR Independent Living Benefits.*

Numbers Affected.

Summary: Former foster youth between the ages of 18 and 23 who remain in, or return to school full-time may receive various services from DCF's "Independent Living" program, including the "Road to Independence Scholarship" (poorly named by the Legislature as this is a monthly stipend rather than a scholarship.) In 2004 the Legislature amended § 409.1451, F.S., to require the department to award monthly benefits on a fluctuating basis depending upon the "needs" of each recipient, rather than continuing to pay the prior monthly benefit rate of \$892. (This was done to allow more youth to receive the Scholarship, while not fully funding the program.) The department created a "needs assessment" instrument to implement this change in the statute.

FLS Advocates: Deborah Schroth, Valory Greenfield, Cindy Huddleston

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

Status: This issue is currently in the forefront of legal advocacy and litigation for older foster children, and foster children who have aged out of the system. DCF finally implemented the Needs Assessment process in late spring, causing the vast majority of Scholarship recipients to see a decrease in their monthly scholarship payment. Advocates are representing these youth in administrative fair hearings, and are raising the issue that the Needs Assessment document and policy are invalid, as they constitute an unpromulgated rule. FLS anticipates additional litigation concerning the substantive problems with the Needs Assessment once the department moves to actually promulgate this policy as a rule within the Florida Administrative Code.

4. *Juvenile Court Rules Committee*

Summary: The Juvenile Court Rules Committee is an appointed Florida Bar Committee that reviews changes to both statutory and case law for necessary changes to the court's procedural rules in dependency and delinquency matters.

FLS Advocate: Deborah Schroth

Summary/Status: FLS has served for many years on this committee, to ensure that the rights of all parties in dependency actions are protected, with our focus on the rights of children in the dependency system. Deborah Schroth chaired this Committee during the 2004 -2005 Florida Bar year.

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, bills were introduced in the Florida Senate

and House of Representatives to eliminate the barrier of out-of-state tuition that prevents many immigrant students from attending college. Pursuant to the proposed legislation, in order to qualify for in-state tuition, a student must earn a Florida high school diploma or its equivalent, and have lived in Florida for at least three years immediately preceding the attainment of their high school degree. The 2005 session was the third year these bills were introduced. In the previous two sessions, they were passed by the Senate but died in the House before they came to the floor for a vote. This session, the substance of our bills were amended onto an education bill and was passed out of the House. Unfortunately, this bill was not passed by the Senate. Advocates have already begun strategizing for next session.

2. *Psychotropic Medication of Foster Children*

Numbers affected: A few thousand foster children.

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

FLS Advocates: Deborah Schroth, Dorene Barker

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

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

Most likely for fiscal reasons, DCF was finally amenable to creating a court procedure this year. Sen. Skip Campbell, who has been a sponsor of such legislation over the past few years, was committed to making this happen in 2005. Despite the fact that the children’s advocacy community was omitted from preliminary drafting discussions, Sen. Campbell agreed with the majority of substantive amendments we had submitted. SB 1090 was signed by the Governor and this bill became effective July 1st. The highlight of this law is that all parties must be served immediately with any motion filed by the department seeking authorization to medicate a child, and any party has the right to request a court hearing on this motion. In the past, the majority of juvenile judges simply signed court orders on an *ex parte* basis.

Through its work on the Juvenile Court Rules Committee, FLS was able to ensure that a proposed Rule outlining specific court procedures will be sent to the Supreme Court for consideration on an emergency basis.

LITIGATION

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

Region I

Numbers Affected: A few thousand former foster youth.

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

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

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

Status: Shortly after filing, the CBC determined it had sent N.C. the notice "in error" and reinstated his scholarship benefits retroactively. While litigating pre-trial motions, the department (from the Program office rather than through counsel in this litigation) conceded that it was required to provide due process to all youth substantially affected by decisions concerning post-18 Independent Living program eligibility and benefits. DCF sent a policy transmittal to all Districts describing the process to be provided.

Since our client was made whole, and since the department's Office of General Counsel was working with us to refine the described procedures, we dismissed this litigation. This victory has resulted in many former foster youth filing requests for fair hearings pursuant to Florida's APA to litigate changes to their benefits.

2. *Master Trust issues*

(Region II)

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

Summary: FLS has discovered wholesale violations of the state’s obligations for foster youth who receive monetary benefits such as SSI, SSDI, VA, child support, etc. Federal and Florida law permit a state child welfare agency to assess the cost of providing foster care services to children who receive federal and other monetary benefits. However, Florida law also requires DCF to act in the children’s best short and long-term interests, as their fiduciary. DCF is required to provide notice to the children, their parents, 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.

FLS Advocate: Deborah A. Schroth
Co-Counsel: Carlton Fields - Tampa office

Status: FLS had previously negotiated with District 4 to attempt to resolve monetary issues as to an individual client and to redress the issue for children who have been denied their rights from the inception of the Master Trust account in 1996 until the present. Although District 4 allowed FLS to co-conduct, with its General Counsel, a mandatory training on the legal requirements of Master Trust accounts, FLS has recently learned that even in District 4 there is a failure to comply with the law.

FLS continues to explore this issue with Children’s Legal Service grantees around the state, and Carlton Fields has agreed to co-counsel litigation with us and assist in researching precise causes of action and available remedies.

OTHER ADVOCACY

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

Summary: The McKinney-Vento Act provides special services for homeless children and youth, with “homeless” being broadly defined to include children initially removed from their parents custody and placed into shelter care. However, the education stability provisions of the Act are rarely provided to children in foster care.

FLS Advocate: Deborah Schroth
Co-Counsel: Jodi Siegel, Southern Legal Counsel

Status: FLS and SLC have provided training to add this law into the advocates “toolbox” for individual representation. FLS continues to raise this issue at the state level whenever possible. There have been some inquiries from other legal services law firms and any involving actual client [problems have been resolved for the individual clients with technical assistance from FLS and SLC.](#)

2. *Psychotropic Medication of Foster Children*

Numbers affected: A few thousand foster children.

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

FLS Advocate: Deborah Schroth

Status: With SB 1090 becoming law, FLS drafted proposed Rule 8.355, Florida Rule of Juvenile Procedure to further define the processes to be used when the department seeks court authorization for the psychotropic medication of Florida’s foster children. This proposed rule was approved by the Rules Committee at the annual meeting of The Florida Bar. The proposed rule will now be sent to the Florida Supreme Court for comment and adoption.

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. FLS conducted a training for staff of Jacksonville Area Legal Aid, Inc. in May. FLS hopes there will be enough interest in this area to create a task force on this issue, and will then offer training to task force members. This work is interesting because it combines elements of children’s advocacy and public benefits advocacy.

EMPLOYMENT

LEGISLATIVE ADVOCACY

1. *Living Wage Ordinances Around the State*

Number Affected: Thousands

Summary: FLS, the Human Services Coalition, and the South Florida AFL-CIO founded the Community Coalition for a Living Wage, to organize the community and mount a campaign to enact

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

FLS Advocate: Arthur Rosenberg

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

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

2. *Minimum Wage Constitutional Amendment*

Number effected: Thousands

FLS Advocates: Rob Williams, Greg Schell, Arthur Rosenberg

FLS was part of a coalition led by ACORN that successfully secured the passage of a constitutional amendment on November 2, 2004 establishing the minimum wage in Florida at \$6.15/hour, \$1 more than the federally mandated minimum wage. It was passed with overwhelming public support. During the 2005 legislative session, FLS worked with ACORN and other advocates to deal with bills introduced to implement the minimum wage amendment, but which would have in fact hindered the fair and effective implementation of the minimum wage. A legislative compromise was reached, but no implementation bill was passed by the legislature. The new minimum wage went into effect May

2, 2005. FLS has been, and continues to, work with ACORN to educate workers and the community about the law and to assure effective implementation and compliance.

3. *Amendments to the State Labor Pool Act*

Number affected: Thousands

FLS Advocates: Dorene Barker and Arthur Rosenberg

Status: During the 2005 legislative session, bills (SB1288/H525) were introduced to amend the state Labor Pool Act, which FLS secured the passage of in 1995. The proposed bills would have permitted the use of check cashing machines at the labor pool hiring sites, and a fee of up to \$1.99 to be charged for the cashing of the checks. Present law prohibits charges for cashing a check. Labor Ready is the only company using such machines and sought this change. As these bills made their way through the legislative process, amendments were also introduced to increase the permitted charges for transportation of laborers to \$2.50 each way. Such charges are now capped at the local public transportation rates.

FLS worked with the Florida Coalitions for the Homeless to oppose these efforts to lessen the protections now in law, and prevented amendments to impose \$2.50 transportation fees. Although H525 was passed by the House, its companion died in the Senate.

OTHER ADVOCACY

1. *Community Benefits Agreement Initiative* - Florida Legal Services is providing legal advice and facilitation to a recently formed Miami Community Benefits Initiative Coalition. This group is intending to build off of successful local living wage campaigns and to emulate Community Benefits campaigns in Los Angeles, Minnesota and the Bay Area so as to insure that poor communities are benefitted by the massive ongoing development.

FLS Advocate: Charles Elsesser, Arthur Rosenberg

Status: This year, Florida Legal Services has taken a more central role coordinating an extremely successful strategic planning session that took place earlier this year. That session attended by more than forty organizational representatives, including labor, community organizations, faith based groups and social service organizations involved in depth strategic planning and training by nationally recognized practitioners.

Since the strategic planning session the group has continued to meet and facilitated significantly by Florida Legal Services, the group is now undertaking the initial plans for a Community Benefits ordinance. Florida Legal Services has been and will continue to provide the legal

assistance in the fashioning of that ordinance.

FAMILY

ADMINISTRATIVE ADVOCACY AND LEGISLATIVE ADVOCACY

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

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

FLS Advocates: Ann Perko, Kent Spuhler

Other Advocates: PDA Task force on Indigence

Status: With leadership from Representative Simmons and Senator Smith, HB 1935, the 2005 Article V Revision glitch bill, passed and was signed by the Governor. This legislation establishes a more specific and more fair indigence determination standard. The bill also generally limits payment plans to 2% of the persons net monthly income. Also, importantly, the bill clarifies that an indigent cannot be denied access to the court and the services of the court because of failure to pay on the payment plan.

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

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

FLS Advocate: Kent Spuhler

Status: Chief Justice Pariente appointed a new committee in July 2004 for a two year period and the FLS executive director was again appointed to serve on the committee. The committee developed recommendations for consideration by the Florida Supreme Court to assist in implementing the Unified Family Court: 1) the need for one administrative family law judge; 2) “one family one judge”; 3) clarification of the elements of unified family court; and 4) coordination of unified family court cases with non-family law cases involving the same family. A subcommittee is currently surveying pro se assistance around the state in order to make recommendations on improvements.

3. *Florida Supreme Court Parenting Coordination Workgroup*

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

FLS Advocate: Kent Spuhler

Status: The workgroup recommended a proposed administrative order to the Florida Supreme Court and the Court has urged circuit chief judges to adopt the proposed order. The proposed order requires the parties to consent to parenting coordination and it is expected that this requirement will generate substantial opposition from the judiciary in several circuits that now operate programs that do not require consent.

4. *Parenting Coordination Legislation*

Summary: A group including representatives from the Family Law Section of The Florida Bar, the Florida Chapter of the Association of Family court Conciliation, the Florida Coalition Against domestic Violence, the judiciary, court administration, parenting coordinators and FLS has been working on drafting parenting coordination legislation for the 2006 session.

FLS Advocate: Kent Spuhler

Status: The initial draft to be circulated for comment is almost completed. The draft will also be presented to the Governor to see if it adequately addresses the issues he raised in vetoing the

2004 legislation.

OTHER ADVOCACY

1. *Domestic Violence Legal Hotline (FLS)*

Summary: FLS is entering into a contract with the Florida Coalition Against Domestic Violence (FCADV) for a eighth year of funding for July 2005 through June 2006. The funding for FLS is for the continued operation of the FLS Domestic Violence Legal Hotline which provides initial legal consultation and advice along with referrals for more extensive legal representation and for assistance from the domestic violence centers.

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

Status: The legal hotline served 3,789 callers from January 1, 2004 through December 28, 2004. However, so far in 2005 the number of callers to the hotline has decreased from last year. FLS continues to identify statewide and regional issues and working with FCADV and local legal services programs to address these issues. FCADV has requested to be notified of clients who may wish to file an appeal, specifically victims who have lost custody battles. Hotline staff screen clients regarding these issues and make the appropriate referrals to FCADV. Because of reduced funding, FLS has had to reduce the staffing on the hotline so there will be less capacity to serve hotline callers this year.

HEALTH/SENIOR

ADMINISTRATIVE ADVOCACY

1. *EPSDT Advocacy on Behalf of Children in Care (Region 1 & 3)*

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

Summary: Members of a legal services EPSDT taskforce which focuses on services for children in state care determined that the state was failing to provide written notice about Medicaid appeal rights to children, their attorneys, or guardian ad litem when their Medicaid behavioral health care service requests are denied, reduced or terminated. Federal Medicaid law requires these notices

FLS Advocates: Deborah Schroth, Anne Swerlick, Miriam Harmatz

Other Advocates: Susan Khoury & Heather Morcroft (LASOCBA); Stephanie Johnson LSNF);

Status: After correspondence and meetings with state officials during 2004 the state agreed with “the concept” of providing Medicaid notices to the children and their representatives. However, the state’s implementation efforts have been slow, in part due to “privatization” of the foster care delivery system and the unique relationships between local district AHCA and DCF offices. Additionally, the 2004 legislature mandated that AHCA contract with a statewide private provider to provide mental health services to children in foster care. It is anticipated that this provider will begin delivering services in 2006 and once this occurs notice procedures will likely change. After meeting with state officials during June 2005, they agreed, in the interim, to immediately focus on ensuring that these Medicaid notices are provided in Leon and Orange counties where local legal services advocates have agreed to monitor these efforts on the local level. FLS will continue to work with state officials and local legal services programs to determine whether Medicaid appeal rights and notices are in fact being provided throughout the state.

2. KidCare Appeals Process

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

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

FLS Advocates: Anne Swerlick & Miriam Harmatz

Status: In May 2004, FLS wrote to Healthy Kids staff to request that the form letters be modified to include the federal notice and appeal requirements. During the later part of 2004 FLS and Healthy Kids staff shared draft language for revising the form letters. New form letters which include language about appeal rights began to be distributed by the Healthy Kids program in early 2005.

3. Medicare Part D

Number affected: Over 300,000 Medicaid recipients

FLS Advocates: Anne Swerlick, Miriam Harmatz

Summary: The Medicare Modernization Act of 2003 creates a new prescription drug program which will go 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 will lose Medicaid coverage for prescriptions and will be required to enroll in a Medicare Part D plan. Other low income Floridians will be eligible for a low income subsidy to enroll in the Part D program if they apply for the subsidy. Community outreach and education will be essential to ensure that dual eligibles do not have disruptions in their medication regimens and to ensure that other low income Floridians have access to Part D benefits.

Status: FLS has been compiling information and consulting with the Center on Medicare Advocacy and the National Senior Citizens Law Center to identify and work on key Part D advocacy issues. In January 2005 FLS coordinated an umbrella group training on Part D which included a trainer from the Center on Medicare Advocacy. During May 2005 FLS staff met with representatives of the Department of Elder Affairs and AARP to determine their community education and outreach efforts. Subsequently FLS distributed a brief memo to the health/senior and public benefits listservs on the part D low income subsidy, Part D enrollment procedures for low income Medicare beneficiaries and sources for advocate and client education materials. In response to information included in a 2005 DCF transmittal about low income Part D subsidy application procedures, FLS wrote to the state and requested DCF make available in its local offices a state application for the Part D subsidy, as required by federal law. During June 2005 DCF responded that it was going to comply with our request and a memo was issued to field offices with a new Part D state application.

4. City of Jacksonville Toxic Waste Incinerator and Dump Sites (Region II)

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

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

FLS Advocate: Deborah Schroth

Co-counsel: Legal Environmental Assistance Foundation

Status: Our client is North Riverside Community Association (NRCA), which secured the designation from the City and EPA as the community's representative in the clean-up process. Along

with this designation, NRCA received a \$50,000 grant to hire its own scientific experts to review the data and its method of generation and to keep the community members informed. As a result of advocacy, the City of Jacksonville agreed to comply with the stricter Florida law rather than the federal law in devising the appropriate clean-up standard. The EPA has agreed to abide by the City's commitment.

The Superfund clean-up process has required vigilant and persistent advocacy through each stage. Through the comments of its experts, NRCA secured more data collections than originally proposed, in the first phase of determining the extent of the contamination of the soil and water. In all likelihood, after comments from NRCA's experts, the State DEP, and the federal EPA, there will be amendments to this study before the specific clean-up actions will be determined.

LEGISLATIVE ADVOCACY

1. Medicaid Reform

Number affected: Over two million current and future Medicaid beneficiaries

Summary: The Governor, Agency for Health Care Administration (AHCA) and legislators have expressed their interest in making significant changes to the Florida Medicaid program through the federal waiver process. Possible changes that have been discussed include a cap on funding, linking state Medicaid spending to state revenue growth and cuts to services including the child health benefit, EPSDT (Early & Periodic Screening Diagnosis & Treatment). These waiver options, if implemented, would eliminate the entitlement protections of the current Medicaid program and inevitably lead to an increase in the number of uninsured and under-insured Floridians.

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

Status: In January 2005, the Governor released more details about his Medicaid reform plan, in a document called "Empowered Care." This plan was a springboard for legislative discussions and debate during pre-session committee meetings, as well as during the 2005 session. During this time, FLS staff worked with a coalition of health and human services advocates and providers, including the Florida Pediatric Society, The Florida Association of Homes for the Aging, AARP, Florida Academy of Elder Law Attorneys and national Medicaid experts (Georgetown Health Policy Institute & Families USA) to : a) analyze the Empowered Care plan and House and Senate proposals for Medicaid reform; b) to develop written educational materials on specific elements of the proposals and ; c) to pursue various legislative strategies. FLS met with key state legislators (and their staff) to educate them about our concerns with the Empowered Care plan and to offer alternatives for saving money in the Medicaid program without harming beneficiaries. The Joint Select Committee on Medicaid Reform held hearings around the state and FLS staff helped identify Medicaid consumers to testify at these hearings. FLS staff made educational presentations on Medicaid reform to other

advocacy groups, including Florida Impact, the Children’s Policy Council and CHAIN. FLS worked with other organizations to get language in Medicaid reform bills which would require the Legislature to review and approve any Medicaid reform applications prior to AHCA submitting them to the federal government. On the last day of session, the Legislature passed a Medicaid reform bill (SB 838) which requires AHCA to post the waiver application on the internet 30 days prior to submitting it to the federal government, to provide copies to the Legislature 10 days prior to submission and once the federal government approves the waiver, AHCA must get legislative approval before it can implement the waiver. SB 838 sets out broad parameters for Medicaid reform and it is expected that many details of the Governor’s reform proposal will not be revealed until the waiver application is posted on the internet.

2. Other Legislative Medicaid Issues

Number affected: Over 2 million Florida Medicaid beneficiaries

Summary: As in many recent legislative sessions, the 2005 Legislature targeted the Medicaid program, in particular “optional” services and eligibility groups, for immediate ways to save money in the 2005-06 budget. During the 2004 session, the Legislature reduced Medicaid income eligibility levels for pregnant women. In recent years, the medically needy program has also been targeted for cuts, as well as vision, hearing and dental services.

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

Status: Advocacy and media pressure from previous years laid the groundwork for announcements from legislative leadership and the Governor early in the 2006 session that the medically needy program would not be cut. Additionally, there was early and continued support during session for restoring Medicaid income eligibility levels for pregnant women. However, other groups and services did not fare as well. FLS prepared written educational materials, testified before health and appropriations committees and met with key legislators to advocate for preservation of the Medicaid program for aged and disabled persons (called the “MEDS-AD” program). However, on the last day of session, the Legislature passed a Medicaid bill which eliminates Medicaid coverage on January 1, 2006 for persons who are also eligible for Medicare (“dual-eligibles”). FLS also worked with a coalition of organizations to advocate for the preservation of medication access protections in the Medicaid program for persons with serious mental illness, nursing home patients, children and individuals with HIV. The Legislature passed a bill which eliminates these protections except for certain HIV medications. The new law also requires step therapy (or “fail-first” therapy) for drugs not included on the PDL.

LITIGATION

1. *Hernandez et al. v. Medows* (Region V)

Case No. 02-20964 CIV-Gold
U.S. District Court, Southern District of Florida

Number affected: The relief granted benefits to any of the state's 2.1 million Medicaid recipients whose request for prescription coverage is denied.

Summary: Plaintiffs successfully challenged the Medicaid agency's refusal to provide recipients with adequate written notice and hearing opportunities when prescription coverage is denied. Under the terms of the settlement, AHCA must ensure that Medicaid recipients are given written notice describing the reason for the coverage rejection, what the recipient can do to resolve the problem, how to request a fair hearing and the circumstances in which immediate and ongoing coverage will be provided. The Settlement also requires AHCA to promulgate an administrative rule regarding the notice and establish an Ombudsman office to assist in resolving coverage problems.

FLS Advocates: Miriam Harmatz and Anne Swerlick

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

Status: A hearing was held on attorneys fees in July 2004. No decision has been issued. FLS has been working with the Agency on the rule development. A proposed rule was published on July 1 and FLS is submitting final comments, which the agency has indicated will be incorporated in the final rule.

FLS is continuing to monitor implementation of the Agreement, including spot checks of pharmacies and compiling data from public records requests. One of the major issues identified to date is that many pharmacies are failing to post the required signs or distribute the notice/pamphlet when Medicaid prescription coverage is denied. The new rule will give the Agency increased enforcement power and field programs are providing information on noncompliant pharmacies so that appropriate enforcement action can be requested.

2. *Edmonds et al v. Levine*

Case No. 05-21215 CIV-Gold

(Region III, VI)

U.S. District Court, Southern District of Florida

Number affected: 16,000

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 form of neurpathic 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. Over ninety recipients appealed the denial and the appeals were uniformly denied pursuant to the AHCA policy of non-coverage. 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 and Anne Swerlick

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

Status: The defendant has filed an answer and the motions for class certification and preliminary injunction have been fully briefed.

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

Number affected: One child and his family

Summary: The client is a 9 year old child with a history of gross motor developmental delay, hyperactivity, speech delay and behavior disorder. He 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 reductions of services was affirmed by the hearing officer.

FLS advocates: Miriam Harmatz and Anne Swerlick

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

Status: At oral argument on December 7, 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 has been restored pending a decision by the court. Pursuant to a court order, on July 2, 2005, the child's attorneys filed a proposed disposition of the case.

4. *Rodriguez v. Florida Department of Health*

Division of Administrative Hearings, Case No. 04-4292RU

Number affected: approximately 30

Summary: The client is an undocumented farm worker who suffered a serious brain and spinal injury in a car accident. The client applied for services through the Brain and Spinal Cord Injury program which is administered by the Department of Health (DOH). The state statute describing the program's eligibility requirements includes a requirement that the applicant be a "legal resident" of the state. However, the DOH policy manual further requires that the applicant be a U.S. citizen or have immigration status to remain permanently/indefinitely in the U.S. Advocates filed an administrative rule challenge alleging that the rule was unpromulgated (which is required before challenging a rule on the merits).

FLS advocates: Miriam Harmatz, Valory Greenfield and JoNel Newman

Status: DOH proceeded to properly promulgate the rule and the unpromulgated rule challenge was dismissed. A possible substantive rule challenge is now under consideration.

4. *M.H. v. Agency for Persons with Disabilities* (Region II)

DCF Office of Appeal Hearings

Appeal 05F-1023

Number Affected: One individual

Summary: FLS has been getting an increasing number of requests for assistance from the field relating to adult clients enrolled in the Developmental Disabilities (DD) Medicaid Waiver program whose services are targeted for reduction or termination by the state. The state has contracted with a third party vendor, Maximus, to do desk reviews for selected cases. These reviews involve a "formulaic" applications of Medicaid's restrictive definition of "medical necessity" to services which are not traditionally characterized as "medical" but rather supportive and social services.

This case involves a 44 year old woman with cerebral palsy who has been living in a group home

for the past three years under the DD Waiver program. This client is non-ambulatory and needs two staff members to move her out of her wheelchair and bed. Prior to her group home placement she resided in a nursing home, was very isolated and was severely depressed. Now in her group home placement she goes to work, earns money at a sheltered workshop and is able to live in a home setting with two other roommates. In January 2005 the client was notified by Maximus that it was seeking to reduce her “residential habilitation” services hours. This reduction in hours will impact the level of assistance available to her in the home for activities of daily living and jeopardize her health and safety in the home.

FLS Advocate: Anne Swerlick
Co-counsel: Andrea Socol, JALA

Status: A Medicaid fair hearing request was filed in response to the notification of the proposed reduction of residential habilitation hours. Petitioner’s counsel filed discovery requests and a hearing was scheduled for May 20, 2005. Petitioner’s counsel sought a continuance while Petitioner pursued a “reconsideration” process through Maximus. The continuance was granted and a new hearing date has not yet been scheduled.

TRAINING

1. Florida Renal Professionals Forum

On February 10, 2005 FLS presented at the annual meeting of the Florida Renal Professionals sponsored by the National Kidney Foundation in Ft. Lauderdale. The presentation focused on Medicaid reform, the terms of the Hernandez settlement and implementation of Medicare Part D. The training was attended by over 100 social workers whose clients are kidney dialysis patients.

2. Legal Services Medicaid 101 Training (Region III)

On March 1, 2005 FLS presented at a one day Medicaid training hosted by the Legal Aid Society of Orange County and Community Legal Services of Mid-Florida. The event was attended by approximately 40 legal services/legal aid advocates from throughout the state. Training topics included eligibility, benefits, managed care and KidCare

3. Access to Quality Health Care Coalition

On March 31, 2005 FLS presented at a meeting sponsored by the Access to Quality Health Care Coalition. The meeting was attended by health care advocates and providers from throughout the state who were visiting legislators during the 2005 session. FLS’s presentation focused on 2005

legislative issues relating to Medicaid and issues pertaining to implementation of Medicare Part D.

4. Changes in the Medicaid Prescription Drug Program

On June 10, 2005, FLS sponsored a meeting relating to changes to the Medicaid prescription drug program due to implementation of Senate Bill 404. FLS staff presented to a diverse group including legal services advocates, medical association representatives and other health and human services providers. The group developed a collective advocacy plan to protect the interests of Medicaid recipients as Senate Bill 404 is implemented.

5. Developmental Disabilities Service Reductions (Region 2)

On June 22, 2005 FLS provided training to a group of Jacksonville Area Legal Aid advocates on advocacy strategies for representing persons with developmental disabilities whose Medicaid services are being reduced or terminated.

HOMELSS

ADMINISTRATIVE ADVOCACY

1. Anti-homeless Ordinances

Number affected: Thousands

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

FLS Advocates: Arthur Rosenberg

Status: Working in conjunction with the Florida Coalition for the Homeless, 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.

2. Labor Pool Act Implementation/Enforcement of Employment Rights

Numbers affected: Thousands

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

FLS Advocate: Arthur Rosenberg

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

LEGISLATIVE ADVOCACY

1. Incarceration of homeless offenders

Number affected: Thousands

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

the Homeless, the Florida Public Defenders Association, ACLU, the Florida Association of Counties, the Florida Alliance for the Mentally Ill. Pursuant to an amendment secured by FLS, judges can waive the mandatory sentence if they determine that it would be in the best interest of the community and the defendant to do so, somewhat lessening the intended impact of the law.

FLS Advocates: Arthur Rosenberg and Dorene Barker

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

HOUSING

LITIGATION

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

Case No. 01-01-3766 Civ-Highsmith

U.S. District Court, Southern District Fla.

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

FLS Advocates: Chuck Elsesser and JoNel Newman

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

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

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

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

FLS Advocates: Chuck Elsesser

Status: Representation is ongoing. We are negotiating with the County with respect to the individual cases. In addition we are undertaking investigation regarding the enforcement of promises made to the relocatees regarding their right to return, employment, etc.

2. *Hill V. Stefan* (Region VI)

Circuit Court - Broward County

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

FLS Advocate: Chuck Elsesser

Co-Counsel: Shawn Boehringer (LASBC)

Status: Service has been effected and discovery begun. We are also exploring the possibility of settlement.

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

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

FLS Advocates: Chuck Elsesser

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

Status: The complaint has been served. Discovery is ongoing and settlement discussions are underway.

5. *FIAC v. DHS*

Summary: FLS is co-counseling with FIAC. This is a FOIA lawsuit arising out of request for documents for Haitian who died in custody at Krome.

FLS Advocate: Chuck Elsesser

FIAC : Mary Gundrum

Status: During the litigation, DHS finally provided a response to the FOIA request. It is however inadequate.

OTHER ADVOCACY

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

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

FLS Advocate: Chuck Elsesser

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

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

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

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

FLS Advocate: Chuck Elsesser

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

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

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

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

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

FLS Advocate: Charles Elsesser

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

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

FLS Advocate: Charles Elsesser

Status: Florida Legal Services aggressively enforced the National Environmental Policy Act, blocking an attempt to obtain a categorical exemption. Florida Legal Services has continued to be involved in the environmental assessment. More than a year after its initial environmental assessment the County recently reintroduced a newly completed environmental assessment of the project. Florida Legal Services assisted the Coalition and LIFFT in researching a response to the assessment. Florida Legal Services drafted a written response to the environmental assessment on behalf of LIFFT and the Coalition and also testified. The County continues to assess that response and has not yet submitted the environmental assessment to the Department of Transportation. Florida Legal Services is also assisting the Coalition with the development of a business relocation plan - which is being drafted in coordination with 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).

4. *Community Benefits Agreement Initiative*

Summary: Florida Legal Services is providing legal advice and facilitation to a recently formed Miami Community Benefits Initiative Coalition. This group is intending to build off of successful local living wage campaigns and to emulate Community Benefits campaigns in Los Angeles, Minnesota and the Bay Area so as to insure that poor communities are benefitted by the massive ongoing development.

FLS Advocate: Charles Elsesser, Arthur Rosenberg

Status: This year, Florida Legal Services has taken a more central role coordinating an extremely successful strategic planning session that took place earlier this year. That session attended by more than forty organizational representatives, including labor, community organizations, faith based groups and social service organizations involved in depth strategic planning and training by nationally recognized practitioners.

Since the strategic planning session the group has continued to meet and facilitated significantly by Florida Legal Services, the group is now undertaking the initial plans for a Community Benefits ordinance. Florida Legal Services has been and will continue to provide the legal assistance in the fashioning of that ordinance.

5. *Villa Maria Apartments (Region VII)*

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

FLS Advocate: Chuck Elsesser, JoNel Newman

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

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

6. *Jimenez v. FEMA*

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

FLS Advocate: Chuck Elsesser

Status: FLS has written to FEMA requesting the change, FEMA has refused to change their policy and we are exploring other options.

7. *POWER U Center for Social Change. (Region VII)*

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 Advocate: Chuck Elsesser

Status: FLS has filed administrative complaints with U.S. HUD and the Department of Transportation regarding the refusal of the local government to update the Environmental Impact Statement on this new development. We are currently exploring other options.

8. *Wynwood Historical Homeowners' Association (Region VII)*

Summary: Wynwood is a very poor, historically Puerto Rican neighborhood under intense pressure to gentrify due to nearby, publicly subsidized development.

FLS Advocate: Chuck Elsesser

Status: FLS has provided assistance with incorporation in order for the group to better protect the neighborhood.

9. *Florida Section 8 Coalition*

Summary: FLS convened a statewide meeting of Public Housing Authorities, legal services advocates and homeless advocates to form an ongoing coalition to fight cuts to Section 8.

FLS Advocate: Chuck Elsesser

Status: The coalition initially was unable to operate due to differences regarding proposed State legislation. FLS and the authorities are now exploring opportunities for working together.

10. *City of Miami Comprehensive Plan (Region VII)*

Summary: FLS is co-counseling with Legal Services of Greater Miami and private counsel to review the City of Miami's review of its Comprehensive Plan.

FLS Advocate: Chuck Elsesser

LSGMI Advocate: John Little

Status: FLS, LSGMI and the private counsel are reviewing the City's initial Report to the Department of Community Affairs and the Department's response and considering the advocacy options.

11. *Hialeah Housing Authority (Region VII)*

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

FLS Advocates: Chuck Elsesser

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

Status: FLS and co-counsel are reviewing further actions in light of the response to the public records act request.

12. *Tallahassee Housing Authority (THA) Demolition of Ebony Gardens (Region I)*

Number of People Affected: 49 remaining residents of Ebony Gardens and those on the THA waiting list

Summary: For several years Florida Legal Services has worked with Legal Services of North Florida representing THA tenants in the proposed demolition of Ebony Gardens. Originally THA sought HOPE VI funding for demolition and revitalization. After being rejected for a HOPE VI

revitalization grant several times, THA applied for and received a HOPE VI demolition grant. All the remaining families have been relocated either to other public housing units or to a private units with a voucher, with the assistance of FLS and LSNF. Demolition has begun, with several former tenants hired to assist with the demolition.

FLS Advocates: Alice Vickers

Co-Counsel: Scott Manion (Legal Services of North Florida)

Status: Some issues still remain regarding the relocation plan. Additionally, FLS and LSNF continue to negotiate with THA as to the planned replacement of units. Currently THA plans to partner with Pinnacle Group to build a 93 unit LIHTC complex. Former tenants of Ebony Gardens will be given first opportunity to return, however, only those with vouchers will be able to afford the units under the present plan. Advocates hope to work with THA to determine if there is a way to reduce the rents on some units to reach those that are extremely low income.

13. *Tallahassee Housing Authority (THA) Housing Choice Voucher Program Administrative Plan (Region I)*

Number of People Affected: 1882 voucher holders and those on the waiting list

Summary: For many years THA has had a variety of staff update their Administrative Plan creating a fractured document that was often difficult to interpret; however, in some cases, though inadvertent, it resulted in language that was helpful to the voucher holders. THA has recently used outside counsel to create a completely new 200 page Plan.

FLS Advocates: Alice Vickers

Status: The document is in its second drafting and FLS has begun reviewing it in preparation for its presentation to tenant groups.

MIGRANT FARMWORKER

ADMINISTRATIVE ADVOCACY

1. *Sain v. Outsource 2000* (Region V)

Case No. 02-004405PSL

Office of the Judge of Compensation Claims, Port St. Lucie District

Number of Farmworkers Affected: 1 (Okeechobee County)

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

FLS Advocates: Greg Schell and Sol Couto

Status: The claimant was released to light duty in May, 2005. The following month, his claims were resolved through mediation, with the claimant receiving a substantial payment to compensate him for past underpayments and to defray the costs of future medical care.

2. *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 tens of thousands of Florida-based farmworkers employed each year in South Carolina.

FLS Advocates: Greg Schell and Kristi Schaeffer (legal intern)

Co-counsel: Marvin Feingold, South Carolina Centers for Equal Justice

Status: The hearing in the case was held July 11, 2005.

3. *Gender discrimination and sexual harassment education project*

Number of Farmworkers Affected: 60,000 (statewide)

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

FLS Advocate: Mónica Ramírez

Status: FLS has been awarded a two-year fellowship by Equal Justice Works and the Florida Bar Foundation to implement this project. During the first year of the project, a comprehensive set of informational brochures regarding sexual harassment, gender discrimination and pregnancy discrimination were prepared in three languages and distributed to organizations assisting farmworker women. The project assisted a fledgling group organize to provide leadership development and support for farmworker women in northeast Florida. The project has also filed charges of discrimination with the Equal Employment Opportunity Commission for several female workers, alleging sexual harassment or discriminatory treatment. The project was highlighted in a lengthy article on sexual harassment of farmworker women in the Summer 2005 issue of *Ms.* magazine. A new non-profit organization, Esperanza, is being created to continue and expand upon the efforts undertaken during the fellowship.

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

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

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

FLS Advocate: Rob Williams

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

Efforts continue to secure funding for the housing. Initially, the Florida legislature earmarked funds for this housing but in the closing days of the 2005 legislative session, these moneys were shifted into general hurricane relief. Federal funding is being pursued to construct several prototype units as a demonstration project.

LEGISLATIVE ADVOCACY

1. *Agricultural Guest Worker Legislation*

Number of Farmworkers Affected: 300,000 (statewide)

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

FLS Advocate: Rob Williams

Status: On April 19, 2005, AgJOBS was offered in the Senate as an amendment to an emergency funding bill for U.S. troops in Iraq and Afghanistan. Because of the rules governing amendments to the funding bill, 60 votes were needed to add AgJOBS to the legislation. AgJOBS was endorsed by a 53-45 majority (with two announced AgJOBS supporters not voting), but fell short of the necessary 60 votes. Proponents of the legislation plan to offer AgJOBS later this year, either as free-standing legislation or as an amendment to other legislation being considered by Congress.

2. *Florida Minimum Wage*

Number of Farmworkers Affected: 300,000 (statewide)

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

FLS Advocate: Rob Williams

Status: During the 2005 legislative session, bills were introduced at the behest of employer groups regarding the amendment. While some provisions merely clarified ambiguities in the amendment, other proposals placed substantial obstacles in the path of workers seeking to recover unpaid wages due them under the amendment. The MFJP testified regarding the employer's bills and ultimately negotiated compromise language mitigating several of the most troublesome sections. The compromise legislation was not adopted prior to the close of the legislative session, but similar proposals are expected to be offered when the legislature reconvenes in 2006.

LITIGATION

1. *Montejo v. Martin Memorial Medical Center, Inc.* (Region V)

Case No. 4D03-2638

Fourth District Court of Appeal

Number of Farmworkers Affected: 300,000 (statewide)

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

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

FLS Advocate: JoNel Newman

Co-counsel: Michael Banks, Stuart, Florida

Status: The Fourth District Court of Appeal unanimously reversed the circuit court's ruling. 874 So.2d 654 (Fla. 4th DCA 2004). The appeals panel held that the lower court lacked jurisdiction to order the removal of the alien from the United States, because federal law pre-empted immigration-related questions of this sort. In addition, the appellate court found that there was no substantial evidence to support the circuit court's ruling and that the hospital's actions in discharging the alien violated Medicare provisions. Rehearing was denied. Presently, the hospital is seeking review by the Florida Supreme Court.

2. *Cagnoli v. Tandem Staffing and Specialty Risk Services, Inc.*

Case No. 1D03-5563

First District Court of Appeal, Florida

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

FLS Advocate: JoNel Newman

Status: The appeals court reversed the administrative law judge's decision. 888 So.2d 79 (Fla. 1st DCA 2004). The appellate court's opinion was based primarily on the Privacy Act arguments present in the MFJP amicus brief. Rehearing was denied, but the state Division of Worker's Compensation has sought review by the Florida Supreme Court, arguing that the state's procedures are exempt from the provisions of the Privacy Act.

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

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

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

Number of Farmworkers Affected: 300 (Hillsborough County)

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

FLS Advocates: Monica Ramirez, Manuel Avalos and Raul Barrera

Status: Through mediation, a settlement was reached, providing for substantial payments in back wages to the named plaintiffs. In addition, a class settlement fund was created to compensate class members for unpaid overtime wages. A hearing to evaluate the fairness of the settlement and to approve the parties' agreement was held on July 15, 2005.

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

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

U.S. Court of Appeals, Eleventh Circuit

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

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

FLS Advocates: Greg Schell and Raul Barrera

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

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

Status: In December, 2003, the six workers' claims were tried to the district court. The court ruled in favor of the workers and awarded them damages. The court denied the plaintiffs' request

for costs and attorney's fees under Fla. Stat. § 448.08, which covers actions to recover wages. The Plaintiffs appealed the court's ruling on costs and fees, arguing that the damages under the so-called "3/4 guarantee" are "wages" within the meaning of the Florida statute. In December, 2004, the Eleventh Circuit affirmed the district court's order denying costs and fees. 2004 WL 3112676 (11th Cir. 2004). A petition for rehearing was also denied.

5. *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.

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

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

Number of Farmworkers Affected: 2400 (Hamilton County)

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

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

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

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

Case No. 01-9013-Civ-Ryskamp

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

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

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

FLS Advocates: Greg Schell, Raul Barrera and Karis Engle

Status: After extensive discovery, the parties settled the matter. A nine-month period during which class members could claim moneys due them under the settlement agreement ended in May, 2005.

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

Case No. 01-9096-Civ-Middlebrooks

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

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

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

FLS Advocates: Greg Schell, Raul Barrera and Karis Engle

Status: The district court granted the plaintiffs' class certification motion, rejecting Mecca's argument that undocumented aliens are not protected under the AWPAs. 213 F.R.D. 601 (S.D.

Fla. 2002). After protracted negotiations, the parties settled the matter. A nine-month period during which class members could file claims under the settlement was completed in May, 2005.

8. *McDonald v. Okeelanta Corporation* (Region V)

Case No. 4D05-188

Fourth District Court of Appeal

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

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

FLS Advocate: Greg Schell

Lead Counsel: David Gorman, North Palm Beach

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

9. *Martin v. Roy C. Arnold* (Region V)

Case No. 04-14000

U.S. Court of Appeals, Eleventh Circuit

Number of Farmworkers Affected: 1 (Okeechobee County)

Summary: Actions on behalf of a middle-aged farmworker who was employed by an Okeelchobee County farmer for over 20 years picking citrus, planting pasture grass and performing various maintenance tasks on the grower's farm. The grower failed to pay any Social

Security taxes on the plaintiff's labor or to keep any payroll records regarding his work. Because of these practices, the plaintiff is unlikely to qualify for old-age Social Security retirement benefits.

FLS Advocate: Greg Schell

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

Status: The district court granted the defendant's motion for summary judgment and ruled that he was exempt from the AWPA because of the relatively small scale of his operations. The farmworker has appealed, contending that the grower failed to "plainly and unmistakably" establish his entitlement to the exemption and pointing to disputed factual issues that should have barred entry of summary judgment in this case. The 11th Circuit affirmed the district court ruling. The MFJP is now assisting the claimant in correcting his Social Security earnings records through the SSA administrative procedures, using the discovery obtained in the litigation.

10. *Bygrave, et al. v. Osceola Farms Co.* (Region V)

Case No. CL 89-8690 AI

Palm Beach County Circuit Court

Number of Farmworkers Affected: 4,500 (Palm Beach County)

Summary: Class action on behalf of sugar cane cutters who worked between November, 1986 and March, 1992 for Osceola Farms Company, one of the state's largest sugar growers. The workers were guaranteed the federal adverse effect wage rate for their labor, roughly \$5.30 per hour. However, the cutters were routinely paid less than this amount, with these shortages concealed through the employer's systematic falsification of payroll records.

FLS Advocate: Greg Schell

Lead Counsel: David Gorman, North Palm Beach

Status: In July, 2005, the trial court decertified the class in the case because of the extended unavailability of the class representative. The plaintiffs have moved to substitute three new class representatives. If the court refuses to permit the action to continue as a class action, individual cane cutters will intervene.

11. *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 Raul Barrera

Status: After certification of the class by the district court, the parties reached a tentative settlement of the case at mediation in March, 2005. 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.

12. *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: 4 (St. Johns County)

Summary: Action by four 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: Suit was filed on June 20, 2005. Discovery will commence shortly.

13. *Silva, et al. v. Texas Express, Inc.* (Region V)

Case No. 2:03-cv-690-FtM-29SPC

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

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

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

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

Status: The district court granted class certification. 222 F.R.D. 684 (M.D. Fla. 2004). The parties have agreed to a settlement under which the class members will be paid for their waiting time and the company will agree to an injunction requiring it to adopt proper timekeeping procedures in the future.

14. *Avila-Gonzalez, et al. v. Maria R. Barajas, et al.* (Region V)

Case No. 04-cv-567-Ft.M.-33-DNF

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

Number of Farmworkers Affected: 200 (DeSoto County)

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

FLS Advocates: Greg Schell and Raul Barrera

Status: The district court has certified a class of all H-2A workers employed by the defendants over a four year period. Discovery is proceeding.

15. *Sanchez-Carranza v. Lionel Barajas* (Region V)

Case No. 04-14326-Civ-Moore

U.S. District Court, Southern District of Florida, Fort Pierce Division

Number of Farmworkers Affected: 100 (Highlands County)

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

FLS Advocates: Greg Schell and Raul Barrera

Status: The district court denied the Plaintiff's motion for class certification. Discovery is proceeding on the named Plaintiff's individual claim.

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

Case No. 04-14232-Civ-Middlebrooks

U.S. District Court, Southern District of Florida, Fort Pierce Division

Number of Farmworkers Affected: 400 (Highlands County)

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

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

Status: The Plaintiffs' class certification motion is pending. Discovery is proceeding.

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

Case No. 04-81093-Civ-Middlebrooks

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

Number of Farmworkers Affected: 400 (Palm Beach County)

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

FLS Advocates: Greg Schell and Manuel Avalos

Status: The district court certified the class and granted the Plaintiffs' motion to join grower Thomas Produce Company as a defendant. Trial is scheduled for October, 2005.

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

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

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

Number of Farmworkers Affected: 5 (Collier County)

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

FLS Advocate: Greg Schell

Status: A tentative settlement of the claim has been reached.

19. *Valerio v. Vila & Son Nursery, Inc.* (Region VII)

Case No. 05-01084 CA 31

Miami-Dade County Circuit Court

Number of Farmworkers Affected: 1 (Miami-Dade County)

Summary: A female nursery worker was repeatedly sexually harassed by the owner of a large Miami-Dade County nursery. When she attempted to resist his advances, the owner threatened her with both termination and deportation.

FLS Advocate: Mónica Ramírez

Co-counsel: Arthur Schofield, West Palm Beach

Status: Discovery is proceeding. Trial is expected in the fall of 2005.

PUBLIC BENEFITS

ADMINISTRATIVE ADVOCACY

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

Number affected: Potentially thousands

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

FLS Advocates: Cindy Huddleston and Valory Greenfield

Co-counsel: Due Process Task Force

Status: In early 2000 FLS began working with the staff of the Miami Workers Center (the Center) and the members of the grass roots organization Minority Families Fighting Against WAGES (MFFAW) as the latter group compiled a list of complaints against the Miami-Dade/Monroe WAGES Coalition. FLS designed a “know-your-rights” curriculum and

went to the Worker Center each month in order to train low income participants on their right(s) to support services. FLS, together with The Miami Workers Center applied and was approved for funding from the Dade Community Foundation to produce a video version of the Know Your Rights training to be used at The Mimi Worker Center and to be made available to other community groups. As a result of litigation that sprang from this regional advocacy (see consolidated cases Hepburn v. AWI and Hepburn v. South Florida Regional Workforce Board in prior litigation dockets), a well-drafted grievance policy was put into place for South Florida TANF participants. FLS convened a statewide due process task force to assist advocates in ensuring that their local RWBs around the state put grievance policies into place which provide at least the due process found in the South Florida policy. The task force is working on a model grievance policy and two model notices which each task force member will endeavor to get his/her regional workforce board to approve and implement.

2. *Elimination of In-person 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 order to 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: During an initial conversation with agency staff, FLS expressed concern that telephone hearings do not work well for limited English proficient claimants (LEP), for situations in which credibility is at issue, and for proceedings where document submission is compromised. In addition, FLS stated that there are other means of ensuring the safety of hearing participants. FLS advised the agency that FLS would prepare more formal written comments after researching the issue moer thoroughly. 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 more extensive written comments in June 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.

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

Number affected: Potentially Thousands

Summary: The law requires that food stamp recipients have the right to have DCF consider his/her request to “compromise” his/her food stamp overpayment if the economic circumstances of the household indicate that it is not likely the claimant would be able to repay the overpayment within three years. Notwithstanding these provisions, 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 is researching with the task force whether the proposed rule adequately satisfies APA mandates and whether this rule is subject to challenge upon this or any other grounds.

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

Number of potential recipients: Hundreds

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

an indication that reversal is imminent. In addition, for many other C/H E's, including bona fide parolees and asylum applicants, the local SSA field offices have started refusing to accept applications for Social Security Numbers (SSN), applications for SSI, and/or requests to appeal denial decisions.

FLS Advocate: Valory Greenfield

Co-Counsel: Region 7 Subcommittee on "Barriers to receipt of SSI for Cuban/Haitian Entrants" including Tom Zamorano (FIAC) and Jose Fons, Lize Gonzalez, and Eli Poupko (LSGMI). This subcommittee operates under the auspices of the Region 7 Litigation Committee. Committee co-chaired by FLS advocate Chuck Elsesser and LSGMI advocate Leslie Powell.

Status: FLS convened meetings of interested persons in Region 7 for the purpose of reviewing the facts of individual cases, researching relief, and making recommendations on how to proceed including editing written briefs and assisting with oral argument preparation. For two NACARA adjusters who won their SSI claims at their ALJ hearings but got reversed by the Appeals Council, LSGMI pursued appeals in federal district court. Both cases were successful at the district court level. For the CAA cases, LSGMI successfully argued these cases in a consolidated hearing at SSA's Office of Hearings and Appeals. The ALJ issued favorable decisions in all the cases, but the cases were taken up by the Appeals Council. The University of Miami Children and Youth Law Clinic is representing a disabled Haitian juvenile in her SSI appeal to federal district court with related legal issues. While these cases were pending, a Miami Herald reporter wrote a story about the change in policy which prompted Representatives Lincoln Diaz-Balart and Ileana Ros-Lehtinen to write to SSA for an explanation of the policy. As a result of this congressional inquiry and the pending litigation, SSA formally clarified its policy to include NACARA, HRIFA, and CAA adjusters in the definition of Cuban/Haitian Entrant.

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

Number of potential recipients: Thousands

Summary: FLS was approached by LSGMI concerning whether DCF is including a single statewide toll free phone number for participants to call to get information about free legal services. in its Food Stamp notices. LSGMI posted a query on the public benefits umbrella list-serve to enlist other advocates interested in this issue to call the toll-free number at various times of day and record and report the results of their efforts. This volunteer effort resulted in about twenty random calls being made to the toll-free number. LSGMI compiled the results which were as follows: about 60% of the time the call went unanswered (this includes getting a recording but getting no call back to a message left on the recording); about 25% of the time the correct legal services referral information was provided; and about 15% of the time bad

information (bad information includes wrong information such as “legal services will not handle the case” or “you don’t need a lawyer”) was provided. Based on these results and the volume of interest in this issue a Food Stamp Notice Task Force was formed to work on systemic strategies to redress the problem.

FLS Advocates: Cindy Huddleston and Valory Greenfield

Co-Counsel: Food Stamp Notice Task Force (designated representative is Nancy Sutton of LSGMI)

Status: FLS convened the first conference call of the Food Stamp Notice Task Force. As a result of that call, members of the task force drafted and sent a letter to their DCF District Administrator about, inter alia: capacity of the toll-free line to accept messages; response time on the toll-free line; DCF not having full and complete information on legal services offices to give out; and the sufficiency of the training received by phone staff. Subsequently, DCF asked that a spokesperson for our state group work with the General Counsel’s office about this issue. Lizel Gonzales and Nancy Sutton of LSGMI agreed to be our group’s representative along with FLS. Discussions with DCF yielded a commitment by DCF to program DCF’s new Integrated Voice Response (IVR) system to provide automated legal services referral information through DCF’s call centers by July 2005. In the interim, FLS provided updated information on the names, addresses, and phone numbers of Florida legal services programs which handle food stamp problems so that accurate referral information could be provided by the single operator who attends the existing 1-800 food stamp hotline. In June DCF requested that we provide a listing matching legal service programs to DCF Districts. We advised DCF that we don’t have that kind of information and insisted they proceed with what has already been provided and/or what they have on hand.

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

Number affected: millions

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

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: DCF held its workshop on May 11, 2004. They had no draft rule, form or any plan for what procedures would be changed. They said that they only published the notice so that they could go directly to “proposed rulemaking” (instead of “rule development”) when they wanted to move forward. DCF has now developed a plan but have not provided it to FLS. FLS remains interested in all viable advocacy avenues impacting upon privatization/modernization issues. In view of state legislation passed at the close of the 2004 session, FLS additionally decided to pursue litigation. See Reed v. Gallagher et al. in the Public Benefits Litigation Section below. Further, FLS sent DCF a Public Records Act request for details of their modernization plan and has been communicating with DCF about parameters to the request in order to make it cost-efficient. In the interim DCF proposed two rules concerning its new web-based interactive online application which DCF intends to make a cornerstone of its modernization effort which is the justification for DCF’s recent moves to close eligibility offices across the state on a mass basis. FLS filed two petitions challenging these proposed rules. See Clark v. DCF in the Public Benefits Litigation Section below.

LEGISLATIVE ADVOCACY

1. *Defeated Full-Family Sanctions in the TANF Program*

Number Affected: Thousands

Summary: CS/SB 408 proposed to align work sanctions in the TANF program with those in the Food Stamp program. For example, the very first time a parent is non-compliant, CS/SB 408 would have let DCF cut off the family’s money for a full month, instead of for just 10 days, the current length of time for a TANF sanction. Studies suggest that such harsh sanctions harm innocent children in these families. Florida already imposes tough sanctions on families for noncompliance with TANF work requirements. Harsher, longer sanctions for the sake of administrative simplification would have been unnecessary, especially considering the potential for complete financial devastation to the family.

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: FLS successfully fended off the attempt at full-family sanctions in TANF. Surprisingly, unlike 1997, where the-harsher-the-sanction-the-better, after FLS explained what they were doing, the Legislature said they were appalled by the seemingly innocuous move to align TANF sanctions with Food Stamp sanctions. The bill was amended and the language making sanctions even worse was taken out.

2. *Harmful Privatization Authorization Repealed*

Number Affected: Thousands

Summary: In 2004, FLS sued the state over its attempts at full-scale privatization of the Food Stamp, TANF and Medicaid programs (*Reed v. DCF*) (see discussion in *Litigation* section). Part of the settlement hinged on what the Legislature did with privatization this session. If the Legislature backed off on their attempts at full fledged privatization of Food Stamps, Medicaid and TANF, we agreed to dismiss the case.

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: In CS/SB 408, in order to settle *Reed*, the Legislature repealed language authorizing wholesale privation. Subsequently, we dismissed the *Reed* law suit.

3. *Privatization Safeguards*

Number affected: Thousands

Summary: The Legislature attempted to pass safeguards to protect against inappropriate privatization measures in Senator Argenziano's bill on agency contracting, SB 1476. Although the bill did not go as far as we believed it should, it did contain provisos to assure a more deliberate and public process in the event a state agency pursues privatization.

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: FLS drafted amendments to strengthen S.B. 1476. However, because Senate staff feared gubernatorial veto if the bill was too restrictive on privatization, few of our amendments were adopted in the form we proposed. However, we remained satisfied that the bill would address some of the more egregious privatization abuses. Nonetheless, in the end, the Governor was averse to even this watered-down attempt at safeguards: Governor Bush vetoed 1476, based on his conclusion that privatization safeguards are the province of the executive branch and not the Legislature.

4. *Removed Food Stamp Sanctions Against Non-custodial Parents with Child Support Arrears*

Number Affected: Thousands

Summary: In the early day of Welfare Reform, Florida enacted the USDA option which permits a state to deny food stamps to persons who are in arrears with child support payments. Florida adopted this sanction and imposed it against non-custodial parents but implemented the sanction

contrary to federal directives. Federal law required the state to approve the applicant for stamps and give the applicant the entire month to pay their child support obligations. If, at the end of the month, the individual remained in arrears, the state could charge the recipient with an overpayment and proceed to recoup the stamps already paid out to which the client was not entitled by virtue of being in arrears for the entire month of receipt. FLS litigated against DCF, challenging the state's practice in three forums: a DCA appeal for client Meyers; a DOAH proceeding for client Tullos; and a federal class action for clients McKeller, Pilcher, et al. (All of which are reported upon in prior dockets). In settling these cases, DCF agreed to notify the class members that it was no longer applying this sanction, to restore lost food stamps to affected class members, and to stop implementing the sanction until it sought and received USDA approval.

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: In lieu of seeking USDA approval to properly implement this option, DCF re-examined this ill-conceived sanction scheme and determined it was improvident. FLS' litigation demonstrated that this sanction option disproportionately affects parents who lose their income due to accident, illness, or disability and who have not recovered the ability to earn income. Based on this re-examination of the option and decision to abandon it, DCF convinced the Legislature to include in CS/SB 408 a repeal of the statutory authority which formerly compelled the Department to sanction the food stamps of non-custodial persons with child support arrears. This particular food stamp sanction is now no longer part of Florida law.

LITIGATION

- 1. Fernandez v. Westwind Group and Unemployment Appeals Commission (Region V)**
DCA Case No. 4DO4-960
Fla. District Court of Appeal, Fourth District
Fernandez v. Agency for Workforce Innovation
DOAH Case Nos. 04-4566RU, 04-4567RU, 04-4568RU Consolidated
Division of Administrative Hearings

Number affected: potentially thousands

Summary: Client, a Spanish-speaking fast food worker, was terminated from her job. She applied for unemployment compensation (UC) benefits on a Spanish application. Nevertheless, she received a determination notice in English denying her claim for UC. She was unable to understand its content and ultimately filed her appeal late. This determination notice has not been promulgated pursuant to the Administrative Procedure Act (APA). When she appealed, the notice of hearing, which was in English-only, directed Ms. Fernandez to let the hearing office

know if she could not find her own translator for the hearing. The hearing notice form has not been promulgated. After the hearing, the referee issued a written hearing decision, in English-only, in which he dismissed the appeal based on lack of jurisdiction because the appeal was filed late. The hearing decision directs Ms. Fernandes to get the document translated on her own. The hearing decision form has not been promulgated. The Unemployment Appeals Commission upheld the decision

Ms. Fernandez appealed to the 4 DCA in March 2004. On appeal, the issue is whether the referee's decision that the request for a hearing was filed late is supported by competent substantial evidence and in accordance with law.

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

Status: FLS filed an amicus brief in the 4th DCA appeal. The brief discusses the growing number of immigrants in the workforce, the numbers of LEP workers in Florida, their contributions to Florida's economy, the purpose of the UC program, the legal authority underlying the right to language access for LEP UC claimants, and the public policy considerations therefore. On June 29, 2005 the 4th DCA affirmed per curiam (with no opinion) the lower tribunal's denial of Ms. Fernandez' alleged untimely claim for UC benefits. FLS also filed three rule challenge petitions with DOAH against the Agency for Workforce Innovation seeking to invalidate the AWI's rules and forms which: permit it to send English-only claims determinations notices containing vital appeal rights information to limited English proficient (LEP) UC claimants; permit it to direct LEP UC claimants to bring their own interpreters to hearings; and direct LEP UC claimants to get their hearing decision notices translated on their own. These challenges were consolidated. Subsequently the parties reached a settlement wherein AWI committed to produce UC notices that are more user-friendly to non-English speakers by putting tri-lingual tag lines about timely appealing on three critical notices enclosing a multi-lingual cover letter insert (telling claimants in 15 languages a phone number to call for free language assistance) whenever the agency mails one of 13 critical documents to claimants during the processing of their UC claim. The agency also added the 15 language cover sheet inside the front cover of its UC claims instruction booklet. As a result of the settlement, the rule petitions were dismissed. The rule litigation was initiated and favorably resolved while the DCA appeal was pending and before the DCA appeal was decided.

2. Reed v. Gallagher et al.

Case number SC04-1679

Supreme Court of Florida transferred to Circuit Court, Case number 2004-CA-1679

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

Number affected: Hundred of thousands

Summary: The 2004 Florida Legislature passed two appropriation provisos in the state

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

FLS Advocates: Cindy Huddleston, Anne Swerlick, Val Greenfield

Status: In August 2004 Taxpayer Mr. Reed filed a petition for mandamus in the Supreme Court of Florida seeking a ruling that these legislative provisions are unconstitutional because they violate the single subject requirement of the Florida Constitution. The Supreme Court transferred the petition to the Circuit Court in Leon County in September 2004 DCF initiated settlement and the parties agreed to abate the case based on DCF's agreement that it does not intend to privatize eligibility determinations. During the 2005 legislative session, a bill to settle our law suit was passed repealing the legislative language challenged in this case. As a result, pursuant to the Stipulated Motion for Abeyance, within 10 days after sine die of the 2005 legislative session we notified the court that we dismissed this action.

3. Clark v. Department of Children and Family Services
DOAH Case Nos. 05-2104RP, 05-2105RP Consolidated
Division of Administrative Hearings

Number affected: potentially thousands

Summary: The Department of Children and Family Services (DCF) proposed two rules discussing its plan to post an interactive web-based application for services on DCF's site. This new electronic application, along with the standard paper application, purports to be available for use by the public in applying for DCF economic self-sufficiency programs such as food stamps, Medicaid Waiver, and cash assistance programs including TANF-funded Benefits such as Relative Caregiver and child-only Welfare Transition. Upon testing of the interactive web-based application (which is already posted and active on DCF's site), it became apparent that the public can not use it to apply for Medicaid Waiver, Relative Caregiver, or child-only Welfare Transition. This is because the application program forces the person filling-in the interactive screens to apply for a program for which they do not want to apply. In addition, the program forces the individual to supply non-mandatory information about race, ethnicity, and citizenship.

FLS Advocates: Cindy Huddleston, Anne Swerlick, Val Greenfield

Status: FLS filed two challenges to the proposed rules on behalf of an aunt, Ms. Clark, who tried to apply for Relative Caregiver and child-only TANF via computer, but was unable to do so because the program solicited inappropriate financial information from the aunt who was not applying for herself but rather only for her niece and nephews. Petitioner's Motion to Consolidate the two challenges was granted. Petitioner immediately thereafter served discovery and was approached by DCF about reaching a settlement. DCF filed an unopposed motion for protective

order allowing it to avoid responding to discovery requests pending further settlement negotiations.

PROGRAM/CLIENT EDUCATION

1. Alien Eligibility for Public Assistance

In February 2005 in Coral Gables, Florida, Valory Greenfield guest lectured on “Alien Eligibility for Public Benefits” for the Community Justice: Lawyering Skills and Ethics Workshop/Seminar” course at the University of Miami School of Law. This training was designed to familiarize the students with the immigration criteria satisfying eligibility for the major public assistance programs in this state (Food Stamps, Medicaid, Supplemental Security Income, and Temporary Assistance for Needy Families) and to provide the students with a very basic understanding of the what each program provides. The training gave the students the information they need to recognize different immigration statuses and discern whether their clients’ statuses confer eligibility for assistance. The training resulted in the production of written materials which are available on FLS’s web site at: <http://www.floridalegal.org/public1.htm> or <http://www.floridalegal.org/Alien%20Elig%20for%20Public%20benefits.pdf> .