

FLORIDA LEGAL SERVICES, INC.



DOCKET

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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 approximately 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 published proposed rules that will incorporate some of the current operating procedures, but that will also change many of the current policies and procedures.

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

Co-Counsel: FLS coordinated and encouraged a group of advocates to work on this extensive project.

Status: DCF published notice of rule promulgation in December, 2005, and conducted its public hearing on January 6, 2006. FLS provided written comments both prior and subsequent to the public hearing, which FLS staff attended. DCF incorporated many of FLS' comments into its rules, which it formally adopted on April 28, 2006.

Unless FLS learns of any harm to our client population by the adoption of these rules, this project has been completed.

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

Numbers Affected. Estimated to be approximately 5,000

Summary: Former foster youth between the ages of 18 and 23 may receive various services from DCF's "Independent Living" program, including the "Road to Independence Scholarship". The Department drafted policies and mandated they be followed by the contracted agencies that administer this program. However, these policies violate the implementing statute, § 409.1451, F.S., in that they do not properly assess the living needs of the benefit recipients, and cap the amount of benefits that can be received.

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

FLS Advocates: Deborah Schroth with Valory Greenfield and Cindy Huddleston

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

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

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

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

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

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

Status of both cases: After extensive discovery and negotiations, this case was settled in late April. DCF published its Notice of Change to the proposed rules, using negotiated language, and advocates expect those rules to be formally filed for adoption during July, 2006. While these rules are not perfect, they provide much better calculations for awarding Road to Independence Program benefits to former foster youth, and remove the departmental caps on the amount of assistance a former foster youth is eligible to receive from the other Independent Living programs. This is another project that has been completed.

4. *Juvenile Court Rules Committee*

Summary: The Juvenile Court Rules Committee is an appointed The 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 - Rules Committee member.

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. Unfortunately, FLS will be unable to continue its participation in this Rules Committee, effective July 1, 2006, for at least 3 years, due to the Bar's term limits on committee membership.

LEGISLATIVE ADVOCACY

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

Number affected: Thousands

Summary: Florida state colleges and universities charge a different tuition rate for Florida residents and non-Florida residents. For example, the University of Florida charges approximately \$3,000 for state resident students (in-state) and \$12,000 for non-Florida (out-of-state) residents. Though in-state tuition is stated as the rate for state resident students, many state resident students are excluded from this rate because of their immigrant status. Florida currently funds the primary and secondary education of state residents regardless of immigration status. Undocumented immigrant college students in Florida must pay out-of-state tuition to attend state colleges and universities, regardless of the fact that they attended and graduated from Florida high schools, or may have lived in Florida for much of their lives.

FLS advocates: Arthur Rosenberg and Dorene Barker

Status: Working with the Florida Immigrant Coalition and other advocacy groups, 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 2006 session was the fourth year these bills were introduced. In two previous sessions, they were passed by the Senate but died in the House before they came to the floor for a vote. In a third, it was passed by the House, only to die in the Senate. This session, unfortunately, this bill again did not receive legislative approval.

2. **HB 7173: Among other things, this bill amends the Independent Living Program.**

FLS Advocate: Deborah Schroth

Primary Advocate: Florida's Children First.

Summary: For the 2006 Legislative Session, FLS and Florida's Children First agreed that FCF would take the lead on children's legislative issues, with input from FLS and the other members of the Clearinghouse. FLS provided extensive comments on the various drafts of HB 7173 to Andrea Moore of FCF, most of which she was able to have amended into the bill.

FLS is especially proud of one particular section of this bill, concerning removing the disabilities of non-age of foster youth when they reach the age of 17, for the express purpose of being able to sign necessary documents so they will be able to enter into a leasehold arrangement immediately upon their 18th birthdays. Before July 1, the effective date of this bill, most landlords in Florida

refused to accept even a rental application from foster youth, until they reached the age of majority. Because affordable housing is scarce, this often meant a period of homelessness for these youth, until their applications cleared and a rental unit became available. FLS will now try to work with the Florida Association of Realtors to advise them of this law, and to help them in its implementation. FLS has also proposed a Rule of Juvenile Procedure Form Order which will hopefully be sent to the Florida Supreme Court for adoption after the Committee's September meeting.

LITIGATION

1. *Master Trust issues*

(Region II)

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

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

FLS Advocate: Deborah A. Schroth

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

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

During the past several months, DCF has begun delegating the administration of the master trust accounts to the community agencies that provide the foster care services. This delegation affects our ability to challenge the state's obligations through a state-wide class action. The current strategy is to file an action as soon as possible in DCF's District 4, upon exhausting available administrative remedies.

K.M. v. DCF (a DCF administrative fair hearing). FLS has been representing a foster youth who will age out of the system in July. One of her issues is that she is an SSI recipient, who had never been advised that she had the right to request DCF to set aside some or all of her SSI benefits for her use when she ages out of the system. FLS filed a request for a fee waiver, as provided by statute, asking for both a prospective and retrospective fee waiver, on the theory that she was entitled to a retroactive waiver consideration due to DCF's failure to notice her of this right. The fee waiver request, heard by an *ad hoc* committee of DCF District 4 staff, was denied. FLS appealed the denial, requesting DCF to send the issue to the Division of Administrative Hearings (DOAH). The Agency Clerk denied this request, but the specially appointed hearing officer, another district's general counsel, is considering FLS' motion for reconsideration of this particular issue.

The Agency Clerk, in the K.M. case, has determined that none of the due process notice issues could be raised administratively.

OTHER ADVOCACY

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

The National Governor's Association (NGA) brings together teams of experts from different states to participate in "best practices" policy academies. One of this year's NGA best practices academies concerns Youth Transitioning Out of Foster Care. DCF applied to participate in this academy, and chose Deborah Schroth as one of its core team members. The first full meeting of this policy academy will take place in July. The purpose of the Academy is to assist the participating states in developing policies and procedures that will improve the outcomes of youth transitioning out of foster care. DCF anticipates its core team members will develop new policies, and then work on legislative and administrative changes to implement those new policies.

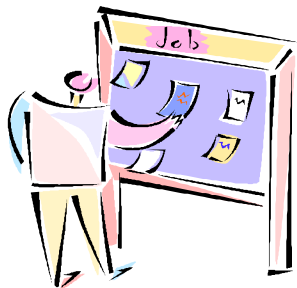
TRAINING

1. *Independent Living Fair Hearings.*

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

2. *McKinney-Vento Act and Victims of Disasters*

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



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 \$9.81) with health benefits, and if no health benefits are provided, \$9.81/hour (now \$11.23). The living wage is adjusted annually with the CPI. This was the first living wage ordinance passed in Florida and the southeastern United States. As provided for in the ordinance, a commission has been established to review the implementation and compliance with the ordinance. FLS has been appointed to a seat on the Miami-Dade Living Wage Board and improvement and revision to the Ordinance have been initiated and made through this Board. Thousands of workers have received pay increases of an average of \$2.50/hour.

FLS Advocate: Arthur Rosenberg

Status: FLS is now focusing on effective enforcement and enacting living wage ordinances in other municipalities. In April 2001, FLS secured the passage of a living wage ordinance in Miami Beach, which is substantially similar to Miami-Dade County's. In April 2006, the City of Miami passed a living wage ordinance requiring payment of \$10.58/hour if the employer provides health insurance and \$11.83 if they do not. The ordinance will take effect on October 1, 2006. A campaign to enact a living wage ordinance is ongoing in Coral Gables and one is beginning in Hialeah. In addition, FLS and the Coalition have been working with other community campaigns around the state to secure passage of living wage ordinances, serving as a resource and providing support and the expertise necessary to help with their campaigns. Orlando, Gainesville, and Broward have passed ordinances, and ongoing assistance is being provided in Jacksonville, Tampa and Orange County. The Coalition has continued to receive small grants to support its work.

In addition to these efforts, the Coalition worked with ACORN, in support of the effort to establish a state minimum wage through a constitutional amendment.

2. *Minimum Wage Constitutional Amendment*

Number effected: Thousands

Summary: 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.

FLS Advocates: Rob Williams, Greg Schell, Arthur Rosenberg

Status: During the 2006 legislative session, FLS worked again with ACORN to secure passage of a bill mandating specific notification requirements and jobsite postings to assure that workers are aware of the state's minimum wage requirements.

OTHER ADVOCACY

1. *Community Benefits Agreement Initiative -*

(Region VII)

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 practioners.

Since the strategic planning session the group has continued to meet with significant facilitation 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: We continue to track the implementation of the 2005 Article V Revision glitch bill. Although 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, there are reports of continued problems

with indigent access to the courts, and we will again seek the return of the full waiver of court fees for the poor in the 2007 Legislative session. There was no Article V bill in the Senate in the 2006 Legislature, so we were not able to return the waiver of fees this year.

FLS Advocates: Ann Perko, Kent Spuhler
Other Advocates: PDA Task force on Indigence

Status: All of the Regions in the state are gathering information on clerk policies and procedures, are filing for judicial review where necessary, and are reporting the status back to FLS so that we can inform the legislature of the problems in implementation of the filing fee bill and convince them to return to full waiver of fees.

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

Summary: This committee, whose members are primarily judges, is charged with making recommendations to the Florida Supreme Court on improving how the judicial system responds to families and children. Specifically, the committee is currently focused on implementing the unified family court, 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: . The committee completed its term on July 1, 2006 and made its final recommendations to the Court. So far, the new chief Justice, Fred Lewis, has not appointed a new 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.

OTHER ADVOCACY

1. *Domestic Violence Legal Hotline (FLS)*

Summary: FLS entered into a contract with the Florida Coalition Against Domestic Violence (FCADV) for a ninth year of funding for July 2006 through December 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 2,593 callers from January 1, 2004 through December 31, 2005. FLS continues to identify statewide and regional issues and is working with FCADV and local legal services programs to address these issues. FCADV has requested to be notified of clients who may wish to file an appeal, specifically victims who have lost custody battles. Hotline staff screen clients regarding these issues and make the appropriate referrals to FCADV. 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. Medicare Part D

Number affected: Over 300,000 Medicaid recipients

Summary: The Medicare Modernization Act of 2003 creates a new prescription drug program which went into effect January 1, 2006. This change has significant implications for low income aged and disabled Floridians, including over 300,000 dual eligibles-those individuals who have both Medicare and Florida Medicaid coverage. On January 1, 2006 these Medicaid recipients lost Medicaid coverage for prescriptions.

FLS Advocates: Anne Swerlick, Miriam Harmatz, Valory Greenfield

Status: After Part D was implemented, FLS has been identifying systemic issues and where state solutions are possible, we have been advocating with state officials for beneficiary relief. For example, when a number of Part D plans failed to provide the requisite transitional coverage for ongoing drug therapies, FLS and other advocates were successful in convincing Florida officials to provide Medicaid coverage to ensure that the recipient would have a period of transitional coverage. We also organized a training on Part D with a national expert shortly after Part D began. We have ongoing consultation with staff from the Center on Medicare Advocacy and the National Senior Citizens Law Center and we have been regularly sharing through the Health/Senior listserv information and advocacy advice relating to Part D implementation problems arising in Florida.

2. Florida Medicaid Reform

Number affected: Over 2 million current and future Medicaid beneficiaries

Summary: During the December 2005 special session, the Florida Legislature passed HB 3B authorizing the Agency for Health Care Administration (AHCA) to implement Medicaid reform pilot projects in Duval and Broward counties starting July 1, 2006.

FLS Advocates: Anne Swerlick, Miriam Harmatz, Dorene Barker

Status: Since passage of the new law, FLS has been meeting with the AHCA Secretary and various other AHCA officials to discuss numerous issues relating to the protection of Medicaid beneficiaries during implementation of these pilot projects. FLS also has provided extensive written comments and suggestions relating to the proposed Medicaid reform plan contract, the enrollment and dis-enrollment process, choice counseling, fair hearing rights and public access to data relating to the pilot projects. AHCA provided to FLS written clarification and assurances on some of the beneficiary protection issues we raised which is particularly helpful since the 2006 Legislature refused to make any changes to the Medicaid reform law passed in 2005.

Finally, we have been doing significant advocacy with AHCA regarding the prescription drug benefit under Medicaid reform. To date, the advocacy is largely aimed at attempting to gain information, through public records requests and a series of conference calls with state officials. We have identified a number of potential problems with the benefit, including the fact that some plans will be using a dollar amount cap and the actual cost of drugs is protected from public disclosure. Additionally, plans will have their own preferred drug lists and utilization requirement procedures. We are advocating for specific data collection that will enable us to determine if a plan is violating the federal Medicaid statute prescription coverage requirements and /or the terms of the *Hernandez* settlement. FLS recently wrote a letter to each member of the Florida Pharmaceutical and Therapeutics Committee (responsible for making recommendations to AHCA relating to their Medicaid prescription drug program) to alert them to these Medicaid reform issues. We have also been working with advocates in pilot counties to refer all beneficiaries with prescription access issues to the FLS Helpline.

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

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

Summary: In 2005, the Florida Legislature directed AHCA and the Department of Elder Affairs(DOEA) to submit a federal Medicaid waiver request in order to develop a capitated long term care Medicaid pilot project targeted towards Medicaid beneficiaries sixty and older. The intent is for the state to contract with managed care providers who would be responsible for delivering to seniors a continuum of Medicaid and Medicare funded services (from nursing home

to home and community-based care). The Legislature has directed that the pilot projects be implemented in the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Seminole, Brevard, Orange and Osceola. However, the pilots cannot be implemented without further legislative approval once the federal government approves the final terms of the proposals.

FLS Advocates: Anne Swerlick, Miriam Harmatz

Status: In January, 2006 AHCA submitted two Medicaid waiver proposals to the federal government (CMS). On February 24, 2006 FLS submitted detailed written comments to AHCA and CMS on these proposals. Among other items, FLS urged the agencies to proceed slowly and cautiously, particularly in light of all of the health care changes low income seniors are currently encountering with the Medicare Part D changes. To date, the federal government has not approved the state's proposals. FLS has been working with Florida AARP and the National Senior Citizen's Law Center on these issues.

LEGISLATIVE ADVOCACY

1. Medicaid Reform

Number affected: Over 2 million current and future Medicaid beneficiaries

Summary: During December 2005, the Legislature passed House Bill 3B which authorizes implementation of a Medicaid reform pilot program in five counties: Broward and Duval, starting July 1, 2006 and Nassau, Baker and Clay, starting July 1, 2007. This authorization is based upon a federal Medicaid waiver which allows the state to make radical changes in its Medicaid program, including a cap on federal funding, required enrollment in an HMO or other capitated plan, plan flexibility to vary the amount, duration and scope of services which are provided under the current Medicaid program and the option for families and individuals to "opt-out" of the program in order to enroll in a private insurance plan with premiums paid for by the state.

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

Status: During the 2006 session, FLS attended numerous meetings with legislators and their staff to advocate for a variety of changes to the Medicaid reform proposal, including greater protections for the SSI population, strengthening enrollment and dis-enrollment rights, preservation of fair hearing rights, stability of plan benefit packages and public access to information about the pilot projects. FLS also advocated against legislative authorization for implementation of the reform pilot statewide -a position which continued to be promoted throughout the 2006 session by AHCA and the Governor's Office. Throughout sessions FLS met with and shared information and analysis about these issues with other grassroots organizations working on these issues. Ultimately, the 2006 Legislature made no changes to the Medicaid reform law passed in 2005.

2. Medicaid Aged & Disabled Waiver

Number Affected: Over 3,000 disabled persons on a waiver waiting list

Summary: The Medicaid Aged & Disabled Waiver program provides home and community based services to persons at risk of institutionalization. Persons with disabilities who are under sixty are served under a separate component of this program which has fewer slots and funding available. There are currently over 3,000 of these individuals on a waiting list for services, many who have been on the waiting list for years.

FLS Advocates: Anne Swerlick

Co-Counsel: Andrea Costello, SLC; Liz Gonzales & Lissie Salazar, LSGMI

Status: LSGMI is representing an individual who is on the waiting list for this program. Their advocacy efforts on behalf of this individual were the subject of a recent article in the Miami Herald. The article led to the Chairman of the Florida Senate Children and Families Committee, Skip Campbell, initiating a legislative hearing about this program and inviting the Secretary of DCF, as well as staff of FLS and SLC to testify. At the hearing data were presented by all parties showing a substantial decrease in the number of persons serviced, a huge increase in the waiting list and funding which has remained stagnant since the inception of the program. The 2006 Legislature subsequently included a \$4.7 million increase in the program and budget proviso language specifying that the new funds must be used to serve individuals on the waiting list.

LITIGATION

1. *Hernandez et al. v. Medows*

Case No. 02-20964 CIV-Gold

U.S. District Court, Southern District of Florida

A. Enforcement of Settlement Agreement

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

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

Also, as part of the corrective actions agreed to by the Agency in December 2005, almost 60,000 letters were sent to Medicaid beneficiaries whose prescription were denied in July 2005 and who (because of pharmacy noncompliance) failed to receive the requisite notice. The Agency provide FLS, with the beneficiaries names and addresses and we also sent letters to these beneficiaries advising them to called he FLS Helpline if they had questions or problems. As a result of the FLS mailing to class members, hundreds of recipients contacted the Helpline. (See Other Advocacy).

FLS Advocates: Miriam Harmatz, Valory Greenfield, Anne Swerlick
Co-counsel: Bill Fraser (LAPBC), Jane Perkins (NHLP)

Status: The Agency's response regarding pharmacy noncompliance has been that they cannot enforce the *Hernandez* settlement *vis a viz* the pharmacies unless/until a rule was promulgated regarding the requisite sign and notices. The rule has now been promulgated and we are negotiating with the Agency regarding appropriate enforcement.

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

Number affected: 6,000

Summary: Under federal Medicaid law, states are required to cover prescription drugs for "medically accepted indications," which the statute defines as uses approved by the FDA (on label) or "off-label" uses that are supported by citation in one of three Congressionally specified compendia. In 2004 the legislature authorized AHCA to implement prior authorization of the off-label uses of the prescription drug Neurontin and its generic equivalent gabepentin. The drug is widely used to treat various forms of neuropathic pain and other intractable pain conditions and is also used for psychiatric disorders. The most current and detailed of the Congressionally specified compendia, DRUGDEX, cites over 40 therapeutic uses of the drug which AHCA is refusing to cover. Without exception AHCA is only covering the two FDA approved uses and two off-label uses. A number of clients and providers contacted FLS and field programs regarding the adverse effects of this policy. 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, Valory Greenfield
Co-counsel: Shawn Boehringer, Broward Legal Aid, Jennifer Wimberly, Legal Aid Society Orange County Bar Assoc; Jane Perkins, National Health Law Program; Neil Kodsi, Carlton Fields

Status: In February 2006, the District Court entered a final order granting Plaintiffs' Motion for Summary Judgment and Entering a Permanent Injunction ordering all of the relief requested in our complaint. AHCA appealed to the Eleventh Circuit. Plaintiffs/ Appellees brief is due July 14, 2006. In the meantime, the Agency is covering Gabapentin (the generic equivalent of Neurontin) and will also cover Neurontin with proper prior authorization. The Agency also notified providers of the change in policy.

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

Number affected: One child and his family

Summary: The client is a 9 year old child with a history of gross motor developmental delay, hyperactivity, speech delay and behavior disorder. He had been getting personal care assistance (PCA) for six hours per day, seven days per week. Pursuant to a desk review by the state's utilization reviewer, Maximus, the amount of PCA services provided to the child were determined not to be medically necessary and were cut to 4 hours per day. Advocates then asked the local AHCA program to provide the extra hours needed through the EPSDT program. AHCA failed to respond to the request. The mother filed an appeal of the reduction and attempted to join AHCA as a respondent. The motion to join AHCA was denied and the reduction of services was affirmed by the hearing officer.

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

The state subsequently filed a motion for rehearing and rehearing *en banc* and a motion to certify questions of great public importance to the Florida Supreme Court. The motions were fully briefed as of February 2, 2006 and to date there has been no response by the Court.

4. *M.H. v. Agency for Persons with Disabilities*
DCF Office of Appeal Hearings
Appeal 05F-1023

(Region II)

Number Affected: One individual

Summary: 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. 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. A full day hearing was held on November 1, 2005 which included testimony from the Petitioner, her treating physician and group home staff. On December 23, 2005 the hearing officer entered a Final Order granting the appeal and reversing the agency’s decision to reduce M.H’s services. However, subsequent to the final hearing and prior to issuance of the Final Order, Maixmus notified the Petitioner that it intended to reduce her residential habilitation hours proposed on her 2006 care plan. Petitioner timely filed another fair hearing request. In March 2006, shortly before another fair hearing was scheduled, the state agreed to withdraw its decision to reduce the Petitioner’s residential habilitation hours. However, since persons on the DD Waiver are required to have annual reviews of their care plans, the state’s ongoing efforts to reduce services, (even when the clients’ conditions and needs remain the same or increase) is highly disruptive to client care. This appears to be a recurring issue for many DD Waiver clients and FLS is continuing to research possible legal challenges.

5. *J.C. v. AHCA,*
DCF, Office of Appeal Hearings, Case No. 05F-2495

(Region I)

Number affected: one individuals

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

left unattended. Currently DOH has no rules for this Waiver program, but they have proposed rules which impose new service limits, including daily hourly limits for companion care services.

FLS Advocate: Anne Swerlick

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

Status: A Medicaid fair hearing request was filed, a hearing was held on October 30, 2005 and an adverse decision rendered on December 5, 2005. The decision turned on the hearing officer's conclusion that J.C. was using his companion care hours as respite care and respite care is not covered by the BSCIP waiver. A Notice of Appeal was filed with the First District Court of Appeal on December 30, 2005. Appellant's Initial Brief was filed on July 10, 2006.

TRAINING/PRESENTATIONS

1. Medicare Part D

In March 2006, FLS held a state wide training On Medicare Part D prescription drug issues and appeals. The training was offered on two different days in Central and South Florida. The training included an overview of the benefit with a national expert from the Center on Medicare Advocacy, and issues specific to Florida beneficiaries. The training also included interactive sessions and discussion of the role of pharmacy experts.

2. Medicaid Reform and Prescription Drug Assistance *(Region II)*

In May 2006, FLS held a training with advocates in Duval County, one of the sites of the Medicaid Reform Pilot. The training included an overview of Medicaid reform, and a training on the FLS Prescription Helpline.

3. Medicaid Reform and Prescription Drug Assistance *(Region VI)*

In June 2006, FLS held a similar training to the above with advocates in Broward County, the other site of the Medicaid Reform Pilot. In addition to providing an overview of Medicaid reform and prescription drug access, this training also included discussion of ADA issues and coordination with grass roots advocates.

4. 2006 Patient Advocate Fly-In & the MS Society Legislative Meeting

In March, 2006, FLS made a presentation to a diverse group of disability group representatives and other advocates meeting in Tallahassee during the legislative session. The presentation focused on Medicare, Medicaid, Dual Eligibles and the FLS Prescription Helpline. At a separate meeting

on the same day, FLS also presented on these topics and other legislative issues to the Florida MS Society.

OTHER ADVOCACY

1. Florida Prescription Access Helpline

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

Summary: In 2005, the legislature imposed significant new restrictions on Medicaid prescription drug access. As a result, tens of thousands of recipients were unable to get their prescriptions after the law was implemented July 1 2005. Moreover, recipients did not receive the due process they are entitled to under the Settlement Agreement in *Hernandez et al v. Medows*. In September, 2005, FLS established a toll-free Helpline dedicated to providing assistance to recipients facing problems getting Medicaid coverage for medically necessary medications. The Helpline has also been instrumental in providing data for enforcement of *Hernandez* (see Litigation Section) and in identifying clients for legislative advocacy.

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

Status: To date, the Helpline has provided counsel and advice to approximately 1500 recipients. Most of these clients were able to get their medication after getting advice and assistance from the Helpline staff. Approximately 30 recipients were referred to field programs throughout the state for further assistance with Medicaid fair hearings.

Given that over half of all Medicaid prescriptions were for dual eligible clients who are no longer eligible for Medicaid prescription coverage and who are now covered under Medicare Part D, the Helpline is also responding to calls from low income Floridians who now receive prescription coverage through Part D. The Helpline is gathering relevant data for national advocacy from these clients and providing information on how to change plans, obtain transitional coverage and appeal denials.

A number of systemic Medicaid and Medicare prescription issues have been identified including the failure on the part of the AHCA's pharmacy benefit manager to provide a clinical review of prior Medicaid authorization requests; more restrictive preferred drug lists used by Medicaid HMOs, problems with coordinating Medicare Part B and Part D drugs, Medicare coverage problems for off-label uses and Medicare co-payments for assisted living residents. It is anticipated that there will be significant prescription drug problems with Medicaid recipients in the Medicaid Reform pilot counties since they will all be in new plans, each of which may have a different preferred drug list, utilization review requirements and pharmacy benefit managers. FLS is working

with advocates in those counties to increase awareness of the FLS Helpline and prescription drug advocacy tools.

HOMELSS



ADMINISTRATIVE ADVOCACY

1. *Anti-homeless Ordinances*

(Regions II, III, IV, V, VII)

Number affected: Thousands

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

FLS Advocates: Arthur Rosenberg

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

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

(Regions II, III, VI, VII)

Numbers affected: Thousands

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

FLS Advocate: Arthur Rosenberg

Status: FLS is working with 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

FLS Advocate: Chuck Elsesser
Co-Counsel: Shawn Boehringer (LASBC)

Status: Case has been resolved with respect to lender. Proceeding to trial with respect to mortgage loan broker.

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

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

FLS Advocate: Chuck Elsesser

Status: The Court denied Defendants' Motion to Dismiss. Thereafter, Defendants agreed to perform Supplemental Environmental Assessment. We are awaiting results. See related case below.

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

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

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

Status: Defendants have filed a Motion to Dismiss, response is due in mid July.

5. *Argent Mortgage v. Jones, (Circuit Court - Broward County)* (Region VI)
Case No. 06-7113

Summary: Cross- Complaint and Third Party complaint in mortgage foreclosure case allege that client was fraudulently induced to sign a deed with a lease and option to repurchase agreement. The lease and option to purchase is a disguised mortgage which violates TILA and related statutes.

FLS Advocate: Chuck Elsesser

Co-Counsel: Shawn Boehringer (LASBC)

Status: Initial pleadings being served.

OTHER ADVOCACY

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

7th Ave Bus Terminal - 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, and is continuing the advocacy through the subsequent environmental process. The county provided a completed environmental assessment of the project and Florida Legal Services assisted the Coalition and LIFFT in researching and drafting a response to the assessment. USDOT requested additional information from the County.

Florida Legal Services is also assisting the Coalition with the development plans and with the 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).

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

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

FLS Advocate: Chuck Elsesser

Co-counsel: JoNel Newman, U of Miami School of Law

Status: The City Commission hearing is presently set for July 27, 2006

3. FarmWorker Association of Florida vs. FEMA (Region VI)

Administrative complaint filed with FEMA alleging that poor Hispanic victims of Wilma have received a different level of assistance from FEMA than people who are better off. This complaint focuses specifically on treatment of farmworkers who have seen abusive and disrespectful behavior by FEMA contractors. FLS and the collaboration are seeking to address this disparity.

FLS Advocate: Chuck Elsesser

Status: We are awaiting a response from FEMA

4. Community Benefits Coalition (Region VII)

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

FLS Advocate: Chuck Elsesser, Arthur Rosenberg

Status: We have drafted several potential ordinances which the coalition is currently considering.

5. 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 and LSGMI, together with private counsel, have participated throughout the City planning process and the submission of the Environmental Assessment Report to the State DCA. The DCA approved the Evaluation and Assessment Report, despite our input.

6. Long Term Disaster Housing Response Efforts (Regions V, VI, VII)

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

(A) Delray is not rebuilding the public housing Carver Estates project and there are many residents that have not been provided with relocation (other than vouchers).

(B) Pahokee's public housing lost 40 units but FEMA is not providing the residents with temporary replacement housing. FLS and the collaboration are focusing on FEMA's responsibilities to assist.

FLS Advocates: Chuck Elsesser
Co-counsel: Hurricane Wilma Disaster Response advocates

Status: This work is ongoing and responses to each issue is being developed separately.

7. *Ad Hoc Coalition re: Miami-Dade County Inclusionary Zoning* ***(Region VII)***

Summary: Miami-Dade County is developing an Inclusionary Housing Ordinance. The ordinance as initially drafted provided no benefit to poor households or low wage workers. FLS is assisting a number of organizations with advocacy to redirect the ordinance to provide assistance to our clients

FLS Advocates: Chuck Elsesser
Jaimie Ross, 1000 Friends of Florida

Status: FLS developed an information packet regarding Inclusionary Ordinances throughout the country. FLS participated in County hearings, arguing that the Ordinance provided no benefits for anyone making less than 140% of median income. The current proposal was withdrawn and will resurface in the fall.

8. *In Re: Rancho Margate Mobile Home Park* ***(Region VI)***

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

FLS Advocates: Chuck Elsesser
Janet Riley, Legal Aid Service of Broward County, Inc.
Jaimie Ross, 1000 Friends of Florida

Status: Comprehensive Plan change was passed at first reading and has been submitted to Department of Community Affairs.

9. Carol Young v. Miami Dade Housing Agency

(Region VII)

Summary: Carol Young is a relocatee from Scott Homes who was placed in a homeownership unit. Her payments for her mortgage, taxes and insurance greatly exceed 30% of her income. We are appealing her relocation benefits to insure that she does not pay more than 30% of her income in rent.

FLS Advocates: Chuck Elsesser
Jeff Hearne, Legal Services of Greater Miami, Inc.

Status: FLS and Legal Services of Greater Miami filed an appeal of the relocation benefit determination. We are awaiting the response.

10. FLABAR Affordable Housing Committee

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

FLS Advocates: Chuck Elsesser
Jaimie Ross, 1000 Friends of Florida

Status: Manual update is completed. Manual sections regarding protections for CLT homeowners was also converted into an article for the Florida Housing Coalition journal and is also being used as a training module by the Florida Housing Coalition.

11. Section 8 Waiting List

(Region VII)

Summary: We are assisting LSGMI with complaints regarding the opening of the Section 8 waiting list. Numerous clients had problems with the application process. County is refusing to provide any hearing process.

FLS Advocates: Chuck Elsesser
Co-counsel: Jeff Hearne

Status: FLS and LSGMI met with County PHA but they refused to make any adjustment. FLS and LSGMI are assessing possible next steps.

12. Section 8 One Strike Terminations

(Region VII)

Summary: We are assisting LSGMI in challenging several hundred terminations of Section 8 Housing Choice vouchers based on a cross check between the voucher households and criminal records. Section 8 vouchers appear to have been terminated based solely on arrest records without any corroborating evidence.

FLS Advocates: Chuck Elsesser

Co-counsel: Jeff Hearne

Status: FLS and LSGMI met with County PHA and they accepted our concerns and represented that they have restored all improperly terminated people to Section 8. We are in the process of doing a document review of all the terminated files to check the accuracy of the PHA's determinations.



IMMIGRATION

LITIGATION

1. FIAC v. DHS

05-20281-CIV-Jordan (*S.D. Fla.*)

(Region VII)

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: Plaintiffs received all documents requested and case has been settled.



MIGRANT FARMWORKER

ADMINISTRATIVE ADVOCACY

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

Number of Farmworkers Affected: 25,000 (statewide)

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

FLS Advocates: Greg Schell
Co-counsel: Andrew Turner, Southern Poverty Law Center

Status: The South Carolina worker's compensation review panel affirmed the hearing officer's determination that the accident was not compensable. Circuit court review will be sought.

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

Number of Farmworkers Affected: 250,000 (statewide)

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

FLS advocate: Rob Williams

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

3. *Post-hurricane housing project* ***(Regions V and VI)***

Number of Farmworkers Affected: 35,000 (DeSoto, Hardee, Polk, Lee, St. Luice, Indian River and Collier Counties)

Summary: In 2004 and 2005, several major hurricanes swept through the heart of Florida's agricultural region, 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 Hurricane Charley in 2004, the 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).

In its 2006 session, the Florida legislature appropriated funds for affordable farmworker housing, and the plans of the Design Group will be incorporated as part of this new housing program.

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: With minor modifications, AgJOBS was adopted as part of the comprehensive immigration legislation passed by the United States Senate in June, 2006. The Senate bill will be the subject of a conference with the House of Representatives, which in December, 2005 passed immigration legislation focused entirely on heightened enforcement of immigration restrictions. The Senate-House conference has yet to be scheduled.

2. *Florida farmworker legislation - 2006 Legislature*

Number of Farmworkers Affected: 300,000 (statewide)

Summary: During the 2006 session, the Florida legislature adopted several proposals developed with the assistance of FLS and other farmworker advocates. The legislation includes a requirement that vans transporting farmworkers be equipped with seat belts and added additional inspectors to enforce Florida's pesticide handling laws. The legislature also appropriated \$40 million for construction of affordable housing for farmworkers.

FLS Advocate: Rob Williams

Status: The farmworker legislation passed with no opposition, in part because of the work by the MFJP and other farmworker advocates with the Joint Legislative Commission on Migrant and Seasonal Farmworkers. The funds for farmworker housing represent an unprecedented commitment by Florida to providing decent accommodations for the state's migrant workers.

LITIGATION

1. *Renteria-Marin, et al. v. Ag-Mart Produce, Inc., et al.* (Region II)
Case No. 3:01-cv-1392-HLA-MMH
U.S. District Court, Middle District of Florida, Jacksonville Division

Perez-Alvino, et al. v. Ag-Mart Produce, Inc. (Region II)
Case No. 3:02-cv-627-HLA-MMH
U.S. District Court, Middle District of Florida, Jacksonville Division

Number of Farmworkers Affected: 2400 (Hamilton County)

Summary: Consolidated class action suits by 19 migrant workers against the nation's largest producer of the newly-developed "grape tomato" arising out of the 2001 and 2002 harvests near Jennings, Florida. 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 in May, 2004. At the conclusion of the trial, the court directed the parties to mediation. The mediation proved unsuccessful. The Court heard additional closing arguments in the case in June, 2006.

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

Number of Farmworkers Affected: 3600 (Hamilton County)

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

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

Status: A hearing on the plaintiffs' motion for class certification is scheduled for September, 2006. Discovery has commenced, with trial scheduled for June, 2007.

3. ***Mitchell, et al. v. Osceola Farms Co.*** (Region V)
Case No. 05-80825-Civ-Cohn
U.S. District Court, Southern District of Florida, West Palm Beach Division

Number of Farmworkers Affected: 1500 (Palm Beach County)

Summary: West Indian canecutters admitted under the H-2A program challenge the payment practices of their employer during the sugar cane harvests between October, 1987 and March, 1993. The workers contend that Osceola failed to pay them the adverse effect wage rate for their work and systematically falsified payroll records to conceal the underpayments. The workers also argue that the terms of their employment contracts required Osceola to pay a much higher piece-rate than actually offered. After a class action brought in state court was decertified in June, 2005, a total of 1048 cane cutters refiled the class claims in federal court, invoking federal

jurisdiction under the newly-enacted Class Action Fairness Act as well as general federal question jurisdiction under 28 U.S.C. § 1331.

FLS Advocates: Greg Schell, Margaret Hennessy and Beth Krzyzkowski
Co-Counsel: David L. Gorman, North Palm Beach
James K. Green, West Palm Beach

Status: In a precedent-setting decision, the district court held that it the workers' claims could proceed under the court's jurisdiction over federal questions. 408 F.Supp.2d 1275 (S.D. Fla. 2005). A total of 1605 former cane cutters have joined the case as plaintiffs. The parties have engaged in extensive discovery, much of it in the West Indies. Trial is scheduled for July, 2007.

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

Number of Farmworkers Affected: 200 (Madison County)

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

FLS Advocates: Greg Schell and Manuel Avalos

Status: After certification of the class by the district court, the parties settled the case through mediation. Under the settlement, the class members will share in a monetary settlement. In addition, the defendants have agreed to a comprehensive and detailed injunction which is designed to insure future compliance with applicable provisions of the AWPA and the Florida migrant labor housing law. The district court approved the settlement in July, 2005. When the defendants continued to violate the AWPA following entry of the court's final order, a motion for contempt was filed in December, 2005. The United States Department of Labor has also filed suit against the Kendas, based in large part on the testimony of MFJP clients, with a trial scheduled for the fall of 2006.

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

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

Summary: Action by 14 migrant workers who were employed in the potato harvests in Florida or Maryland as members of a crew headed by farm labor contractor Ron Uzzle. The workers were housed in substandard conditions and paid far less than the minimum wage for their work. Large

deductions were made from the workers' wages for meals, debts and pay advances, with usurious interest rates charged for loans. When one of the plaintiffs complained regarding his meager wages, he was beaten by the labor contractor's henchmen. The plaintiffs contend that these practices violated the AWPA, the FLSA and the Racketeer Influenced and Corrupt Organizations Act ("RICO").

FLS Advocate: Greg Schell
Lead Counsel: Lisa Butler, Florida Rural Legal Services, Inc.

Status: The court denied the growers' motion to dismiss in December, 2005. Trial is set for the summer of 2006. A second case, involving four farmworkers, has been filed and is proceeding in tandem with the initial suit, *Calicutt v. Picolata Produce Farms, Inc.*, No. 3:05-cv-559 (M.D. Fla.)

6. *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

Status: The district court certified a class of all H-2A workers employed by the defendants over a four year period. After the defendants failed to comply with several discovery orders, the district court entered a default against them as a sanction. In March, 2006, the district court entered a default judgment for \$136,000. In its detailed order granting the default judgment, the district court addressed several questions of first impression. Of particular importance was the district court's ruling that in cases involving guest workers, expenses incurred by the workers which primarily benefit the employer cannot reduce employees' first week wages below the higher wage applicable to guest workers. 2006 WL 643297 (M.D. Fla. 2006).

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

Number of Farmworkers Affected: 500 (DeSoto County)

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

FLS Advocates: Greg Schell and Manuel Avalos

Status: The plaintiffs have moved for class certification. Discovery is underway.

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

Number of Farmworkers Affected: 80 (Okeechobee County)

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

FLS Advocates: Greg Schell

Status: After one of the defendants pled guilty to federal charges of cocaine trafficking, the case was settled, with the 18 plaintiffs receiving the remaining assets of the now defunct harvesting corporation, along with a monetary payment.

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

Number of Farmworkers Affected: 300 (Collier County)

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

FLS Advocate: Greg Schell

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

Co-Counsel: Carla Von Greiff, EEOC

Status: The court granted the MFJP’s motion to intervene on behalf of its four clients, who filed the original charges that prompted the EEOC to file suit. The MFJP serves as local counsel for the four plaintiffs.

10. *Castrejon, et al. v. Delray Plants, Inc.* (Region V)
Case No. 05-80554-Civ-Paine
U.S. District Court, Southern District of Florida, West Palm Beach Division

Number of Farmworkers Affected: 1500 (Palm Beach County)

Summary: Class action by employees of a large wholesale nursery seek to recover overtime wages. The Plaintiffs contend that the employer is not entitled to the agricultural exemption to the overtime provisions of the Fair Labor Standards Act because it handles nursery stock from other growers.

FLS Advocate: Greg Schell
Co-Counsel: Richard B. Celler, private attorney in Fort Lauderdale

Status: Prior to class certification, the parties settled the claims of the three named plaintiffs.

11. *Avila-Gonzalez v. Putnal’s Premium Pinestraw, Inc.* (Region II)
Case No. 1:05cv198-MP/AK
U.S. District Court, Northern District of Florida, Gainesville Division

Number of Farmworkers Affected: 80 (Alachua County)

Summary: Class action by H-2B pine straw workers employed near Mayo in 2004. The workers were paid less than the prevailing wage for their work, were transported in uninsured vehicles, housed in substandard trailers and were denied most of the substantive benefits of the AWPA.

FLS Advocates: Greg Schell

Status: A settlement has been reached, under which the named plaintiff will receive damages and the defendant employer will enter into a consent injunction to ensure compliance with the AWPA in the future.

12. *Zamor v. Sylvio C. Adolphe, et al.* (Region VII)
Case No. 01-5100-Civ-Altonaga
U.S. District Court, Southern District of Florida, Miami Division

Number of Farmworkers Affected: 200 (Miami-Dade County)

Summary: Class action by seasonal farmworkers employed during the 1999-2000 bean harvest near Homestead. The workers were paid less than the minimum wage for their work and were transported in uninsured vehicles. The farm labor contractor failed to pay to the government most of the Social Security taxes withheld from the workers' wages.

FLS Advocate: Greg Schell

Status: A settlement was reached and approved by the district court in April, 2004. Under the settlement, the farm labor contractor was required to file W-2 forms to credit the crew members' individual Social Security earnings accounts with their work during the 1999-2000 harvest. The court held the defendant in contempt for his failure to file the W-2 forms and ordered him arrested by the United States Marshal. Shortly thereafter, the W-2 forms were filed and the contempt order vacated.

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

Number of Farmworkers Affected: 1 (Highlands County)

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

FLS Advocate: Greg Schell

Status: Discovery is underway, with trial scheduled in November, 2006.

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

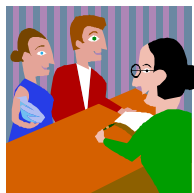
Number of Farmworkers Affected: 200 (Highlands County)

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

FLS Advocates: Greg Schell and Raul Barrera

Status: Discovery is underway. The Plaintiff has moved to join as a co-defendant the harvesting company that employed the defendant.

PUBLIC BENEFITS



ADMINISTRATIVE ADVOCACY

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

Number affected: Potentially thousands

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

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

Status: Based on significant feedback from advocates in the field as well as a survey of existing case law, law review articles, and studies, FLS prepared extensive written comments and suggested amendments to the hearing rules which essentially set forth that in-person hearings should be granted for good cause over the objections of any party. AWI met to consider the in-person hearing inadequacies we brought to their attention. The agency indicated that: it had conducted a training with its hearing officers to direct them once again, as it has in the past, to make adjustments, including in-person hearings, on a case-by-case basis to ensure that all hearings provide due process; it would continue to monitor of the use of in-person hearings; it wanted FLS to encourage advocates to request rulings from hearing officers on due process issues including in-person hearings or other hearing accommodation; and the Unemployment Appeals Council would examine the administrative rules for hearings to determine if additional changes are needed to ensure due process. FLS recently re-contacted AWI to inquire about the status of contemplated amendments to the phone hearing process, if any. We await their response.

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

Number affected: Potentially Thousands

Summary: The law requires that food stamp recipients have the right to have DCF consider his/her request to “compromise” his/her food stamp overpayment if the economic circumstances of the household indicate that it is not likely the claimant would be able to repay the overpayment within three years. Notwithstanding these provisions, DCF is limiting the circumstances under which a “compromise” will be considered.

FLS Advocates: Cindy Huddleston and Valory Greenfield

Co-Counsel: Food Stamp Compromise Task Force

Status: After several years of advocacy, with the Food Stamp Compromise Task Force making comments on proposed rules and participating in a negotiated rule making process, DCF published a proposed rule that limits the use of compromise to resolve pending litigation or bankruptcy proceedings. FLS requested public records and did research to determine whether the proposed rule adequately satisfies APA mandates and whether this rule is subject to challenge upon this or any other grounds. Research revealed that the form of the rule published in FAW was not the form codified in FAC. Indeed, the final rule adopted permits consideration of pending litigation and bankruptcy proceedings in the determination of whether to grant compromise but, by its terms, does not restrict compromise to those situations. Two new compromise cases from the field have recently come to our attention and we are providing technical support to the advocates involved and we are helping to lay the groundwork in the record below for appeals and/or rule challenges should an adverse fair hearing result in either of these cases. We will monitor both these cases to ensure that the Department properly implements the revised compromise rule.

3. *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 because Legal Services has fought long and hard for many of the existing procedures 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 has not provided it to FLS. 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 prior dockets. 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. Recently, FLS testified before USDA-Food and Nutrition Services officials in Miami and Tallahassee concerning modernization’s harm to clients. The testimony highlighted client complaints about lack of access to human help because of mass office closures as DCF increasingly relies on technology to carry-out its modernization plans.

Notwithstanding adverse experiences initially reported by our clients when local offices started closing, the Florida modernization technology model is being touted throughout the nation by the federal government as a stellar example of efficiency and customer service. In late April 2006, FLS sent questionnaires to every legal aid and legal service program in the state. By the close of this reporting period, programs had begun sending completed questionnaires back to FLS.

FLS has sent both a state public records act request and a federal public disclosure request based on information about foreign outsourcing by DCF contained in a federal Government Accountability Office (GAO) report “Offshoring in Six Human Services Programs.”

4. *Planning for Disaster-related Public Benefits*

Number affected: Millions

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

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: DCF contacted FLS to solicit our feedback on application documents for the (potential) 2006 disaster food stamp program. DCF accepted FLS’ suggestions to: bold the text stating that SSNs were not necessary; collapse three individual eligibility criteria questions into one question framed in the alternative; and add a parenthetical explaining how liberal identity verification can be. DCF rejected our suggestion to add “without regard to immigration status” to its anti-

discrimination statement at the top of the application which describes that applicants will be considered “without regard to race, color, sex, disability, religion, national origin or political belief.” We additionally suggested that DCF make applications for disaster benefits available through the Internet as part of its ACCESS Florida economic self-sufficiency computer program. DCF responded that it was studying whether it could implement “pre-registration” for disaster benefits.

5. *APA and Termination of FEMA Shelter Benefits*

Number affected: Thousands

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

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

FLS Advocates: Valory Greenfield and Cindy Huddleston

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

Status: Counsel drafted a Freedom of Information Act (FOIA) request to FEMA Headquarters in D.C. The agency responded to this request by determining that FLS’ request would not be in the public interest. FEMA determined that FLS had neither the intent nor ability to effectively disseminate the information requested to the public. On this basis, FEMA denied FLS’ request for waiver of the fee for searching and copying the records. Instead FEMA determined that FLS’ request fell into the “commercial” category and would be billed at the highest rate. FEMA estimated that it would well over \$250 to process FLS’ request which would be payable in advance. FEMA asked FLS to narrow the scope of its request in order to lower the fee that would be due. FEMA notified FLS in its response that its determination is appealable.

Rather than appeal, counsel gathered data and redrafted the FOIA in order to better demonstrate that FLS has the ability and intent to disseminate the requested information to the public and that said dissemination will enhance the public's understanding of the information to a significant extent. The revised FOIA was sent in mid-June. Counsel intend to review the pleadings in the class action case Watson et al. v. FEMA et al., Civil Action No. H-06-1709, U.S. D.C., Southern Dist. Texas, Houston Div. (Order on Plaintiffs' Request for Temporary Restraining Order, May 30, 2006) in order to determine how Florida disaster victims experiences are affected by this lawsuit filed on behalf of Katrina and Rita victims who are being terminated from FEMA's Section 403 housing and evaluated for Temporary Housing Assistance under 42 U.S.C. 5174 (Section 408).

6. *Ability to Self-refer to the Relative Caregiver Program*

Number affected: thousands

Summary: In April DCF proposed to delete language in a rule (65A-1.205) which incorporated the form (CF-ES 2305, Request for Eligibility Consideration) with which relatives indicate a desire to apply for Relative Caregiver benefits. Forms such as this one must be incorporated into rules in order to be considered valid. It is important for family members caring for court-ordered dependent children to be able to apply for Relative Caregiver benefits because these benefits are higher than the TANF-funded cash assistance benefits these relatives would otherwise get. The form itself came about as part of the settlement of the FLS DOAH case, Wright v. DCF, challenging DCF's non-rule policy prohibiting relatives from self-referring to the Relative Caregiver program. The Wright settlement also resulted in the inclusion of language in DCF's online ESS Program and Policy Manual clarifying that relatives can self-refer to this program.

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: Negotiations with DCF resulted in the Department's commitment to incorporate the form into another rule which it then officially proposed to do in a June 2005 announcement of a rule development workshop. Nevertheless, in September the Department withdrew its proposed April amendment which would have deleted the reference to the form in rule 65A-1.205. Notwithstanding the restoration of the form into one rule, in March 2006 the Department proceeded with incorporating the form at issue into the rule (65A-4.208) it had "work-shopped" in June 2005. FLS participated in a hearing on this proposed rule at which we suggested that the paper application contain a check-off box for the Relative Caregiver program and that applicants for RC be able to self-refer using the eligibility consideration form, the Internet application, or the paper application. DCF agreed to both these changes and published an April 2006 Notice of Change to the proposed rule. (65A-4.208). Now, as the result of the Clark litigation, enforcement of the Wright litigation settlement, and our participation in several related rule-making proceedings, the ESS paper application (as well as the Internet application) permit a relative to self-refer to the RC program using the application itself as an alternative to the Request for Eligibility Consideration Form (which depended upon the worker to give the form to the applicant).

In the process of examining the Department's compliance with the Wright settlement, we discovered that it had deleted the agreed upon self-referral language from its on-line Manual. FLS contacted DCF in June 2006 to remind them of the Wright settlement obligations. DCF responded that the omission manual would be addressed in the July 2006 update to the on-line ESS Manual.

In December 2005 the Family Safety Division of the Department proposed a new rule on the Relative Caregiver program (65C-28.008) which sets out the entire application process, clarifies timetables for processing activities, and delineates responsible parties among the various DCF units involved. FLS submitted extensive written comments on the rule, including comments concerning the self-referral process, and asked to testify at the rule hearing. The rule was adopted with changes in May 2006. It contains language codifying the right to self-refer. In addition, a majority of FLS' other comments were incorporated into the final version of the rule including specification of timetables and the means (in writing on a prescribed form) for notice of referrals and determinations between the Family Safety and ESS branches of DCF and between DCF and the relative caregiver

LITIGATION

- 1. 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 regarding 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. In negotiations, DCF agreed to address all

problems with the URL application raised by the Clark case no later than the beginning of February, barring any unforeseen complications beyond their control. Subsequently, the court granted the parties' joint stipulated motion for abeyance until February 1, 2006. The motion included DCF's agreement to process the client's individual claim for ongoing and retroactive benefits in the interim.

In February 2006, DCF calculated Petitioner Clark's eligibility for Relative Caregiver benefits including her retroactive eligibility back to 2003 when she first applied. The client was issued in excess of \$13,000 in cash assistance. By late April 2006, DCF completed technical operational changes to its URL Internet Application program which addressed the allegations raised by the Clark petition. Further, the Department finalized amendments to the rule (65A-4.208) properly incorporating by reference Form 2353, the ACCESS Florida Internet application. While this rule change was a direct result of the Clark litigation, additional negotiations between the parties resulted in the rule not only properly incorporating the URL ACCESS Florida application but also incorporating the Request for RC Eligibility Consideration form 2305 (also incorporated in 65A-1.205). Finally, these additional negotiations resulted in codification of text concerning the ability to self-refer to the RC program using forms 2353 (ACCESS Internet application), 2305(RC Eligibility Consideration Request), OR 2337 ((the paper application with a check-off box for RC). Because all matters were resolved, FLS moved to dismiss. DOAH closed the file on April 25, 2006.

2. Grau v. Department of Children and Family Services

DOAH Case Nos.

Division of Administrative Hearings

Number affected: potentially thousands

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

S.G. is a mentally retarded and mentally ill young man who applied to participate in the Developmental Disabilities Home and Community Based Services Medicaid-Waiver Program. The Agency for Persons with Disabilities, part of DCF, denied his application based on his lack of eligibility, specifically not having an IQ demonstrating mental retardation. At hearing, he attempted to submit documentary medical evidence from his physician and testimony from his case worker and the supervisory case manager concerning his IQ. The hearing officer segregated this

evidence and stated on the record that it could not be considered because it post-dated the date the agency acted – it had not been part of the agency’s denial determination – and the hearing officer was restricted to only looking at whether the agency’s action was correct at the time it was taken (i.e. based on the information the agency had at that time). S.G. was not represented at his hearing but obtained counsel, the Coalition for Independent Living Options (CILO), to appeal the adverse Final Order to the 4th District Court of Appeal.

FLS Advocates: Cindy Huddleston and Val Greenfield

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

Status: In late May 2006 FLS and co-counsel filed a Petition to Challenge the Invalidity of Rule 65-2.056(3) as well as requests for admissions and interrogatories. DCF counsel contacted us and offered to delete the phrase “at the time the action was taken” from Rule 65-2.056(3). By mid-June DCF sent a Notice of Proposed Rule Development to Florida Administrative Weekly for publication. The parties filed a joint motion for continuance of the final hearing and postponement of discovery pending continuation of good faith rule-making. This motion was granted. The appeal of the adverse fair hearing decision is pending in the 4th DCA and is being handled by Ms. Yadoff, co-counsel in the rule challenge.