

FLORIDA LEGAL SERVICES, INC.



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1. *Gadsden Saves Project*

(Region I)

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

Summary: Legal Services of North Florida coordinated the creation of a program in Gadsden County called “Gadsden Saves” beginning in May 2001. The project is modeled on “Cleveland Saves,” a pilot program of the Consumer Federation of America to encourage persons to establish and regularly contribute to savings accounts, particularly those without accounts at financial institutions. The program currently receives modest grants from CFA and operates with a volunteer director and a board. LSNF is no longer involved.

FLS Advocate: Alice Vickers

Status: Gadsden Saves continues to exist but has a small group of clients. The board seeks members who can generate more clients. LSNF may provide some bridge to clients in the future.

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.

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.

Status: The Independent Living Program issues are currently in the forefront of legal advocacy and litigation for older foster children, and foster children who have aged out of the system. DCF finally implemented the Needs Assessment process in late spring, causing the vast majority of Scholarship recipients to see a decrease in their monthly scholarship payment. Advocates are representing these youth in administrative fair hearings, and have filed an APA challenge asserting that these policies constitute an un-promulgate rule. This case is set for trial April 4, 2006.

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.

Status: In response to the 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 files this APA challenge to the proposed rule, asserting that the proposed rule is an invalid exercise of delegated legislative authority. Trial is scheduled for February 14 - 16, 2006, consolidated with a similar challenge filed by the Florida Coalition for Children, Inc., the coalition of community-based care agencies that administer the Independent Living Programs throughout the state.

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.

LEGISLATIVE ADVOCACY

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

Number affected: Thousands

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

FLS advocates: Arthur Rosenberg and Dorene Barker

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

LITIGATION

1. ***In Re: A.S.*: 909 So. 2d 524 (Fla. 1st DCA 2005). Parental Notification. (Region II)**

FLS Advocate: Deborah Schroth

Co-Counsel: Leslie Goller, Terrel Hogan Law Firm; Becky Steele, ACLU.

Summary: Subsequent to an amendment to the Florida Constitution, the Florida Legislature required that a doctor who is asked to perform an abortion on an unemancipated minor notify her parents 48 hours in advance of the procedure. The law permits the young woman to petition a court to waive this parental notification requirement. Immediately prior to the July 1, 2005 effective date of this law, the Florida Supreme Court promulgated procedural rules governing parental notification waiver actions.

Status: A.S. petitioned the Circuit Court in Duval County (Fourth Judicial Circuit) for a judicial waiver of the parental notice requirement. The trial court failed to comply with either the procedural rules or the relevant statutes in reaching its decision to dismiss the action, violating the woman's rights to confidentiality and to an expedited final order. The 1st District Court of Appeal determined that the petition of A.S. was "deemed granted" by operation of law. *In Re A.S.* is the first published appellate decision interpreting the parental notification law in Florida.

2. **McKinney-Vento Act Litigation against the Leon County School District. (Region I)**

Numbers Affected: Unknown.

FLS Advocate: Deborah Schroth

Co-Counsel: Tara Rosenblum and Scott Manion, Legal Services of North Florida, Inc.

Summary: The Leon County School Board promulgated two overlapping policies concerning "unaccompanied" students classified as homeless and staying with a non-custodial adult. The Leon County school system prioritized these policies, which violated the rights of students temporarily living with family or other adults as a result of their parents homelessness. Despite both federal and state laws to the contrary, the school system required the informal and temporary custodian of the homeless students to file a court action seeking custody before enrolling these students in school.

Status: Legal Services of North Florida interviewed a number of informal custodians facing this illegal requirement at the commencement of the 2005-2006 school year. Advocates drafted a complaint, and discussed the imminent litigation with the School Board's legal counsel. The School Superintendent immediately implemented corrective action requiring all homeless students to be enrolled in school without any seeking their legal custody. Legal Services of North Florida subsequently participated in the process to rewrite the policies to eliminate any conflicts with the requirements of the McKinney-Vento Act and implementing state law.

2. *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

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.

OTHER ADVOCACY

1. *Psychotropic Medication of Foster Children*

Numbers affected: Several thousand foster children.

Summary: Foster children are more likely than children in the general population to receive mind and behavior-altering medications. While this is to be expected, because these children have been subjected to abuse and neglect, it is also believed that these children are grossly over-

medicated to placate their foster placements.

FLS Advocate: Deborah Schroth

Status: The 2005 Legislature passed SB 1090, creating requirements for medical documentation concerning prescribed chemical treatment of foster children, and protecting the rights of both parents and children to participate in the court’s decision-making process concerning medication. To implement these protections, FLS drafted Rule 8.355, Florida Rules of Juvenile Procedure, and submitted this draft to the Juvenile Court Rules Committee. The rule further defines the processes to be followed whenever the department seeks court authorization for the administration of psychotropic medications of any foster child. This rule, Rule 8.355, was adopted by the Florida Supreme Court on November 17, 2005.

TRAINING

1. *Independent Living Fair Hearings.*

FLS has begun to help individual advocates, primarily through technical assistance, on requesting and conducting fair hearings for former foster youth who are substantially affected by eligibility or payment decisions for any of the post-18 Independent Living programs. FLS conducted a training for staff of Jacksonville Area Legal Aid, Inc. in May. FLS hopes there will be enough interest in this area to create a task force on this issue, and will then offer training to task force members. This work is interesting because it combines elements of children’s advocacy and public benefits advocacy. FLS has continued to provide technical assistance to advocates involved in these administrative hearings.



EMPLOYMENT

LEGISLATIVE ADVOCACY

1. *Living Wage Ordinances Around the State*

Number Affected: Thousands

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

FLS Advocate: Arthur Rosenberg

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

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

2. *Minimum Wage Constitutional Amendment*

Number effected: Thousands

FLS Advocates: Rob Williams, Greg Schell, Arthur Rosenberg

FLS was part of a coalition led by ACORN that successfully secured the passage of a constitutional amendment on November 2, 2004 establishing the minimum wage in Florida at \$6.15/hour, \$1 more than the federally mandated minimum wage. It was passed with overwhelming public support. During the 2005 legislative session, FLS worked with ACORN

and other advocates to deal with bills introduced to implement the minimum wage amendment, but which would have in fact hindered the fair and effective implementation of the minimum wage. A legislative compromise was reached, but no implementation bill was passed by the legislature. The new minimum wage went into effect May 2, 2005. FLS has been, and continues to, work with ACORN to educate workers and the community about the law and to assure effective implementation and compliance.

3. *Amendments to the State Labor Pool Act*

Number affected: Thousands

FLS Advocates: Dorene Barker and Arthur Rosenberg

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

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

OTHER ADVOCACY

1. *Community Benefits Agreement Initiative - (Region VII)*

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

FLS Advocate: Charles Elsesser, Arthur Rosenberg

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

Since the strategic planning session the group has continued to meet 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: With leadership from Representative Simmons and Senator Smith, HB 1935, the 2005 Article V Revision glitch bill, passed and was signed by the Governor. This legislation establishes a more specific and more fair indigence determination standard. The bill also generally limits payment plans to 2% of the persons net monthly income. Also, importantly, the bill clarifies that an indigent cannot be denied access to the court and the services of the court because of failure to pay on the payment plan. There are reports of continued problems with indigent access to the courts, and we will seek the return of the full waiver of court fees for the poor.

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: Chief Justice Pariente appointed a new committee in July 2004 for a two year period and the FLS executive director was again appointed to serve on the committee. The committee developed recommendations for consideration by the Florida Supreme Court to assist in implementing the Unified Family Court: 1) the need for one administrative family law judge; 2) "one family one judge"; 3) clarification of the elements of unified family court; and 4) coordination of unified family court cases with non-family law cases involving the same family.

3. *Parenting Coordination Legislation*

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

FLS Advocate: Kent Spuhler

Status: After many discussions and drafts, the stakeholder group concluded that a consensus could not be reached on legislation for 2006 so the group has recommended that no parenting coordination legislation be filed for the 2006 legislative session. The group has issued a report with a summary of the group's efforts and the issues regarding consent, confidentiality and affordability that could not be resolved.

OTHER ADVOCACY

1. *Domestic Violence Legal Hotline (FLS)*

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

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

Status: The legal hotline served 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. MEDS-AD Program

Number Affected: 125,000 Medicaid beneficiaries

Summary: For over 15 years Florida's Medicaid program has included coverage for low income aged and disabled persons under the "MEDS-AD" program. Prior to 1992, the income limit for this program was 100% of the federal poverty level ("FPL"). In 1992, the income limit was reduced to 90% of the FPL and in 2002 this limit was again reduced to 88% of the FPL. During the 2005 legislative session, a bill was passed which completely eliminated this program effective January 1, 2006. This affected about 125,000 Medicaid recipients statewide. However, the bill authorized the state to pursue a "MEDS-AD" Waiver program which would continue to provide coverage to persons in nursing homes, enrollees in home and community based waiver programs and persons without Medicare coverage.

FLS Advocates: Miriam Harmatz & Anne Swerlick, Dorene Barker

Status: After the 2005 session, FLS staff had multiple contacts with Medicaid agency staff, providers and legislators to advocate for timely implementation of the MEDS-AD waiver program. This was necessary to ensure no disruption in coverage for those groups included in the new waiver program. FLS advocated for a prompt submission of the waiver application by the Agency for Health Care Administration (“AHCA”) to the federal government in order to get approval of the waiver prior to January 1, 2006. FLS also obtained copies and reviewed the waiver application and terms and conditions and made written comments and recommendations to AHCA and the Department of Children and Families (“DCF”) (the agency which makes Medicaid eligibility determinations) on the proposed notices to be sent to affected individuals. FLS provided information and technical assistance to local legal aid programs, provider groups and other health and human services organizations on the new waiver program and appeal rights for beneficiaries improperly terminated from Medicaid coverage. FLS also worked with the director of an assisted living facility (“ALF”) for persons with severe mental illness to obtain clarification from AHCA that persons residing in ALFs which are licensed to provide assistive care services would continue to be Medicaid eligible under the new MEDS-AD Waiver program.

2. 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: Under the new Medicare law, during the summer and fall of 2005 the federal government was supposed to automatically enroll dual eligibles into a low income subsidy (LIS) program which covers the Part D premium and coinsurance. Further, dual eligibles who did not pick a Part D plan were supposed to be automatically enrolled in a Part D plan prior to January 1, 2006. To help determine whether there were any problems with the automatic enrollment process, FLS staff contacted about 25 medically needy individuals known to FLS through earlier advocacy work. Some of these individuals had not received notification that they were enrolled in the LIS or any Part D plan. FLS contacted AHCA to determine if the information about these individuals’ dual status had been properly transmitted to the federal government. FLS followed up with these individuals to ensure that they were determined eligible for the LIS and enrolled in a plan prior to January 1, 2006. FLS staff also sent certified letters to all of the “benchmark” Part D plans (those plans enrolling persons eligible for the LIS) requesting their formularies, exception procedures and transition plans so we could share this information with local programs and other advocates. FLS has been in 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.

LEGISLATIVE ADVOCACY

1. Medicaid Reform

Number affected: Over 2 million current and future Medicaid beneficiaries

Summary: During the regular 2005 session, the Legislature passed a bill giving AHCA authority to pursue an 1115 waiver with the federal government which would allow the state to make radical changes in its Medicaid program. These changes include 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: Throughout 2005 AHCA and the Governor have been meeting with federal officials (Center for Medicare & Medicaid Services- “CMS”) to hammer out the terms of an 1115 Medicaid reform waiver, well before a waiver application was actually filed with CMS. As required by state law, AHCA posted a copy of the waiver application on its website 30 days prior to filing it with CMS. This was the first opportunity that advocates had to actually review and comment on the waiver. FLS submitted detailed written comments on the waiver application to AHCA and provided copies to CMS, key Florida legislators and the Florida congressional delegation. FLS in conjunction with the Advocacy Center for Persons with Disabilities drafted and circulated a sign-on letter highlighting problems raised by the Medicaid reform proposal for persons with disabilities. Within two weeks FLS obtained authorization from over 80 health and human services and provider organizations to sign-on to the letter. A press conference was held on November 7, 2005 to publicly release the sign-on letter and copies were distributed to all Florida legislators and the Florida congressional delegation.

The waiver application was filed with CMS on September 30, 2005 . CMS approved the waiver within 16 days. (The typical time frame is 3-6 months). In December 2005, the Governor called a special session and Medicaid reform was included in the call. The Governor sought legislative authorization to implement Medicaid reform initially in five pilot counties and subsequently statewide with no requirements to return to the Legislature for further authorization. Both prior to and during the special session week, FLS met with legislators to raise concerns about the Governor’s Medicaid reform proposal, to propose other reform options, and to propose specific

legislative amendments. FLS staff found sponsors for various amendments and testified before the Senate Select Committee on Medicaid Reform. The Legislature passed House Bill 3B which authorized implementation of a Medicaid reform pilot program solely in five counties. The bill expressly requires additional legislative authorization before the program can be expanded statewide. The Medicaid reform pilot will again be considered during the regular 2006 session and before its July 1, 2006 implementation in the pilot counties. FLS is continuing to meet with legislators and to pursue various consumer protection amendments to the Medicaid reform legislation.

LITIGATION

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

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: Immediately after the 2005 legislation restricting access to prescription drug coverage was implemented July 1, it became apparent that the Agency was violating the Settlement Agreement. These violations included the failure to ensure that Medicaid recipients receive written notice describing the reason for the coverage rejection, as well as immediate and ongoing coverage (pending appeal) for refill denials. On July 22 FLS requested several specific corrective actions which would ensure that the due process guarantees in the Settlement were operationalized in a nondiscretionary manner. Contrary to the terms of the Settlement, the Agency initially opposed the mandatory language and operational remedies we proposed. Thus, FLS began enforcement proceedings against AHCA under the terms of the Settlement and the parties have been mediating since October 14, 2005.

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

Status: Plaintiffs have been successful in achieving the following corrective actions which were completed by the Agency in December 2005: (1) a remedial notice was sent by AHCA to pharmacists which clarified the mandatory obligation to provide the written notice whenever a claim rejection could not be resolved during the recipient's pharmacy visit, and the mandatory obligation to provide an immediate 3 days supply of the medication if the denial was for a refill; (2) the Agency changed its electronic point of sale message to the pharmacist to include language

reminding the pharmacist to provide the written notice when coverage is rejected; (3) a remedial notice was sent to the class members (over 50,000) whose drugs were denied when the newly restrictive law went into effect July 1. The parties are still negotiating the terms for operationalizing when and how recipients receive ongoing coverage pending the outcome of an appeal.

The Agency is also in the process of promulgating a rule regarding the pharmacist's duty to post the sign and provide the notice required under the Settlement. The rule should provide the Agency with necessary authority to penalize pharmacies who still refuse to provide the required notice.

B. Attorneys Fees

On October 12, 2005 the Magistrate issued a Report and Recommendation recommending that plaintiffs are entitled over \$ 857,000 in fees plus the requested costs. Judge Gold issued a final order affirming the Report and Recommendation on November 14, 2005. FLS attorneys account for over \$550,000 of the award.

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

Number affected: 6,000

Summary: Under federal Medicaid law, states are required to cover prescription drugs for "medically accepted indications," which the statute defines as uses approved by the FDA (on label) or "off-label" uses that are supported by citation in one of three Congressionally specified compendia. In 2004 the legislature authorized AHCA to implement prior authorization of the off-label uses of the prescription drug Neurontin and its generic equivalent gabapentin. The drug is widely used to treat various forms of neuropathic pain and other intractable pain conditions and is also used for psychiatric disorders. The most current and detailed of the Congressionally specified compendia, DRUGDEX, cites over 40 therapeutic uses of the drug which AHCA is refusing to cover. Without exception AHCA is only covering the two FDA approved uses and two off-label uses. A number of clients and providers contacted FLS and field programs regarding the adverse effects of this policy. 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: A three day evidentiary hearing was held in September on the Plaintiffs' Motions for Preliminary Injunction and Class Certification. Plaintiffs' Motion for Permanent Injunction has been fully briefed.

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.

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

Number Affected: One individual

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

This case involves a 44 year old woman with cerebral palsy who has been living in a group home for the past three years under the DD Waiver program. This client is non-ambulatory and needs two staff members to move her out of her wheelchair and bed. Prior to her group home placement she resided in a nursing home, was very isolated and was severely depressed. Now in her group home placement she goes to work, earns money at a sheltered workshop and is able to live in a home setting with two other roommates. In January 2005 the client was notified by Maximus that it was seeking to reduce her “residential habilitation” services hours. This reduction in hours will impact the level of assistance available to her in the home for activities of daily living and jeopardize her health and safety in the home.

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

Status: A Medicaid fair hearing request was filed in response to the notification of the proposed reduction of residential habilitation hours. Petitioner’s counsel filed discovery requests and a hearing was scheduled for May 20, 2004. Petitioner’s counsel sought a continuance while Petitioner pursued a “reconsideration” process through Maximus. After months of waiting for a reconsideration decision, the hearing officer denied any further requests for a continuance by Petitioner’s attorneys. 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, 2006 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, Maximus 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 which is still pending. Another hearing date has not yet been scheduled and counsel for the state, to date, have not indicated whether they intend to pursue the reduction of hours on the 2006 care plan in light of the December 28, 2005 hearing decision.

5. **T.P. v. AHCA**
DCF, Office of Appeal Hearings, Case No. , 05F-2496
J.C. v. AHCA,
DCF, Office of Appeal Hearings, Case No. 05F-2495

(Region I)

Number affected: two individuals

Summary: T.P and J.C., two individuals 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 their companion care service hours would be reduced because their hours exceeded Medicaid guidelines. J.C. was also notified that his request for additional companion care hours was denied. Both individuals live with family members and some of the companion care hours are used when family members are not available (due to work, errands and other family obligations), sometimes for more than 24 hours. Both of these individuals have quadriplegia, need 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: Medicaid fair hearing requests were filed for both individuals. The hearing requests were directed to both DOH and the state Medicaid agency, the Agency for Health Care Administration (AHCA). After intervention by Petitioners' counsel and advocacy with the DOH attorney, companion care services were reinstated by DOH pending a final hearing. Petitioners' counsel then conducted extensive discovery, including depositions of both DOH and AHCA personnel to determine the basis for the reduction and denial of services. During the discovery process AHCA amended its services reduction/denial notice to change the reasons for its actions. The new justification was that BSCIP does not cover "respite" services and the companion care services were being used by both Petitioners as respite care. There are no state rules which define respite services and the definition of companion care services included in the waiver documents do not preclude the use of companion care hours on a 24 hour basis.

Two separate fair hearings were held on October 30, 2005. The hearing officer granted T.P.'s appeal and denied J.C.'s appeal. The unfavorable hearing 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.

TRAINING/PRESENTATIONS

1. Pfizer Pro Bono Conference

In August 2005 FLS presented at the Pfizer Pro Bono Conference in New York. FLS' presentation discussed the recent Florida legislation restricting prescription access and the ways

in which the problems facing Florida Medicaid recipients provide a preview for certain Medicare Part D problems. FLS also discussed legal handles available to Medicaid advocates under a *Hernandez* type due process action and the FLS Helpline.

2. National Legal Aid and Defenders Association

In November 2005 FLS co-presented on Medicare Part D with the National Senior Citizens Law Center in Orlando. FLS' presentation focused on relevant lessons from Medicaid prescription drug restrictions and what advocates could do to prepare for Part D.

3. Florida Guardian Ad Litem

On December 2005 FLS provided a statewide conference call training for the Guardian ad Litem Program staff on changes related to the Medicaid prescription drug program due to 2005 legislation. The training also provided some background on Medicare Part D.

4. National Health Law Program

In December 2005, FLS presented at the National Health Law Program's annual Health Advocates Conference in Washington DC. FLS's presentation was on state Medicaid cuts and advocacy related to prescription drug coverage,

OTHER ADVOCACY

1. Florida Medicaid Prescription Access Helpline

Number affected: Over 2 million Medicaid 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*. FLS obtained funding to create 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: Anne Swerlick, Miriam Harmatz, Valory Greenfield, Helpline Staff

Status: To date, the Helpline has provided counsel and advice to approximately 200 recipients. Most of these clients were able to get their medication after getting advice and assistance from the Helpline staff. Approximately 20 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 will also be gathering relevant data for national advocacy from these clients and providing information on how to change plans, obtain transitional coverage and appeal denials.

2. Prescription Drug Task Force

(Regions I, II, III)

In October FLS created the Prescription Drug Hearing Task Force so that advocates throughout Florida could confer with each other on strategies for handling fair hearings for clients denied their Medicaid prescription drugs. Task force members include Treena Kaye, Tarysha Henry, Susan Firamonte and Roberts Walton of CLSMF, Jonathan Brentwood and Rebecca Feyerick of JALA, Jennifer Wimberly of LASOCBA, Irene Macy of NWFLS and FLS staff. Members of the task force have been solicited to assist FLS in designing a statewide training on how to handle these hearings. In addition, model pleadings are being collected from task force members for use at the training. The existence of the task force will be publicized at the training in order to make participation available to any other interested advocates.

FLS Advocates: Valory Greenfield, Miriam Harmatz, Suzanne Estrella & Cindy Huddleston



HOMELESS

ADMINISTRATIVE ADVOCACY

1. Anti-homeless Ordinances

(Regions II, III, 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

Status: Motions for Summary Judgment remain pending

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

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

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

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

3. ***Mimms vs. CO Group, Blue Chip Lending Services, Thomas Bowman*** (Region V)
Circuit Court - Palm Beach County

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

FLS Advocates: Chuck Elsesser
Co-Counsel: Legal Aid Society of Palm Beach County - Shahar Pasch

Status: This case has been settled.

4. ***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: Defendants filed Motion to Dismiss which was argued in late December. We are awaiting a ruling which will be followed by the preparation of the Administrative Record.

OTHER ADVOCACY

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

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

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

FLS Advocate: Charles Elsesser

Status: As a result of client's advocacy the number of vacancies has been dramatically reduced.

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

FLS Advocate: Charles Elsesser

Status: Florida Legal Services aggressively enforced the National Environmental Policy Act, blocking an attempt to obtain a categorical exemption, 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).

4. *Villa Maria Apartments* (Region VII)

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

FLS Advocate: Chuck Elsesser
Co-Counsel: LSGMI

Status: This case was successfully resolved with Miami Beach Community Development Corporation obtaining ownership of the building, securing financing to rehabilitate, and securing an extension of time from the Unsafe Structures Board to rehabilitate the structure. This project was honored at the Florida Housing Coalition Annual Conference as the success story of the year.

5. *Jimenez v. FEMA*

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

FLS Advocate: Chuck Elsesser

Status: FLS is engaged in advocacy to obtain a change in policy from FEMA regarding its failure to provide short term noncash FEMA benefits to non-citizens. FEMA has not responded positively so litigation may be required.

6. *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. We are awaiting the response by the DCA.

7. *Hialeah Housing Authority* (Region VII)

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

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

Status: FLS and co-counsel are reviewing further actions.

8. 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.

© The poor victims of Wilma have received a different level of assistance from FEMA than people who are better off. This has been seen both in connection with public housing and among farmworkers who have seen abusive and disrespectful behavior by FEMA contractors. FLS and the collaboration are seeking to address this disparity.

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.

9. 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 and advocates have been meeting with County Commissioners and preparing for County hearings in the next few months.

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 almost completed. Manual sections regarding protections for CLT homeowners was also converted into an article for the Florida Housing Coalition journal and is also being developed 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 with out any corroborating evidence.

FLS Advocates: Chuck Elsesser
Co-counsel: Jeff Hearne

Status: FLS and LSGMI met with County PHA and they are developing a proposal to deal with the concerns.

13. Tallahassee Housing Authority (THA) Demolition of Ebony Gardens

(Region I)

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

Summary: For several years Florida Legal Services has worked with Legal Services of North Florida representing THA tenants with regard to the proposed demolition of Ebony Gardens. Originally THA sought HOPE VI funding for demolition and revitalization. After being rejected for a HOPE VI revitalization grant several times, THA applied for and received a HOPE VI demolition grant. All the remaining families have been relocated either to other public housing units or to a private units with a voucher, with the assistance of FLS and LSNF. Demolition is complete.

FLS Advocates: Alice Vickers
Co-Counsel: Scott Manion (Legal Services of North Florida)

Status: FLS and LSNF are continuing to monitor the plans for rebuilding.

14. Tallahassee Housing Authority (THA) Lease (Region I)

Number of People Affected: 600 public housing tenants and 900 waiting list applicants

Summary: THA is revising their lease to incorporate changes in their Admission and Continued Occupancy Plan and regulations.

FLS Advocates: Alice Vickers
Co-Counsel: Scott Manion (Legal Services of North Florida)

Status: The proposed lease changes have been reviewed and comments submitted. FLS and LSNF are currently preparing for the public meetings to reiterate problems with the lease that have not been resolved through negotiation.

IMMIGRATION



LITIGATION

1. FIAC v. DHS (Region VII)
05-20281-CIV-Jordan (S.D. Fla.)

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 hearings officer rejected the farmworker's claim following a hearing in July, 2005. In November, 2005, the matter was argued to a three-judge panel of the South Carolina worker's compensation review panel.

2. ***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).

Efforts have continued to secure funding for the housing. Federal funds for farmworker housing are likely to be available as part of the relief package appropriated following Hurricanes Katrina and Wilma in 2005.

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: After failing to attract the super-majority in the U.S. Senate needed to attach it to an emergency funding bill in April, 2005 (AgJOBS was endorsed by a 53-45 majority but fell short of the necessary 60 votes), supporters of the plan have worked to have its essential terms included in other immigration legislation being considered by Congress in early 2006. In December, 2005, the U.S. House passed immigration legislation focused entirely on heightened enforcement of immigration restrictions, which has resulted in increased interest in AgJOBS and other guestworker proposals.

2. *Florida Minimum Wage*

Number of Farmworkers Affected: 300,000 (statewide)

Summary: In November, 2004, Florida voters approved an amendment to the Florida Constitution providing for a state minimum wage of \$6.15 per hour, with provisions for automatic increases based on inflation (the 2006 rate will be \$6.40). The amendment prohibits retaliation against workers seeking to enforce their right to the state minimum wage and provides a civil remedy for recovery of unpaid minimum wages, including express authorization for class actions (traditional class actions are unavailable to enforce the federal minimum wage law set out in the Fair Labor Standards Act).

FLS Advocate: Rob Williams

Status: During a special session of the Florida legislature in December, 2005, a bill implementing the amendment was passed at the behest of employer groups. The MFJP helped draft compromise language mitigating several of the most troublesome sections and leaving intact the essential provisions of the law.

LITIGATION

1. *Florida Division of Workers Compensation v. Cagnoli*

Case No. SC05-220

Florida Supreme Court

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

FLS Advocate: JoNel Newman

Status: The appeals court reversed the administrative law judge's decision. 888 So.2d 79 (Fla. 1st DCA 2004). The appellate court's opinion was based primarily on the Privacy Act arguments present in the MFJP amicus brief. Rehearing was denied, but the state Division of Worker's Compensation sought review by the Florida Supreme Court, arguing that the state's procedures are exempt from the provisions of the Privacy Act. On November 3, 2005, the Florida Supreme Court affirmed the state appeals court's ruling, adopting the reasoning offered in the MFJP's *amicus* brief. ___ So.2d ___, 2005 WL 2898733.

2. ***Mejicanos, et al. v. Sanwa Specialty Herbs, Inc.*** (Region IV)
Case No. 8:03-cv-2530-T30-EAJ
U.S. District Court, Middle District of Florida, Tampa Division

Number of Farmworkers Affected: 300 (Hillsborough County)

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

FLS Advocates: Mónica Ramírez, Manuel Avalos and Raul Barrera

Status: Through mediation, a settlement was reached, providing for substantial payments in back wages to the named plaintiffs. In addition, a class settlement fund was created to compensate class members for unpaid overtime wages, with the unclaimed back wages being donated to a local social service group assisting farmworkers in the Wimauma area. In July, 2005, the district court approved the class settlement, following which the settlement funds were disbursed.

3. ***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 to the court in May, 2004. At the conclusion of the trial, the court directed the parties to mediation. The mediation proved unsuccessful and the parties presented their post-trial pleadings to the court in December, 2004. The district court has yet to issue its decision. The employer has yet to alter its housing practices, resulting in the filing of the *Morales-Cervantes* case (below).

4. *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: Suit was filed in December, 2005.

5. *McDonald v. Okeelanta Corporation* (Region V)
Case No. 4D05-188
Fourth District Court of Appeal

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

Summary: Class action on behalf of sugar cane cutters who worked during the 1988-89 season for Okeelanta Corporation, one of the state's largest sugar growers. Under their work contracts,

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

FLS Advocate: Greg Schell
Lead Counsel: David Gorman, North Palm Beach

Status: The trial court ruled against the Plaintiffs in October, 2004, holding that the company had properly utilized the 10 day notice and that any claims of the workers terminated in January, 1989 were barred by a settlement reached between Okeelanta and the United States Department of Labor. The Plaintiffs' appeal to the Fourth District Court of Appeal will be argued on January 10, 2006.

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

Status: On December 29, 2005, the district court dismissed the workers' class-based claims, ruling that the state court's decertification barred filing of another class action. In a precedent-setting ruling, the district court nonetheless allowed the 1048 plaintiffs to pursue their individual claims in federal court. The court reasoned that it could entertain the workers' contract claims under its federal question jurisdiction because federal regulations dictated most of the contract

terms. The Plaintiffs have moved to add an additional 503 individual cane cutter Plaintiffs. Trial is scheduled for July, 2006.

7. ***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 AWP.

FLS Advocates: Greg Schell, Raul Barrera 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 AWP and the Florida migrant labor housing law. The district court approved the settlement in July, 2005. When the defendants continued to violate the AWP following entry of the court's final order, a motion for contempt was filed in December, 2005.

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

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

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

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

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

Status: After the district court granted class certification (222 F.R.D. 684 (M.D. Fla. 2004)), the parties settled the action. Under the settlement, the class members will be paid for their waiting time and an injunction was entered requiring the company to adopt proper timekeeping procedures in the future.

10. *Avila-Gonzalez, et al. v. Maria R. Barajas, et al.* (Region V)
Case No. 04-cv-567-Ft.M.-33-DNF
U.S. District Court, Middle District of Florida, Fort Myers Division

Number of Farmworkers Affected: 200 (DeSoto County)

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

FLS Advocates: Greg Schell and Raul Barrera

Status: The district court 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 December, 2005, the Plaintiffs filed for a default judgment and damages on behalf of themselves and the members of the class.

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

Number of Farmworkers Affected: 100 (Highlands County)

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

FLS Advocates: Greg Schell and Raul Barrera

Status: After the district court denied the motion for class certification, the named Plaintiff's individual claim was settled and the action dismissed.

12. ***Alejo, et al. v. Salvador Barragan*** (Region V)
Case No. 04-14232-Civ-Middlebrooks
U.S. District Court, Southern District of Florida, Fort Pierce Division

Number of Farmworkers Affected: 400 (Highlands County)

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

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

Status: The action when the lead plaintiff went into hiding and the other Plaintiffs chose not to continue with the action.

13. ***Villatoro, et al. v. Rafael Ysasi, Jr., et al.*** (Region V)
Case No. 04-81093-Civ-Middlebrooks
U.S. District Court, Southern District of Florida, West Palm Beach Division

Number of Farmworkers Affected: 400 (Palm Beach County)

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

FLS Advocates: Greg Schell and Manuel Avalos

Status: Following class certification, the case was settled through mediation. Thomas Produce agreed to pay a substantial sum of damages to the class members. The company also agreed to an injunction under which it will adopt electronic timekeeping procedures at all of its locations. The injunction also requires that within two years, Thomas Produce will place all workers employed on its operation on the company payroll, rather than continuing to pay them through farm labor contractors.

14. *Valerio v. Vila & Son Nursery, Inc.* (Region VII)
Case No. 05-01084 CA 31
Miami-Dade County Circuit Court

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

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

FLS Advocate: Mónica Ramírez

Co-counsel: Arthur Schofield, private Attorney in West Palm Beach

Status: Following discovery, the parties reached a settlement, the terms of which are confidential.

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

Number of Farmworkers Affected: 500 (DeSoto County)

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

the company because of truthful testimony he provided as a witness in an earlier lawsuit against Sorrells Brothers.

FLS Advocates: Greg Schell, Raul Barrera and Manuel Avalos

Status: Suit was filed in December, 2005.

16. *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 and Raul Barrera

Status: Suit was filed in December, 2005.

17. *Molina v. Lady Moon Farms, Inc.* (Region V)
Case No. 05-CA-003183
Lee County Circuit Court

Number of Farmworkers Affected: 100 (Lee County)

Summary: Class action against organic vegetable grower and packer which failed to pay its employees the Florida minimum wage of \$6.15 per hour after it became effective on May 2, 2005.

FLS Advocates: Greg Schell and Raul Barrera

Status: A tentative settlement has been reached under which the employer will pay all of the back wages owed to the class members. The named plaintiffs will also receive an award of liquidated damages.

18. *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: Mónica Ramírez
Co-Counsel: Muslima Lewis, 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.

19. *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: The district court has granted the Plaintiffs' motion to provide notice of the action to current and former employees under the Fair Labor Standards Act. The Plaintiffs' class certification motion is pending. Trial is scheduled for the summer of 2006.

20. *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 and Raul Barrera

Status: Suit was filed in December, 2005.

- 21. *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. In December, 2005, after the labor contractor's repeated refusal to file the reports, the Plaintiff moved for contempt and asked that the contractor be incarcerated until the W-2 forms were filed.

- 22. *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: Suit was filed in November, 2005.

- 23. *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 AWPB 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: Suit was filed in December, 2005.



PUBLIC BENEFITS

ADMINISTRATIVE ADVOCACY

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

Number affected: Potentially thousands

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

FLS Advocates: Cindy Huddleston and Valory Greenfield

Co-counsel: Due Process Task Force

Status: As a result of litigation that sprang from regional advocacy (see consolidated cases Hepburn v. AWI and Hepburn v. South Florida Regional Workforce Board in the litigation section), a well-drafted grievance policy was put into place for South Florida TANF participants. FLS convened a statewide due process task force to assist advocates in ensuring that their local RWBs around the state put grievance policies into place which provide at least the due process found in the South Florida policy. The task force is working on a model grievance policy and two model notices which each task force member will endeavor to get his/her regional workforce board to approve and implement. These documents can then be shared with advocates around the

country through Val Greenfield who agreed to serve, on FLS' behalf, on a national Welfare Privatization Advisory Committee for The Welfare Law Center in New York.

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

Number affected: Potentially thousands

Summary: Effective June 1, 2005, the Agency for Workforce Innovation (AWI) which oversees administration of the Unemployment Compensation (UC) program, began eliminating in-person hearings for unemployment compensation claimants in 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. Thereafter AWI responded by phone and in writing to FLS. 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.

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

Number affected: Potentially Thousands

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

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

Status: After several years of advocacy, with the Food Stamp Compromise Task Force making comments on proposed rules and participating in a negotiated rule making process, DCF published a proposed rule that limits the use of compromise to resolve pending litigation or bankruptcy proceedings. FLS requested public records and 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. We will monitor this to ensure that the Department properly implements the revised compromise rule.

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

Number of potential recipients: Thousands

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

FLS Advocates: Cindy Huddleston and Valory Greenfield
Co-Counsel: Food Stamp Notice Task Force (designated representative is Nancy Sutton of LSGMI)

Status: FLS convened the first conference call of the Food Stamp Notice Task Force. As a result of that call, members of the task force drafted and sent a letter to their DCF District Administrators about, inter alia: capacity of the toll-free line to accept messages; response time on the toll-free line; DCF not having full and complete information on legal services offices to give out; and the sufficiency of the training received by phone staff. Discussions between DCF

headquarters and task force representative Nancy Sutton and FLS yielded a commitment by DCF to program DCF's new Integrated Voice Response (IVR) system to provide automated legal services referral information through DCF's call centers by July 2005. FLS provided updated information on the names, addresses, and phone numbers of Florida legal services programs which handle food stamp problems so that accurate referral information could be provided. By July DCF indeed had a change request ready to go, but we had to make corrections to the list of referral offices due to intervening changes in the way legal services regions were distributing food stamp cases by then. About 30-60 days after we sent back the corrected referral list, DCF put the changes into place on the Integrated Voice Response (IVR) telephonic system. When a caller keys-in his/her zip code, there is now a menu option which enables the caller to access recorded information providing the phone numbers for legal services programs in their area. This should make it easier for clients to get legal help with their DCF problems.

5. *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. FLS remains interested in all viable advocacy avenues impacting upon privatization/modernization issues. In view of state legislation passed at the close of the 2004 session, FLS additionally decided to pursue litigation. See *Reed v. Gallagher et al.* in the Public Benefits Litigation Section 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.

6. *Reporting Child Support Compliance by UC Claimants*

Number affected: Thousands

Summary: In August 2005 the Agency for Workforce Innovation (AWI) proposed to amend one of its rules to incorporate a requirement for individuals to report two items: 1) whether they owe any child support; and 2) whether a child support agency is enforcing the debt. AWI stated that the amendment was compelled under federal law.

Advocates: Cindy Huddleston and Valory Greenfield

Status: FLS submitted written comments noting that the rule, as proposed, would be broader than the federal law sought to be implemented. In fact, the agency's interpretation of who needed to report child support arrears was not supported by the narrow dictates of the federal law and thus the proposed rule would have been invalid. FLS suggested alternative text to narrow the rule to the population intended to be affected by federal law: the only persons who must report being in arrears are those persons whose child support obligations are being pursued by the Dept. of Revenue under a "part D" child support enforcement plan. In October, an AWI attorney contacted FLS to provide a copy of the proposed rule text and to solicit our feedback in advance of publication. We suggested a minor modification to the new, improved rule language. In December 2005, the rule was proposed for adoption with the agreed-upon text.

7. *Public Benefits Response to Hurricanes*

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. In addition, the in the aftermath of Katrina, evacuees in Florida were eligible for the aforementioned programs as well as special Medicaid and cash assistance programs in their new state of residence. As start-up announcements, policy updates, and clarification notices were issued by government officials about these programs, FLS quickly passed the information on to advocates in the field. By the same token, FLS got back information from the field about how the programs were working, or not, in the affected communities. FLS was able to quickly reach appropriate state officials and in many instances, get prompt resolution of these problems.

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status - Disaster Unemployment Assistance (DUA):

Limited English Proficiency (LEP) Evacuees: On the basis of information from the field, we quickly and successfully negotiated with the Agency for Workforce Innovation (AWI) for an immediate removal of an English-language prompt on their telephonic claims system directed to Katrina evacuees from Mississippi which had been mistakenly inserted into the Spanish-language phone menu. This quick action kept Spanish-speaking LEP unemployed workers, both evacuees and Florida residents, from encountering a barrier in reporting claimed weeks.

Late Filing for DUA: Unfortunately, we were not successful in persuading AWI to extend the deadline to apply for post-Wilma DUA for Floridians engaged in temporary clean-up work. These workers could not apply for DUA until their clean-up jobs ended. By that time, the application deadline for DUA had passed. AWI's position was that the small volume of applications toward the end of the program signaled a lack of need. Nevertheless, we took the opportunity to remind AWI that hurricane clean-up work is not grounds for disqualification from participation in the DUA program. And we urged AWI to direct its staff to find good cause for failure to timely file for DUA on the basis of having been engaged in temporary disaster clean-up work. While AWI would not issue such a directive, they assured us that claims examiners and hearing officers would evaluate good cause for missing that DUA deadline on a case-by-case basis. We sent a message alerting the public benefits and disaster list-serves to this issue.

Status: Disaster Food Stamp Program:

Katrina evacuees: On the basis of information from the field, we learned that Katrina evacuees who tried to apply for food stamps via the Department of Children and Families web site were required to provide information that, although appropriate for regular food stamps, was not relevant for the special Katrina disaster program. For instance, status as a non-working post-secondary student should not have been among the minimal criteria considered in determining eligibility for the one month of special food stamps for Katrina evacuees. Yet the Department of Children and Families' on-line application program did not permit a Katrina evacuee to indicate his/her special status, limit the provision of irrelevant information, and be evaluated under the proper eligibility criteria for this program. We quickly and successfully negotiated with DCF to make an immediate correction to their on-line application program to make it possible for evacuees to apply for the special Katrina disaster program via the Internet.

Immigrants and Disaster Food Stamps: Disaster food stamps are available to disaster victims without regard to their immigration status. DCF's published disaster food stamp policy is consistent with this. Even undocumented aliens can get disaster food stamps. In fact, DCF's application "tip sheet" clearly says at the top of the page that help is available without regard to citizenship status. However, at the bottom of that very same tip sheet it says to bring the SSNs of everyone in the household. On the basis of information from the field, we learned that fear about the necessity for an SSN was deterring many immigrants from applying. We contacted DCF and urged them to extend the program on the basis of this confusion and re-publish a revised tip

sheet. DCF countered that its federal waiver would not permit extension of the program beyond 5 days and a republished revised tip sheet would not look substantially different from the ones already in circulation and thus would not sufficiently highlight the problem sought to be corrected. Instead, DCF proposed to re-instruct its application centers that no SSN is needed via status conference calls it continued to conduct for the remainder of the program. We have asked for documents reflecting the numbers of immigrants without social security numbers who applied for this program as compared to other disaster programs. And we have already approached the Department about modifying its tip sheet and application documents for next hurricane season.

Wilma Disaster Food Stamp Delays: After Hurricane Wilma struck on October 24, 2005, DCF accepted disaster food stamp program applications until November 13, 2005. Approximately 655,000 households applied and in early November, DCF reported that 2.1 million people from those households had already been approved. Nevertheless, shortly before Thanksgiving both the field and media reported on tens of thousands of persons still waiting for stamps. The initial problem stemmed from the Department's EBT card vendor failure to timely mail cards out during a nine day period in November based on computer data transfer problems. That problem was fixed and tested within days and 36,789 delayed EBT cards were mailed by December 2. However, by the end of December both the media and field reported anew that people were still without benefits. When FLS' administrative advocacy was met with resistance, FLS informed DCF of its intent to issue a media release. That announcement resulted in our getting an immediate commitment to process the remaining groups as follows: by January 6, case action notices will be sent on 1500 incomplete applications; by January 6, case action notices will be sent on 1000 potential duplicate applicants; and by mid-January DCF will re-contact all approved, inactive households whose EBT cards were returned as undeliverable and will send replacement EBT cards to all approved, inactive households for which they obtain updated contact information. In all cases, approved but inactive households will have 90 days to use their disaster benefits once benefits are activated.

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

Number affected: thousands

Summary: In April DCF proposed to delete language in a rule which incorporated the form 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. Notwithstanding that, in September the Department withdrew its proposed April amendment thus restoring, in its entirety, the rule it had sought to amend by deleting the reference to the form. Thus, the Relative Caregiver "Request for Eligibility Consideration" form remains validly incorporated in a published rule. However, 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. Negotiations with DCF resulted in an admission of error and a commitment to restore the language, albeit in another chapter. In December the Department proposed a new rule on the Relative Caregiver program 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. Our comments were distributed to the Relative Caregiver Task Force and suggestions for other areas of testimony were solicited from the field

LEGISLATIVE ADVOCACY

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

Number Affected: Thousands

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

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: FLS successfully fended off the attempt at full-family sanctions in TANF. After FLS explained the impact of the proposed legislation many legislators voiced their opposition to the seemingly innocuous move to align TANF sanctions with Food Stamp sanctions. The bill was amended and the language making sanctions even worse was taken out. Once session was over, the Department consulted FLS as it undertook to reconcile the food stamp and cash assistance sanctions once again. Our success in the Legislature convinced the Department to reconcile the two programs this time by scaling down the food stamp sanctions to the level of the less strict

TANF sanctions instead of the other way around as it proposed during session. In contrast to DCF's proposal to worsen the TANF sanctions, this new change can be accomplished without legislative approval because modifications to food stamp sanctions are an authorized option under current federal law.

2. *Privatization Safeguards*

Number affected: Thousands

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

FLS Advocates: Valory Greenfield and Cindy Huddleston

Status: FLS drafted amendments to strengthen S.B. 1476. However, because Senate staff feared gubernatorial veto if the bill was too restrictive on privatization, few of our amendments were adopted in the form we proposed. Nonetheless, in the end, the Governor was averse to even this less restrictive attempt at safeguards. Governor Bush vetoed S.B. 1476 based on his conclusion **that privatization safeguards are the province of the executive branch and not the Legislature.** FLS continues to monitor this area for the 2006 legislative session. For instance, Senate Bill 398 has been filed without substantive content (proposed as a place-holder) by Saunders and it could be a bill that will address privatization. Also, House Bill 599 has been filed to establish an advisory committee to promote privatization in the non-profit sector.

LITIGATION

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

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

Number affected: potentially thousands

Summary: Client, a Spanish-speaking fast food worker, was terminated from her job. She applied for unemployment compensation (UC) benefits on a Spanish application. Nevertheless, she received a determination notice in English denying her claim for UC. She was unable to

understand its content and ultimately filed her appeal late. This determination notice has not been promulgated pursuant to the Administrative Procedure Act (APA). When she appealed, the notice of hearing, which was in English-only, directed Ms. Fernandez to let the hearing office know if she could not find her own translator for the hearing. The hearing notice form has not been promulgated. After the hearing, the referee issued a written hearing decision, in English-only, in which he dismissed the appeal based on lack of jurisdiction because the appeal was filed late. The hearing decision directs Ms. Fernandes to get the document translated on her own. The hearing decision form has not been promulgated. The Unemployment Appeals Commission upheld the decision

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

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

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

2. 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. DCF filed an unopposed motion for protective order allowing it to avoid responding to discovery requests pending further settlement negotiations. 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. FLS is monitoring compliance with the settlement.

PROGRAM/CLIENT EDUCATION

1. Informational Flyers for Katrina Evacuees

In September 2005 Hurricane Katrina caused the displacement of thousands of residents of Louisiana, Mississippi, and Alabama. About 3500 are reported to have relocated to Florida as the government attempted to respond to the crisis by authorizing special public assistance programs. FLS prepared a flyer for Katrina evacuees providing information about their

unconditional eligibility for one month of Food Stamps. See <http://www.floridalegal.org/Disaster%20Information/Important%20Way%20to%20Get%20Food.PDF>. FLS also prepared a flyer which provides Katrina evacuees information about their potential eligibility for a special one-time cash payment called ECA (Emergency Cash Assistance). See: <http://www.floridalegal.org/Disaster%20Information/Katrina%20&%20Rita/katrina%20evacuee%20ECA%20flyer.pdf.pdf>. Since these policies were unique to Katrina, there were not flyers in existence addressing these programs. The flyers were distributed to disaster advocates and public benefits advocates with the express wish that they further distribute it to known shelters, Red Cross sites, etc. after imprinting their program's contact information on the template. FLS also produced and distributed to field advocates a listing of useful Internet links to State of Florida and federal Katrina information in one document. See: <http://www.floridalegal.org/Disaster%20Information/Quick%20Links%20to%20federal%20and%20State%20Information%20and%20Data%20About%20Katrina.PDF>.

FLS Advocates: Cindy Huddleston, Valory Greenfield