Approved for Release as
External Opinion # EX-2004-1001
January 8, 2004

Legal Services Corporation
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OFFICE OF LEGAL AFFAIRS

You expressed the view that this language in the OLA Opinion "is no longer operative" in light of *U.S. v. LSNY*, in which the D.C. Circuit enforced the LSC Office of Inspector General (OIG) subpoenas for client names that could be connected with CSR problem codes. The court rejected blanket assertions by an LSC grantee that client names connected to problem codes were protected from disclosure by attorney–client privilege and by rules of professional responsibility. The court remanded the case for any case specific privilege determinations. Based on this decision, you reached the following conclusion:

> It is our understanding, then, that the prior OLA holding which indicated LSC may not review retainer agreements, which set forth the *matter in which representation is sought and/or the* nature of the representation provided, is no longer operative. Similarly the OLA holding which indicates LSC may not review client names associated with problem codes is also inconsistent with the opinion of the Court of Appeals.

SUMMARY OF CONCLUSIONS

Judging from your request and discussions that have been

those individual cases or clients. The same analysis applies to other §509(h) information such as financial eligibility information and eligibility records. Recipients must cooperate with LSC procedures for evaluating any such privilege claims. The privilege relevant here is as established under federal common law, rather than state law.

BACKGROUND AND ANALYSIS

The statutory scheme governing LSC's access to information in recipient records was

> This ruling does not mean that there is no case in which disclosure of the combination of a client's name and a problem code would reveal a client's "motive" for seeking representation, within the meaning of the cases. This ruling is not intended to foreclose specific claims of privilege as to individual clients.

100 F.Supp.2d at 46 (D.C. District Court).

> Courts have consistently held that the general subject matters of clients' representations are not privileged. *See, e.g., In re Grand Jury Subpoena*, 204 F.3d 516, 520 (4th Cir. 2000). Nor does the general purpose of a client's representation necessarily divulge a confidential professional communication, and therefore that data is not generally privileged. To be sure, there are exceptions, but as always the burden of demonstrating the applicability of the privilege lies with those asserting it. *See In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (per curiam); *cf. In re Sealed Case*, 877 F.2d 976, 979-80 (D.C. Cir. 1989). That burden requires a showing that the privilege applies to each communication for which it is asserted, *see Lindsey*, 158 F.3d at 1270–71 . . . .

249 F.3d at 1082 (D.C. Circuit). The D.C. Circuit remanded the case to the district court for possible further proceedings—providing LSNY the opportunity to make a showing for individual cases that the name connected to the problem code would reveal an "indubitably confidential communication" such as a privileged confidential motive for seeking representation.[7]

CONCLUSIONS

Pursuant to §509(h), LSC may obtain from recipients client names connected with CSR problem codes or descriptions of legal services, except for specific situations in which doing so would reveal privileged information. Recipients may be able to make colorable "specific claims of privilege as to individual clients" that providing such information would breach the privilege. Similarly a recipient may be able to exclude specific names, problem codes or descriptions of legal services from otherwise permissible lists of such information in those specific situations when doing so would reveal privileged information. The same analysis applies to other §509(h) information such as financial eligibility information and eligibility records. Such information connected to a client name might rarely, if ever, "divulge a confidential professional communication," but we cannot foreclose the possibility that a recipient will make a legitimate privilege claim for such information in a specific case. As with any situation in which a recipient claims that information may be withheld from LSC, the recipient will need to cooperate with

appropriate. We wish that we could give you a more absolute answer but, like the D.C. Circuit, we cannot foreclose the possibility that situations might arise in which the privilege would apply to these types of information.

This analysis generally applies to LSC's CSR problem code numbers even unconnected to their descriptions because the numbers and descriptions are publicly available and well known within the LSC community. Even a stranger to LSC's system would not have trouble obtaining the CSR Handbook, decoding the numbers and figuring out, for example, that 36 represents a paternity case. A list of problem code numbers connected to client names is functionally equivalent to a list of problem code descriptions connected to client names. As such, if Jane Smith and "paternity" would reveal privileged information (based on the specific situation), then Jane Smith and LSC CSR number 36 would do the same (although we can evaluate any specific proposal for providing code numbers and client names in situations in which the privilege would apply).

We hope that this opinion corrects any misunderstandings regarding this issue. To respond to your specific questions, with respect to §509(h) information, LSC may generally