

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

and

KIRT WEST,
INSPECTOR GENERAL OF THE
LEGAL SERVICES CORPORATION
3333 K STREET, NW, 3RD FLOOR
WASHINGTON, DC 20007,

Petitioners,

v.

CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.
631 HOWARD STREET, #300
SAN FRANCISCO, CA 94105,

Respondent.

No. 1:07-mc-00123-EGS

**DECLARATION OF JEANNIE
BARRETT IN SUPPORT OF
ATTORNEY-INTERVENERS'
OPPOSITION TO PETITION FOR
SUMMARY ENFORCEMENT OF
ADMINISTRATIVE SUBPOENA**

Before: The Honorable Emmet G. Sullivan

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TERI SCARLET, ARTURO RODRIGUEZ, and KIRK AH-
TYE

I, Jeannie Barrett, declare:

1. I am an attorney licensed to practice in the State of California, and I have been a member in good standing of the California State Bar since 1977. Between 1997 and the present, I have been employed as an attorney by California Rural Legal Assistance, Inc. (“CRLA”), respondent in this action, and I am currently the directing attorney of the Santa Maria office. I am submitting this declaration in support of the Attorney-Interveners’ Opposition to the Office of the Inspector General’s (“OIG”) Petition for Summary Enforcement of Administrative Subpoena. I make this declaration on personal knowledge, except as otherwise expressly stated. If called as a witness, I could and would testify competently to the matters stated in this declaration.

CRLA’s Client Intake Procedures

2. Most potential clients who contact CRLA—either by walking into a CRLA branch office or by calling a branch office—are asked to complete an intake form. Sometimes the potential client fills the form in by himself or herself; sometimes a secretary fills in the form (a number of our clients are illiterate, for example). A true and correct copy of the version of this form that was in effect between 2003 and 2005 is attached hereto as Exhibit A.

3. In addition to the potential client’s name, address, and telephone number, the intake form asks for extensive personal information, including date of birth, social security number, detailed information regarding income and assets, gender, race, alien status and other immigration-related information, language, handicapped status, spouse’s name, a description of the legal problem, and any adverse parties. The inclusion of the identity of adverse parties on the intake form is essential, as CRLA uses it to run a conflicts check on the potential client.

4. On the back of the intake form there is a section for “CRLA Staff Use.” This section contains several boxes that can be checked, including “Client is eligible and accepted for advice/counsel, brief service, or referral,” “Client is eligible and accepted for extended service,” and “Ineligible.” CRLA does not take individuals for whom the box “Ineligible” is checked on as clients. A person may be deemed “Ineligible” for a variety of reasons: they may have

improper immigration documentation, or they may have a legal problem, such as a criminal legal problem, that CRLA, by law, cannot help them address. In my experience, attorneys make the decision as to which of these boxes is checked with respect to particular individuals.

5. Once the intake form has been filled out, the information from it is input into CRLA's computer database. Intake information is input into the computer database even if the potential client has been determined to be "Ineligible" for CRLA's legal services. One of the pieces of information stored about clients in the CRLA database is a "problem code," which is a code that captures the client's description of his or her legal problem. Another piece of information stored about clients in the CRLA database is the "close code," which describes how the client's matter was resolved. A true and correct list of CRLA's "problem codes" and "close codes" is attached hereto as Exhibit B.

6. If a potential client is eligible, there are no conflicts, and he or she is accepted as a client, that person is assigned to a CRLA staff attorney. Following the assignment, the attorney can access the information on the client in CRLA database's. He or she can also add information to the database, such as case notes and time records.

7. Eligible clients fall into the following categories: referral clients, advice/counsel clients, brief services clients, and extended service clients. Referral and advice/counsel clients are clients for whom CRLA attorneys do not take any public action—including sending letters or making telephone calls. Generally, referral and advice/counsel clients do not enter into written retainer agreements with CRLA. In my practice, approximately 80% of my clients are referral or advice/counsel clients, and I believe my practice to be typical of attorneys at CRLA.

8. Brief service clients are clients for whom CRLA takes limited action—writing a letter, making a telephone call—and these clients enter into brief service retainer agreements with CRLA. Extended service clients are clients for whom CRLA fully takes on representation, and these clients enter into full form retainer agreements.

CRLA's Clients' Fear of Retaliation

9. CRLA's mission is to provide free legal services to the poor throughout California, particularly farm workers. Many of these people are immigrants. In addition to being poor, many of CRLA's clients have little, if any, formal education and speak little, if any, English. Many of CRLA's clients do not know their legal rights, or even that they have legal rights. In my experience, my clients' poverty and lack of knowledge has made them very vulnerable to exploitation by employers, landlords, and others.

10. CRLA's clients are frequently afraid that, if their visit to CRLA were known, they would be retaliated against—or their coworkers or family would be retaliated against. The retaliation they fear most often is that they will be fired, but they also fear eviction, or loss of public services, or even physical violence. This fear is so strong that at community education events, which CRLA holds on a regular basis, at least 50% of the attendees will not even sign the attendance sheet when they learn that the attendance sheet must be shared with the Legal Services Corporation.

11. The fear of retaliation is unfortunately very real. I have heard of many instances of retaliation, but I recall several in particular. In one instance, a woman who had attended one of our community education events on sexual harassment learned about a coworker who was being sexually harassed. The woman told the foreman (based on information she had received at our event) that what he was doing was illegal. Both the woman and her coworker were then fired. In 2003, we offered to bring a claim on behalf of the woman, but she decided not to pursue it: having already lost her job for simply stating her coworker's rights, she was afraid that she would be blacklisted if she actually made an official legal claim.

12. In another instance, a farm worker came in to seek help regarding a disability. The worker had contracted carpal tunnel syndrome due to the farm's pruning practices, and we referred her out (i.e., referred her to another attorney) to make a worker's compensation claim. We subsequently heard that as soon as she requested a worker's compensation form from the farm, she was fired.

13. In a third instance, in 2004, a pesticide applicator was fired for pointing out the lack of proper safety procedures on the farm on which he worked. He came to us to file a claim for wrongful firing. We agreed, and in connection with the claim, we tried to get declarations from his coworkers about the farm's safety procedures. Most of the coworkers declined to give us declarations, however, as they were too afraid of being fired themselves.

14. Out of fear of retaliation, people who contact CRLA are often reluctant to fill out the intake form. CRLA assures these people, however, that the information they give CRLA in filling out the form will remain confidential. In fact, the intake form itself states that any information clients give CRLA will remain confidential. The maintenance of their confidence is of great importance to CRLA's clients. Even where a client does agree to fill out an intake form, or to seek advice from a CRLA attorney, the client often decides not to pursue any action that could link him or her—such as a letter or a telephone call—to a visit to CRLA.

CRLA's Clients' Other Confidentiality Concerns

15. Aside from fear of retaliation, there are other reasons that clients of CRLA are very interested in protecting their confidentiality. A number of the matters that CRLA attorneys are asked by clients for help on—relating to disability, juvenile delinquency, and various forms of public assistance—are sensitive and potentially embarrassing, and the clients often tell their attorneys that they want to keep those matters confidential. Because many of these matters are resolved in administrative or other forums in which the records are kept confidential, I have assured clients, and I am informed and believe that other CRLA attorneys assure their clients, that the matters will be kept confidential.

16. For example, in one education case my office worked on, we pursued a claim on behalf of students who had been sent by a juvenile court to a particular school for juvenile delinquents as probation. As conditions of their probation, the students were required to get certain grades in their classes, but the school had no resources for the students who were learning disabled. We represented the students in both juvenile court and in school administrative proceedings, the records of both of which are confidential by law. Because the students were

described in our representation as being both juvenile delinquents and special needs, neither the students nor the parents would have been willing to pursue the claim publicly. We told the students and parents, however, that our representation of the students would remain confidential.

17. My office also has many clients who are qualified to receive social security disability payments. Getting the clients to describe their condition in writing (which is necessary to receive the payments) is often difficult, as the clients are embarrassed of their condition and do not want to be labeled as “disabled.” This is especially true if the disability is not visible, such as a mental health disability. In a number of cases, I have had clients turn down money they need because they are too ashamed to admit that they are disabled, and this is despite the fact that we tell them that social security disability records are confidential by law.

Individual Cases in which CRLA’s Clients’ Identities Are Confidential

18. I would be able to provide the Court, *in camera*, with numerous, specific examples, drawn from my own practice, of individual clients whose information is privileged and confidential, yet sought by OIG. Concerns about waiving the very privilege and confidentiality concerns at issue prevent me from providing such detail, except *in camera*, and under circumstances in which there would be no waiver of privilege.

19. That said, there are numerous clients, from my own practice, whose information is called for by OIG’s subpoena, who have forgone prosecution of meritorious claims because they feared retaliation and desired to keep our consultation confidential, including clients with valid employment claims against local agricultural employers, and valid landlord/tenant claims against local landlords.

20. Similarly, there are clients, from my own practice, whose information is called for by OIG’s subpoena, who would not have authorized me to take any legal action on their behalf if I could not have assured them that such action could be taken confidentially. Such clients include, for example, juveniles with education-related disability claims.

21. In the years that I have worked for CRLA, I have seen at least one case a week in which, as in the cases described above, the client wants to keep their interaction with a CRLA attorney confidential.

22. The details of these individual's circumstances and desire for confidentiality are compelling and would assist the Court in understanding, in human terms, what is at stake. I thus respectfully request that, if the Court determines a more individualized showing of privilege is needed, that it direct me to provide more detail concerning clients from my practice *in camera*, without thereby waiving the attorney-client privilege.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 13th day of September 2007, at Santa Maria, California.

/s/ Jeannie Barrett

Jeannie Barrett