

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, D.C. 20007

Petitioners,

v.

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

Respondent.

Misc. No. 1:07-MC-00123-EGS

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**DECLARATION OF KAREN SMITH IN SUPPORT OF CRLA'S
OPPOSITION TO PETITION FOR SUMMARY ENFORCEMENT OF
ADMINISTRATIVE SUBPOENA DUCES TECUM**

I, KAREN SMITH, declare as follows:

1. Except where otherwise indicated, I have personal knowledge of the facts stated in this declaration, and as to any facts of which I lack personal knowledge I am informed and believe they are true. If called upon as a witness I could and would testify to the facts stated herein.

My Background

2. I am currently employed by California Rural Legal Assistance, Inc. (CRLA) as Administrative Director of Training, Technology and Other Support. I have held this position for 7 years. Prior to that I was a Directing Legal Secretary for the Stockton CRLA office for approximately 25 years and Administrative Assistant for 16 (overlapping) years.

3. In my capacity as case management system manager, I became familiar with all aspects of the KEMPS Client for Windows (“KEMPS”) data base system used by CRLA as its computerized case management system up until October 31, 2005. I worked with the designers of the KEMPS system to develop certain aspects of the program used by CRLA. I developed and conducted training for Administrative Legal Secretaries (“ALS”), intake workers and other CRLA staff on the use of the system. Between 2000 and 2006 I was also responsible for troubleshooting the system with our vendor and responding to inquiries from the field offices about the system. During that same time frame I coordinated the collection of data from the KEMPS system for statistical reports submitted to the Legal Services Corporation and California IOLTA program. I also responded to specific requests for statistics and time records made in the course of annual audits as well as special audits and investigations conducted by State and Federal oversight agencies.

4. My role as case management system manager has meant that I have had regular

contact with each of our field offices. Working with the Deputy Director and the Directors of Litigation Advocacy & Training I have regularly responded to questions about intake and client eligibility screening and entry of information into the case management systems. At staff training conferences and semi-annual meetings with the Directing Attorneys and Administrative Legal Secretaries (“DA/ALS Meetings”) I provided training on intake, eligibility screening, conflicts checks, and the case management systems. I train from the case handling manual and have interactive sessions where ALSs share information about their office systems. As a result I have a basic understanding of the procedures used in each CRLA office for intake and use of the case management system.

CRLA’s Intake Procedures

5. Every individual who comes to CRLA seeking legal services goes through an intake process in which CRLA staff determine whether CRLA can help them and, if so, whether they are eligible for CRLA’s services. In most offices information regarding each walk-in applicant is entered into the “door log” either by having the applicant sign in, or by having a CRLA staff person enter that information. CRLA intake staff interview the applicant to see if the applicant’s issue is one that is appropriate for CRLA to help with. If not, the applicant does not become a CRLA client, and is usually referred without preparing an intake. These referrals are recorded in CRLA’s records as what LSC terminology calls “matters” (rather than “cases,” which involve service to eligible clients).

6. Under most other circumstances, staff or the applicant fills out a paper intake form with some personal information about the applicant and a brief description of their reason for seeking CRLA’s services. CRLA’s intake form states, and CRLA’s typical practice is that staff helping applicants who cannot fill out the form themselves tell those applicants, that the

information the applicant supplies for the form will be kept confidential. The information collected includes financial information and citizenship/alienage status information. This information is taken from the paper intake or telephone interview and entered by CRLA staff into the electronic case management system (formerly KEMPS, now Legal Server).

7. If the applicant's issue is one that is appropriate for CRLA to help with, a CRLA advocate will interview the applicant and make the final determination about whether the applicant meets financial and citizenship/alienage status eligibility criteria under the Legal Services Corporation Act and other governing law. Generally the eligibility determination will be completed during the first interview. However, under certain circumstances, it may be necessary to get additional information or documentation from the applicant regarding eligibility.

8. If an applicant meets eligibility requirements and CRLA agrees to provide the services requested, it is opened in hard copy and electronically as what LSC terminology calls a "case." A retainer agreement may be signed anytime from the initial interview to a later date once eligibility and the nature of the services to be provided are established. A retainer agreement is not required when a case will be completed with only brief advice.

9. If an applicant does not meet eligibility requirements, the applicant is advised of that fact, and the paper and electronic files are closed as what LSC terminology calls a "matter."

10. CRLA creates a database file—or "record"—in its case-management database for each eligible client to whom it agrees to provide legal assistance. CRLA also opens records for many, but not all, applicants for legal assistance whom it declines to serve on various grounds, including lack of eligibility.

11. The case management database thus contains information about applicants for CRLA's services who do not become clients of CRLA, as well as for persons who are accepted

as clients. The information in the KEMPS system for applicants generally includes name, address, social security number, a coding for the type of legal matter for which assistance is being sought (a “problem code”) and names of the applicant’s spouse, as well as the names of adverse parties collected for the purpose of doing conflicts checks. There may also be notes associated with a particular applicant.

12. Generally, all intakes are given a unique identifying number as they are prepared. This number was generated by the KEMPS system automatically when CRLA used KEMPS. Information about applicants who completed intakes was entered into the KEMPS database and associated with the intake number generated by the system. This information remains in the system even after the file is closed. This is true even for those applicants who did not become CRLA clients. The information CRLA received about these applicants remains in the system even if it was determined that they were not eligible, and they were not accepted as clients.

13. The paper intake and information about client retainers and the substantive case documents are maintained in conventional paper files.

CRLA Client Management Database And OIG’s March 16, 2006 Data Request

14. The Legal Services Corporation Office of Inspector General’s (“OIG”) March 2006 Data Request asked CRLA to produce data from 19 “tables” in its “KEMPS” case management database for all matters, activities and cases that were open during all or part of the period January 1, 2003 to October 31, 2005.

15. CRLA maintains an electronic case management database. From January 1, 2003 to October 31, 2005 this database was maintained on a software package called KEMPS; it is now maintained in a different software package called Legal Server. With respect to OIG’s data requests in this litigation, CRLA has generally treated OIG’s references to “KEMPS” as also

applicable to the corresponding data fields and information that were transferred and/or recorded and maintained within our current “Legal Server” case management system.

16. As described above, CRLA opens a database file—or “record”—in its case-management database for each eligible client to whom it agrees to provide legal assistance as well as many, but not all, applicants for legal assistance whom it declines to serve. There are 39,107 “records”—*i.e.*, individuals whose names and other information were entered into the case management database—that were open at some point during the 2003-2005 time period and were thus responsive to OIG’s Data Request.

17. CRLA’s case management database is organized into data “tables” containing broad categories of information—*e.g.* CLIENTSW (personal information), CONFLICT (conflict information), ELIGIBILITY (financial eligibility information). These data tables are in turn comprised of standardized data “fields” containing specific information relevant to CRLA’s practice. For example, the CLIENTSW table contains fields for a client’s—or non-client applicant’s—first name, middle initial and last name; spouse’s first and last name; address, residence city, residence county; telephone area code; telephone number; date of birth; gender; language; handicap status; citizenship status, Resident Alien Card (or “green card”) number; case opening date; LSC “problem code” (one of about 60 numerical designations used by LSC-funded legal aid programs like CRLA that describes the type of issue of that the client or applicant wished to consult CRLA about); and closing code (a code that LSC-funded legal aid programs use when closing a file to describe the amount and type of service provided to the client or applicant—*e.g.* counsel and advice, brief service, referral, negotiated settlement with or without litigation, administrative decision, court decision). The CONFLICT table contains information used to run a conflicts check, including adversary party names. The ELIGIBILITY table

contains fields for number of adults and children in a client or applicant's household, household income source and amount and client or applicant assets. Other tables contain calendaring information and, in cases that are actively litigated, information about the forum, etc. All of these tables also contain a "case number" field that provides a unique numerical identifier for each individual record and allows data from different tables pertaining to a particular record—that is, a particular individual—to be linked together.

18. OIG's Data Request asked for virtually all the identifying information CRLA maintained in KEMPS for all persons whose records were open at any time from January 1, 2003 to October 31, 2005. For example, OIG's request encompassed personal information such as first name, middle initial and last name; spouse's first and last name; address, residence city, residence county; telephone area code; telephone number; date of birth; gender; language; client handicap status; citizenship status, and client's Resident Alien Card (or "green card") number. (OIG's requests did not ask for the field containing Social Security numbers or case summary notes). OIG also requested database information about the nature and posture of cases, including: case opening date; problem code; and closing code. (A full listing of LSC problem codes and closing codes can be found in Exhibits HH (at Attachment 2) and II (at 3) to the Declaration of William G. Hoerger filed concurrently with this Declaration). OIG also requested fields containing information related to financial eligibility, such as number of adults and children in household; household income (both source and amount); and assets (both type and amount). Finally, OIG asked for fields containing information used in conflict checks, including adversary party name, but excluding descriptive notes on adversary parties.

19. On April 14, 2006, I sent to OIG on CRLA's behalf a computer disk identifying data fields for the 39,107 names or "records" in its KEMPS case management database for the

relevant time period. CRLA produced intact data for the vast majority of the fields that it uses. CRLA did not produce data in the some fields, however, based on CRLA's determination (communicated to me by CRLA management) that these fields contained identifying information for clients and applicants many of whom had consulted CRLA in confidence, so that for many of those clients and applicants the identifying information would be confidential and/or privileged.

20. By way of example, some of the fields that CRLA *did* produce information for include: residence city, county and zip code; telephone area code; date of birth; number of adults and children in the household; household income and assets; citizenship status; gender; race; language; client handicap status; case-opening date; LSC problem code and closing code. By contrast, some of the identity related fields that CRLA *did not* produce information for include: first and last name; street address; phone number; Resident Alien Card (or "green card") number; spouse's first and last name; and adverse party name(s).

21. CRLA also did not produce data from some other "tables" listed in OIG's request simply because it had never entered any data into those tables. KEMPS was an off-the-shelf product that had functionality—in the form of certain tables—that CRLA did not use.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Declaration was executed at Stockton, California on September __, 2007.

KAREN SMITH