
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OFFICE OF COURT
ADMINISTRATION**

**CONTRACT WITH
LAWYERS FOR CHILDREN**

Report 2007-R-2

AUDIT OBJECTIVE

Our objective was to determine whether expenses claimed by Lawyers For Children under its contract with the Office of Court Administration (OCA) were adequately documented, were allowable and were reimbursed in accordance with contract terms, and were processed through an appropriate system of internal control. Our audit covered the period April 1, 2004, through March 31, 2007.

AUDIT RESULTS - SUMMARY

OCA has contracted with Lawyers For Children since 1984 to provide legal representation for children in Family Court proceedings in New York City. For the period April 1, 2004, through December 31, 2006, Lawyers For Children claimed a total of \$10.2 million in expenses under the contract. We found that these expenses generally were adequately documented, were allowable, and were reimbursed in accordance with contract terms. However, we identified \$6,929 in claimed expenses during the 2005-06 fiscal year that were not adequately documented and recommend that this amount be refunded to OCA unless the necessary supporting documentation is provided.

Lawyers For Children is supposed to be reimbursed for its services on a cost basis. It should be reimbursed only for expenses that have actually been incurred. However, we found that Lawyers For Children sometimes claims expenses before they are incurred and is reimbursed for these expenses, because OCA does not require that the reimbursement requests be supported by expense documentation. We recommend that the requests be supported by such documentation and Lawyers For Children be reimbursed only for expenses after they have been incurred.

Lawyers For Children regularly receives private donations and other miscellaneous funding from sources other than OCA. Lawyers For Children is required by the contract to report this additional revenue to OCA, and the revenue is to be taken into account by OCA when Lawyers For Children is reimbursed for its expenses under the contract. We found about \$557,000 in settlement fees that were paid to Lawyers For Children by the City of New York but were not clearly reportable under the terms of the contract. Consequently, this revenue was not formally reported to OCA. OCA reports that it interpreted the contract as not requiring that this income be reported or taken into account when contract expenses were reimbursed. We recommend that the contract be amended to provide clearer guidance for such revenue.

Lawyers For Children's expenses under the contract are supposed to be controlled through an annual budget process. However, we found that OCA is not closely monitoring actual contract expenses to ensure that they are consistent with the budgeted amounts. We also found improvements are needed in certain financial internal controls at Lawyers For Children. Our report contains a total of 17 recommendations for improvement in the administration of the contract. OCA officials indicated that they will work with Lawyers For Children to ensure appropriate internal controls are in place and in that context will specifically address every recommendation of the audit.

This report, dated September 25, 2008, is available on our website at: <http://www.osc.state.ny.us>.

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Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

New York State law provides that a child who has entered into foster care as a result of neglect or abuse proceedings is to be assigned a law guardian by the Court. The Office of Court Administration (OCA), which is the administrative branch of New York State's Unified Court System, is authorized by law to enter into agreements with legal aid societies to provide law guardians for such children. OCA has entered into such an agreement with Lawyers For Children, a not-for-profit organization based in New York City.

Under the agreement, the New York City Family Court may assign children needing law guardians to Lawyers For Children. Lawyers For Children reports that, since its founding in 1984, it has represented about 45,000 such children, with a current annual caseload of approximately 4,000 children. Lawyers For Children also reports that it has not rejected for representation any children referred by the Court. OCA officials advised us that the Court has been satisfied with the representation provided.

OCA has entered into a succession of contracts with Lawyers For Children since 1984. Under these contracts, Lawyers For Children has provided legal advocacy services in Family Court proceedings. Lawyers For Children has also provided the represented children with various social work services.

During the three-year period covered by our audit, one five-year contract ended (Contract C400063 covering the period April 1, 2000, through March 31, 2005) and another five-year contract began (Contract C400080 covering the period April 1, 2005, through March 31, 2010). Under both contracts, Lawyers For Children was to be reimbursed on a cost basis for its services, and the total reimbursements for a fiscal year were not to

exceed the amount set forth in the approved budget for that year.

As is shown in the following table, the total amounts budgeted under the contracts ranged from \$3.5 million to \$4.3 million in the three fiscal years covered by our audit. These amounts included both the State funds provided by OCA and other funding obtained by Lawyers For Children from other sources (generally private donations and grants). Under the contract, Lawyers for Children is expected to obtain this other funding.

Year	OCA Funds	Other Funds	Total
2004-05	\$2,200,000	\$1,345,723	\$3,545,723
2005-06	\$2,350,000	\$1,297,720	\$3,647,720
2006-07	\$2,960,000	\$1,300,000	\$4,260,000

Lawyers For Children is required to report all its contract expenses to OCA. These expenses may be reimbursed by OCA on a quarterly basis or they may be reimbursed at any time by the non-OCA funding. At the end of each fiscal year, the total reimbursements are to be reconciled against the total expenses to ensure that they match. Lawyers For Children is required to report its non-OCA funding to OCA so that this other funding can be taken into account in the reconciliation process.

For the period April 1, 2004, through December 31, 2006, Lawyers For Children claimed a total of \$10.2 million in program expenses under the contract. Our audit focused on these claimed expenses. According to records maintained by Lawyers for Children and OCA, as of December 31, 2006, \$6.6 million of this \$10.2 million in claimed expenses had been reimbursed by OCA. The other expenses were paid using non-OCA funding.

AUDIT FINDINGS AND RECOMMENDATIONS

Validity of Expenses

To determine whether the \$10.2 million in contract expenses claimed by Lawyers For Children for the period April 1, 2004, through December 31, 2006, was adequately documented and allowable, we reviewed the supporting documentation for a sample of the claimed expenses. For each fiscal year, we selected a judgmental sample of expenses to review, as follows:

- For the 2004-05 fiscal year, we selected 32 expense transactions totaling \$415,421.
- For the 2005-06 fiscal year, we selected 155 expense transactions totaling \$483,430.
- For the 2006-07 fiscal year, we selected 76 expense transactions totaling \$428,727.

We found that all of the sampled expenses for the 2004-05 and 2006-07 fiscal years were adequately documented and were allowable under the contracts, as they appeared to relate to authorized program services.

However, for the 2005-06 fiscal year, \$6,929 of the \$483,430 in sampled expenses was not supported by adequate documentation. This \$6,929 related to 17 transactions for various types of expenses. Lawyers For Children officials told us that they had lost the original supporting documentation for these expenses. They provided us with alternative documentation (e.g., credit card statements) in an effort to support the expenses, but this alternative documentation was not sufficiently reliable to support that the transactions were allowable.

In response to our preliminary audit findings, officials at OCA and Lawyers For Children noted that all the sampled expenses from the 2004-05 and 2006-07 fiscal years were allowable under the contract, and therefore, in their opinion, it was likely that the undocumented expenses from the 2005-06 fiscal year were also allowable under the contract.

We acknowledge that the risk of impropriety appears to be low, but note that Lawyers For Children is required by the contract to maintain all relevant financial documentation for a period of six years. We recommend OCA periodically review Lawyers For Children's records to determine whether this requirement is being met. We also recommend OCA recover the \$6,929 in undocumented expenses, unless documentation can be provided which shows that the expenses were, in fact, incurred for authorized program purposes.

Recommendations

1. Review Lawyers For Children's records periodically to determine whether adequate supporting documentation is being maintained for the expenses claimed under the contract.
2. Obtain a refund of \$6,929 from Lawyers For Children unless documentation can be provided which shows the expenditures were incurred for authorized program purposes.

Reimbursement of Expenses

We found that, contrary to contract requirements, Lawyers For Children sometimes claims expenses before they are incurred and is reimbursed for these expenses, because OCA does not require that the reimbursement requests be supported by

contemporaneous expense documentation. We also found that about \$557,000 in miscellaneous revenue was not taken into account when contract expenses were reimbursed. The revenue was not taken into account because it was not clear whether it was reportable under the contract.

Quarterly Reimbursement

At the beginning of each fiscal year, OCA is to advance Lawyers For Children an amount equal up to 40 percent of its total contract budget for that year. Then, at the end of each quarter, Lawyers For Children is to submit a voucher to OCA describing the contract expenses actually incurred in that quarter. The voucher is to be supported by a detailed report listing these expenses. OCA is to review the detailed listing and reimburse Lawyers For Children for all authorized expenses not covered by the initial advance.

At the end of the fiscal year, Lawyers For Children is to reconcile the total reimbursements for the year against the total reported expenses to ensure that they match, and OCA is to verify the accuracy of this reconciliation. The non-OCA funding received by Lawyers For Children is to be reported to OCA and taken into account in this reconciliation process. We found that, on an annual basis, the reimbursement requests were generally accurate. There were only minor discrepancies between the expenses claimed for reimbursement in each fiscal year and the expenses recorded in the payroll registers and other records for that year.

However, on a quarterly basis, the reimbursement requests were not always accurate. We reviewed the quarterly reimbursement process for all four quarters of the 2004-05 and 2005-06 fiscal years and for the first three quarters of the 2006-07 fiscal year. We compared each quarterly

reimbursement request with the payroll registers and other expense records maintained by Lawyers For Children.

We found that OCA inappropriately advanced funds to Lawyers For Children for expenses that had yet to be incurred. For example, in the second quarter of the 2004-05 fiscal year, Lawyers For Children claimed \$754,446 for salaries and fringe benefits, and was reimbursed for that amount, even though it actually incurred only \$599,157 for these expenses during that quarter. Similarly, in the third quarter of the 2005-06 fiscal year, Lawyers For Children claimed and was reimbursed for \$48,687 more than it actually incurred in fringe benefits. In both instances, the excess amounts were accounted for in the following quarter, as Lawyers For Children claimed commensurately less than it actually incurred.

Overpaying for any particular quarter affords Lawyers for Children more funds than it is entitled to receive. We recommend OCA review the reimbursement requests more closely and ensure that only actual expenses are reimbursed. To facilitate this review, we recommend OCA require Lawyers For Children to submit supporting documentation along with its reimbursement requests, and OCA reconcile this documentation to the requests to ensure that the requests are accurate and are fully supported.

OCA officials replied to our preliminary findings that, in the future, Lawyers For Children will be required to submit supporting documentation along with its reimbursement requests. The officials also indicated that the responsibility for reviewing the requests will be transferred to a different OCA office, which has more expertise in contract monitoring.

Accounting for Revenue

According to both the April 1, 2005 contract between Lawyers For Children and OCA and the prior five-year contract between these parties, Lawyers For Children is required to report its other revenue to OCA and to include such revenue in the contract budget. In October 2005, Lawyers For Children was awarded \$557,042 as its share of a settlement of a class action lawsuit against new York City regarding foster care.

The contract is not specific about whether “other revenue” includes proceeds such as the lawsuit settlement. Both OCA and Lawyers For Children agreed that the settlement proceeds were not other revenue under the contract. Accordingly, Lawyers For Children used most of the settlement funds for purposes other than the contracted program such as office renovations, new office furniture and computer equipment; only \$29,865 was used for contract program purposes. Therefore, we could not conclude whether the \$557,042 should have been reported to OCA and should have been part of the contract budget for the program.

Although, Lawyers For Children did not formally report the \$557,042 in settlement revenue to OCA, Lawyers For Children officials told us they made OCA aware of the issue as early as November 9, 2005, and provided OSC with a memo from Lawyers For Children to OCA (signed by both parties), dated May 9, 2007 that memorialized a November 9, 2005 conversation between Lawyers For Children and OCA with respect to the settlement funds.

According to minutes from the meetings of the Lawyers For Children Board of Directors, Lawyers For Children officials were informed that the OCA contract did not clearly make this revenue reportable under the contract.

The minutes stated that Lawyers For Children needed to “evaluate the risk of the state appropriating these funds” rather than Lawyers For Children properly retaining the settlement revenue for the “exclusive, discretionary use of LFC [Lawyers for Children].”

To prevent future ambiguity, we recommend that the contract between OCA and Lawyers For Children be amended to clarify what constitutes “other revenue” that must be reported to OCA and must become part of the contract program budget. To further illustrate why this is important, it should be noted that non contract funds were not sufficient to cover all of the litigation expenses that culminated in the lawsuit settlement. Uncovered costs of \$88,006 were paid from contract funds. Therefore, it could be argued that at least this portion of the settlement should have been reported as other revenue for contract budget purposes subsequent to the settlement.

At the beginning of each fiscal year, Lawyers For Children is supposed to report its expected donations and other revenues for the upcoming year in a funding and donation schedule that is to be attached to the contract as a formal appendix (Appendix D in the 2000-05 contract and Appendix C in the 2005-10 contract). However, we found that OCA was not ensuring compliance with this contract requirement. Appendix D was not attached to the 2000-05 contract and Appendix C was not attached to the 2005-10 contract. In fact, the OCA contract manager told us that he was unaware that these appendices were referenced in the contracts. We recommend that OCA ensure that the appendices are attached to the contracts. This is necessary to adhere to contract requirements and to provide better assurances that all reportable revenue has been identified.

In response to our preliminary findings, OCA officials indicated they are reviewing the contract language to ensure that miscellaneous items, such as other income, are brought to OCA's attention.

Recommendations

3. Require Lawyers For Children to submit supporting documentation for its quarterly reimbursement requests, and reconcile this documentation to the requests to ensure that the requests are accurate.
4. Amend the contract so that it clarifies what is to be reported to OCA as other revenue.
5. Ensure all appendices referenced in the contract are included with the contract.

Budgeting of Expenses

Lawyers For Children's expenses under the contract are supposed to be controlled through an annual budget process. The purpose of this process is to help ensure that the objectives of the contract are met.

Each year, Lawyers For Children submits a budget request for OCA's approval. In this request, Lawyers For Children is supposed to indicate its expected expenses for the upcoming year in various categories (e.g., personal services, travel, training, equipment). These estimates are to be based on the expected State funding, expected other funding, and program needs. Once the budget has been approved by OCA, Lawyers For Children is expected to adhere to the budgeted amounts or obtain OCA's approval for significant interchanges of funds.

We found that OCA is not closely monitoring actual expenses to ensure that they are consistent with the budgeted amounts.

Non-Personal Services

Lawyers For Children may shift non-personal services funds from one budget category to another. However, an increase or decrease of more than 20 percent in any category must be approved in writing by OCA.

We found that Lawyers For Children was not seeking OCA's approval for such interchanges of funds and OCA was not monitoring expenses against the budget. For example, in the 2004-05 fiscal year, the expenses in three budget categories (law library and equipment, travel, and training) were under budget by more than 20 percent, and the interchanges were not approved by OCA. Law library and equipment expenses were 33 percent under budget, travel expenses were 42 percent under budget, and training expenses were 21 percent under budget.

Lawyers For Children officials told us that expenses were under budget in 2004-05 because of a lack of available funding, as the amount of private donations was lower than expected. The officials stated that they had to reduce expenses because their fundraising goals were not met. We acknowledge that Lawyers For Children may have to adjust its spending in response to actual conditions during the year; however, large interchanges should be approved by OCA, as is required by the contract.

Personal Services

The contract states that Lawyers For Children may shift personal services funds from one budgeted line item to another, as long as the individual salaries are not increased by more than 5 percent from the amounts originally specified in the budget. The contract also states that such interchanges between line items must be approved in writing by OCA within 15 days.

We found that OCA and Lawyers For Children were not complying with this requirement. During the three years covered by our audit, the salaries of 21 employees were increased through such interchanges, but the interchanges between line items were not approved in writing by OCA. None of the increases exceeded 5 percent. We also noted that individual salaries were not specified in the budget that was attached to the contract as Appendix B. To facilitate OCA's monitoring of employee salaries, we recommend individual salaries be included in Appendix B.

Lawyers For Children employs attorneys, support staff, administrative staff, social workers, and cleaners. According to OCA officials, maintenance and cleaning personnel are to be treated as contractors, not employees. However, Lawyers For Children paid three maintenance and cleaning personnel as employees. OCA did not review any payroll records, which would have shown that the three personnel were included on the payroll. Because Lawyers For Children paid these individuals as employees, OCA incurred expenses for payroll taxes and unemployment insurance that would not have been incurred if they had been paid as contractors.

In response to our preliminary findings, OCA officials agreed that payroll records should be reviewed, and they indicated that OCA may disallow the payroll tax expenses that were incurred for these employees.

Recommendations

6. Monitor contract expenses against the approved budget to ensure that the expenses are consistent with the budget.
7. Ensure that budget variances of more than 20 percent in non-personal service expenses are approved in advance.

8. Ensure that Lawyers For Children requests and obtains approval for interchanges between budgeted line items.
9. Require individual employee salaries in Appendix B.
10. Review the payroll records periodically to ensure that individuals who should be paid as contractors are not included as employees on Lawyers For Children's payroll.
11. Disallow all prior expense claims for payroll taxes and unemployment insurance for persons who should have been paid as contractors and recover the disallowed amounts.

(In response to the draft audit report, Lawyers For Children officials state that the language of the audit finding should be modified to state that: (1) The contract with OCA does not require that maintenance and cleaning personnel be treated as contractors. (2) Their independent auditors have advised that these personnel must be treated as employees and there was no indication that OCA previously informed Lawyers For Children that it was expected to treat these personnel as contractors. (3) OCA should direct Lawyers For Children to include these individuals in the Personal Services section of their budget if Lawyers For Children's independent auditors continue to advise that these personnel must, by law, be treated as employees. and (4) The audit report should recommend that OCA address this issue in the language of the contract, in order to provide clarity to Lawyers For Children regarding OCA's expectations.)

Auditor's Comments: We agree that OCA should clarify its expectations with contract language.

Internal Controls

We found certain improvements are needed in OCA's internal controls over contract monitoring. We also found improvements are needed in certain financial internal controls at Lawyers For Children.

Monitoring by OCA

The contract requires Lawyers For Children to notify OCA whenever it replaces any of the personnel who are performing legal advocacy services, and obtain OCA's approval for these changes. Such notification enables OCA to ensure that the personnel hired are licensed attorneys, as is required by law. However, we found that OCA and Lawyers For Children were not complying with this requirement.

Lawyers For Children regularly replaces attorneys who leave its employment. Lawyers For Children officials said that they have never reported personnel replacements to OCA, and OCA officials said they have never received a list of attorneys from Lawyers For Children or verified the status of the attorneys' licenses. In addition, OCA has never determined whether Lawyers For Children is verifying the licenses and qualifications of its attorneys.

According to OCA contract administrators, there was never any intent that Lawyers For Children be required to report all personnel changes among its legal staff. The intent was to report a change only in the Executive Director's position. The administrators therefore believe it is not OCA's responsibility to review other personnel changes. However, the contract explicitly

requires OCA to review these personnel changes.

For example, the contract for 2005-10 states, "In the event that the Contractor seeks to make ... any change in the personnel performing the services provided ..." pursuant to this Agreement, Contractor shall first provide written notice thereof to UCS [the Unified Court System, i.e., OCA] and shall obtain the prior written approval by UCS."

We recommend OCA comply with this contract provision. In response to our preliminary audit findings, OCA officials stated that they were considering deleting this provision from the contract.

Financial Controls at Lawyers For Children

The Lawyers For Children Policy and Procedure manual states that all checks must be signed by the Administrative Director, and checks of more than \$250 must be signed by both the Administrative Director and the Executive Director. This control is intended to ensure that only valid payments are being made.

To determine whether this requirement was being met, we reviewed 340 checks totaling \$792,151 that were issued between October 1, 2005, and March 31, 2006. We found that 18 of these checks did not have the required signatures, as 2 checks for less than \$250 were not signed by the Administrative Director and 16 checks for more than \$250 were not signed by both officials. The total value of the 18 checks was \$142,427.

Lawyers For Children did not designate alternative check signers to cover absences by either of the primary designees. As a result, checks issued during the absence of one or both of the designated persons were issued without the appropriate signatures. We

recommend alternative check signers be designated.

The New York State Accounting System User Procedures Manual states that accounting functions should be divided among several employees so that the work of one employee complements and acts as a check on the work of another. If these functions are not adequately separated, funds could be diverted and the records adjusted to cover the misappropriation. However, at Lawyers For Children, a single employee, the Administrative Director, is responsible for many of the organization's accounting functions.

For example, the Administrative Director is the only employee who records invoices and payments in the accounting records. The Administrative Director also determines what bills to pay, processes the checks and is one of the designated signatories. An external bookkeeper reconciles the bank accounts monthly and makes adjusting journal entries quarterly.

In response to our preliminary audit findings, Lawyers For Children officials stated that accounting duties cannot readily be separated among different employees because of the small size of their office staff. They said they must conserve resources by consolidating responsibilities. They also indicated that there are extensive controls on disbursements, as the Executive Director reviews every payment by initialing the documentation supporting the payment. This review occurs before the check has been issued. We recommend that Lawyers For Children review the combination of accounting functions assigned to the Administrative Director to determine where it may be practical to separate incompatible duties. When it is not practical, Lawyers For Children should

determine what compensating controls should be used.

Lawyers For Children staff often work in locations other than their office. Lawyers For Children maintains daily location sheets to record these work locations. We reviewed the location sheets for July 2006, June 2005, and May 2004. We found that two location sheets were missing for May 2004 (May 6 and May 20) and one location sheet was missing for July 2006 (July 3). According to the contract, these records must be kept for at least six years. We recommend that steps be taken to better ensure compliance with this requirement.

We also found that the location sheets did not always clearly indicate each employee's location. For example, the location sheets had entries such as "field" without indicating the particular field location. Also, the location sheets had a legend which explained the meaning of various abbreviations and symbols, but some of the notations (such as "Meeting," "Coming," "Out," and "-") were not explained.

In response to our preliminary audit findings, Lawyers For Children officials stated that the location sheets are complemented by detailed daily logs that are kept on an erasable white board, ensuring that employees can be found immediately. To provide better assurance employees' locations are being adequately monitored, we recommend the location sheets clearly indicate each employee's location. In addition, an erasable board would not provide a permanent record, which is required by contract, to be retained for six years.

Lawyers For Children hired the spouse of one of its employees to perform computer maintenance and repairs. The spouse was paid \$3,330 for these services between March 15, 2006, and March 10, 2007. The employee

was the one who was responsible for notifying her spouse when the computer maintenance and repair services were needed, and signed the checks paying for the services.

Although Lawyers For Children indicated they evaluated other potential consultants regarding qualifications and cost, there can be an appearance of impropriety when employees are involved in decisions concerning vendors who are family members. After the end of our field work, Lawyers For Children provided an undated policy pertaining to conflicts of interest. However, this policy does not contain any provision prohibiting an employee from authorizing a related-party vendor to perform work. In addition, responding to our preliminary findings report, OCA officials indicated that they would provide Lawyers For Children officials with the applicable State guidelines.

(In response to the draft audit report, Lawyers For Children officials state that all work performed by this consultant required the authorization of the Executive Director and checks were signed by the Executive Director and the Administrative Director.)

Lawyers For Children incurs certain fringe benefit expenses on its employees, such as unemployment insurance and payroll taxes. These expenses are reimbursed by OCA. We examined Lawyers For Children's records relating to these fringe benefit expenses and found that, for two of the expenses, there were discrepancies between the amounts shown on the records and the amounts claimed for reimbursement. Specifically, in the 2005-06 fiscal year, we identified a discrepancy of \$6,459 in the unemployment insurance expenses and a discrepancy of \$7,741 in the payroll taxes.

Because of these discrepancies, it is not clear whether the amounts that were claimed for

reimbursement were accurate. We recommend Lawyers For Children resolve the two discrepancies and ensure that future fringe benefit claims are accurate.

Recommendations

12. Ensure that Lawyers For Children notifies OCA whenever it hires a new attorney. Require Lawyers For Children to verify the qualifications of these attorneys, and confirm that this is being done.
13. Instruct Lawyers For Children to review the combination of accounting functions assigned to the Administrative Director to determine where it may be practical to separate incompatible duties. When it is not practical, determine what compensating controls could be used.
14. Instruct Lawyers For Children to maintain all daily location sheets for at least six years.
15. Instruct Lawyers For Children to ensure that the daily location sheets clearly indicate the location of each employee.
16. Instruct Lawyers For Children to expand their policies and procedures that would prohibit employees from being involved in decisions concerning vendors who are family members.
17. Resolve the two discrepancies in fringe benefit expenses and ensure that future fringe benefit claims are accurate.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We audited OCA's and Lawyers For Children's administration of the law

guardian contract for the period April 1, 2004, through March 31, 2007. To accomplish our objective, we reviewed the contract and associated documents, and examined selected records maintained by OCA and Lawyers For Children. We also interviewed officials and staff at both OCA and Lawyers For Children.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to OCA officials for their review and comment. Their comments were considered in preparing this final audit report, and are included as Appendix A. In addition, Lawyers For Children also provided comments in response to a draft copy of this report. Their comments are also included as part of Appendix A. Our rejoinders to certain of the comments provided by officials of OCA and Lawyers For Children are shown in Appendix B, State Comptroller's Comments.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Chief Administrative Judge of the Unified Court System shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Carmen Maldonado, Robert Mehrhoff, Abe Fish, Peter Schmidt, Gayle Clas, Altagracia Rodriguez, Farhan Ahmad, and Dana Newhouse.

APPENDIX A - AUDITEE RESPONSES

State of New York
Unified Court System



Ann Pfau
Chief Administrative Judge

Hon. Thomas P. DiNapoli
State Comptroller
110 State Street
Albany, New York 12236

Dear Comptroller DiNapoli:

The Office of the State Comptroller has issued draft audit report (2007-R-2) regarding the Unified Court System's "Contract With Lawyers For Children." I have discussed the report with UCS staff and offer the following comments.

The auditors examined \$10.2 million in expenses and have identified \$6,929 for which adequate documentation to support the expenditure could not be located. We have reviewed the specifics of the proposed disallowances and disagree that these amounts should be recovered. Each of these expenses represents continuing operational costs for goods and services from which the organization has clearly established a pattern of appropriate payment. We will reinforce with Lawyers for Children the necessity to retain all documentation to support its expenditures.

We agree with comments in the report concerning monitoring of contract expenditures and quarterly reconciliations. For that reason, among others, OCA established a separate unit last fall to handle the law guardian contracts. (This function previously had been part of our Budget Office's responsibilities.) This will allow closer oversight of these contracts and greater scrutiny of LFC's financial documentation. We will work with the Contractor to ensure that appropriate internal controls are in place and in that context will specifically address every recommendation of the audit.

In assessing these recommendations we note that LFC raises a significant amount of revenue, which is used to supplement their State funds and enhance support for their law guardian activities. This private fund-raising provides a major benefit to LFC and its clients as well as to the Unified Court System.

Finally, the report suggests that OCA should review the credentials of the attorneys hired by the private contractor. We disagree with this recommendation, as we rely on our contractors to screen and employ qualified individuals. The report cited no instances of unqualified staff that would warrant such a recommendation.

Sincerely,

c: Dennis W. Donnelly, CPA

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April 17, 2008

RECEIVED
EXECUTIVE CORRESPONDENCE

APR 28 2008

OFFICE OF THE STATE COMPTROLLER
THOMAS P. DINAPOLI
COMPTROLLER

*
Comment
1

*** See State Comptroller's Comments, page 20.**



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April 24, 2008

Hon. Thomas P. DiNapoli
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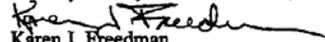
OFFICE OF THE STATE COMPTROLLER
THOMAS P. DINAPOLI
COMPTROLLER

Dear Comptroller DiNapoli:

I am in receipt of a copy of Chief Administrative Judge Pfau's response to your draft audit report (2007-R-02) regarding the Unified Court System's "Contract With Lawyers For Children." While I understand that it is within the Chief Administrative Judge's purview to file a formal response to the draft document, I would also like to register my comments with your office. I remain concerned that the draft report contains ongoing inaccuracies, and in some instances changes that must be made to specific wording in the report in order to avoid serious mischaracterization of events.

I have attached a copy of Lawyers For Children's comments. I trust that these comments will be seriously reviewed and that every effort will be made to incorporate them into the final version of the report. I want to be certain that I have given you all of the information necessary for you to file a report that accurately reflects the events that transpired at Lawyers For Children during the audited period. Lawyers For Children has been devoted to serving the State of New York and the children of this State for close to 25 years and there is nothing that is more important to me than the good name and reputation of this organization.

Thank you for your consideration,


Karen J. Freedman

Providing free legal and social work services to New York City's children since 1984

**LAWYERS FOR CHILDREN'S RESPONSE
TO OSC DRAFT**

All suggested changes to the text of the document are underlined

I. AUDIT RESULTS – SUMMARY

As the summary section of the Audit sets the tone for the entire document, LFC believes that certain specific changes should be made in this section in order to accurately reflect the facts and the conclusions drawn by OSC.

P. 2 – Last full paragraph ending left column and beginning right hand column:

We recommend that the requests be supported by such documentation and Lawyers For Children be reimbursed for expenses after they have been incurred.

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P. 2 – 1st full ¶ in right hand column:

Lawyers For Children regularly receives private donations and other miscellaneous funding from sources other than OCA. Lawyers For Children is required by the contract to report this additional revenue to OCA, and the revenue is to be taken into account by OCA when Lawyers For Children is reimbursed for its expenses under the contract. We found about \$557,000 in settlement fees that were paid to Lawyers For Children by the City of New York, but were not clearly reportable under the terms of the contract. Consequently, this revenue was not formally reported to OCA. OCA reports that it interpreted the contract as not requiring that this income be reported or taken into account when contract expenses were reimbursed. We recommend that the contract be amended to provide clearer guidance for such revenue.

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II. VALIDITY OF EXPENSES (p.4)

Of the \$10.2 million dollars in contract expenses, OSC claims that \$6,929 was not supported by adequate documentation. Despite numerous requests by Lawyers For Children to OSC, Lawyers For Children has not been provided with a list of the specific expenses that OSC believes fall into this \$6,929 category. Without such specifics, Lawyers For Children is being

* See State Comptroller's Comments, page 20.

faulted for failing to address a perceived deficiency without being provided by OSC with the information necessary to do so.

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III. UNACCOUNTED FOR REVENUE (p.6)

The very title of this section is misleading in that it implies a failure to adhere to the terms of the contract. Lawyers For Children accepts OSC's conclusion that in the future such revenue streams should be dealt with more formally as an amendment to the contract, however, the clear and erroneous implication in this section is that Lawyers For Children and its Board were acting improperly, and in fact scheming to hide funds that should have been reported to the state. This borders on libel, especially as to the actions of the Board. We feel strongly that this section must be revised in order to accurately reflect the import and recommendations contained in this section.

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Heading Change: REVENUE OUTSIDE OF THE CONTRACT

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Beginning with 2nd ¶:

The contract is not specific about whether "other revenue" includes proceeds such as the lawsuit settlement. Both OCA and Lawyers For Children agreed that the settlement proceeds were not other revenue under the contract. Accordingly, Lawyers For Children used most of the settlement funds for purposes other than the contracted program, such as one time capital expenses including office renovations, new office furniture and computer equipment; only \$29,865 was used for contract program purposes. Therefore, we did not conclude that the \$557,042 should have been reported to OCA or should have been part of the contract budget for the program.

Although Lawyers For Children did not formally report the \$557,042 in settlement revenue to OCA, LFC officials told us they made OCA aware of the issue as early as November 9, 2005, and provided OSC with a memo from Lawyers For Children to OCA (signed by both parties), dated May 9, 2007, that memorialized a November 9, 2005 conversation between Lawyers For Children and OCA with respect to the settlement funds.

According to minutes from meetings of the Lawyers For Children Board of directors, Lawyers For Children officials were informed that the OCA contract did not clearly make this revenue reportable under the contract. The minutes stated that Lawyers For Children needed to "evaluate the risk of the state appropriating these funds" rather than Lawyers For Children properly retaining the settlement revenue for the "exclusive, discretionary use of LFC [Lawyers For Children]."

* See State Comptroller's Comments, page 20.

We recommend that the contract between OCA and Lawyers For Children be amended to clarify what constitutes "other revenue" that must be reported to OCA and must become part of the contract program budget. To further illustrate why this is important, it should be noted that non-contract funds were not sufficient to cover all of the litigation expense that culminated in the lawsuit settlement. Uncovered costs of \$88,006 were paid from contract funds. Therefore, it could be argued that at least this portion of the settlement should have been reported as other revenue for contract budget purposes subsequent to the settlement.

IV. BUDGETING OF EXPENSES (p. 7)

Although the contract is silent on this point, OSC indicates that OCA officials have stated that "maintenance and cleaning personnel are to be treated as contractors, not employees." As Lawyers For Children has explained repeatedly, although OCA has asked us to list the cleaning and maintenance expenses in the non-personal category, Lawyers For Children could not ignore the advice of our independent auditors, who informed us unequivocally that under state and federal law these specific workers were required to be documented as employees. (See CPA letter attached.)

P. 8 / left hand column:

Lawyers For Children recommends that the entire section regarding cleaning personnel be removed or, in the alternative, that the language be modified as follows:

Lawyers For Children employs attorneys, support staff, administrative staff, social workers, and cleaners. According to OCA officials, maintenance and cleaning personnel are to be treated as contractors, not employees. However, Lawyers For Children's contract with OCA does not require that maintenance and cleaning personnel be treated as contractors. In addition, Lawyers For Children was advised by its independent auditors that it must treat these personnel as employees, and there is no indication that OCA previously informed Lawyers For Children that it was expected to treat these personnel as contractors. OCA also did not review any payroll records, which would have shown that the three personnel were included on the payroll. As a result, Lawyers For Children paid three maintenance and cleaning personnel as employees and OCA incurred expenses for payroll taxes and employment insurance that would not have been incurred if they had been paid as contractors. If Lawyers For Children's independent auditors continue to advise the organization that these personnel must, by law, be treated as employees, OCA should direct Lawyers For Children to include these individuals in the Personal Services section of their budget. In

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* See State Comptroller's Comments, page 20.

addition, we recommend that OCA address this issue in the language of the contract, in order to provide clarity to Lawyers For Children regarding OCA's expectations.

V. INTERNAL CONTROLS (p. 8)

Lawyers For Children appreciates the recommendations on improving internal controls, however, there are certain errors in this section that must be corrected.

First, OSC notes that the Executive Director initials checks after they have been issued. This is simply incorrect. Checks are not sent out until the initials have been entered on the documentation supporting the payment. Second, OSC states that LFC has no policy guidelines for conflicts of interest regarding vendors who are family members. LFC's policy is in written form and was provided to OSC.

Third, OSC indicates that 18 checks valued at \$142,427 were not signed by both officials of LFC. LFC is committed to continued improvement in this area, including designating an alternative check signer to cover absences; however, it is critical that OSC acknowledge in its report that these checks were all issued for authorized contractual expenses and all of these checks had the requisite supporting documentation.

P10/1st partial paragraph:

They also indicated that there are extensive controls on disbursements, as the Executive Director reviews every payment by initialing the documentation supporting the payment. This review occurs before the check has been issued.

P. 10 / 1st full ¶ in right hand column:

After evaluating a number of potential consultants regarding qualifications and cost, Lawyers For Children hired the spouse of one of its employees to perform computer maintenance and repairs. The spouse was paid \$3,330 for these services between March 15, 2006, and March 10, 2007. Regardless of the amount, all work by this consultant required the authorization of the Executive Director and checks to this consultant were signed by the Executive Director as well as the Administrative Director. However, the employee who is the consultant's spouse was the one who was responsible for notifying her spouse when the computer maintenance and repair services were needed.

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* See State Comptroller's Comments, page 20.

Replace the following ¶ entirely and insert the following text:

In order to avoid even the appearance of impropriety, OCA should insure that Lawyers For Children continues to adhere to the policies and procedures provided by Lawyers For Children to OSC, that preclude employees who are family members of LFC vendors from being involved in the selection of, authorization of work by, or payment of those vendors.

P. 9 End of 1st partial paragraph, right hand column:

The total value of the 18 checks was \$142,427. Although these checks did not all have dual signatures as recommended by Lawyers For Children's own internal control procedure, none of these checks were found to be improperly issued or lacking in proper documentation.

* Comment 5

* See State Comptroller's Comments, page 20.

APPENDIX B - STATE COMPTROLLER COMMENTS ON AUDITEE RESPONSE

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| <ol style="list-style-type: none">1. Our recommendation was that OCA require Lawyers For Children to verify qualifications of attorneys and that OCA should confirm that this is being done. This confirmation could be periodically performed and would not require OCA to screen for qualified individuals.2. We have revised our report to reflect comments of Lawyers For Children, as appropriate.3. As our audit report indicates, the expenses were for 17 transactions sampled for the 2005-06 fiscal year for which Lawyers For Children officials told us they had lost the original supporting documentation. This matter was presented to Lawyers For Children during audit field work and, at that time, Lawyers For Children officials | <p>provided alternative, but not reliable, documentation such as credit card statements, in an attempt to support the expenses in question.</p> <ol style="list-style-type: none">4. See comments added after recommendation 11 on report page 8.5. We did not test the 18 checks to determine whether these checks were all issued for authorized contractual expenses or whether all of these checks had requisite supporting documentation. However, nothing led us to believe that the checks were for other than authorized purposes.6. See comments added in parenthesis on report page 11. |
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