**MEMORANDUM**

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Re: Litigation Options for Indigent Citizens

**INTRODUCTION**

One of the biggest hurdles for indigent citizens in determining the litigation options needed for legal representation. In Jonathan Harr's book, *A Civil Action*, several families from Woburn Massachusetts brought a mass tort action against large companies and corporations. The families were represented by Jan Schlichtmann a personal injury lawyer working on a contingency fee. Indigent citizens can use a contingency fee as an option; however, the recovery for damages must be large enough to cover expenses and likely enough to risk going forward. The families of Woburn were also represented by Anthony Roisman from the public interest law firm named Trial Lawyers for Public Justice. For indigent citizens, public interest lawyers are an option since they will take on cases that embrace broader systematic reforms without charging a fee. Nevertheless, public interest firms are selective in choosing their cases and tend to select cases that will gain some larger social change or legal precedent. Scott L. Cummings, *The Politics Of Pro Bono*, 52 UCLA L. Rev. 1, 15 (2004).

An indigent citizen that has an action that does not serve a wider cause or without the possibility of a substantial recovery from damages will have to look at other alternatives. This paper will explore the alternatives of Legal Services Corporation, Legal Aid Organizations, Law School Clinics, and Pro bono work. Furthermore, it will examine the scope and limits of these options.

**HISTORY OF FEDERAL LEGAL SERVICES CORPORATION**

In understanding the litigation options for indigent citizens, the history of the federal Legal Services Corporation (“LSC”) can provide some insite. In the 1960s, President Lyndon B. Johnson recognized the need to provide legal services for the poor; only two-thirds of the poor had access to needed, affordable legal services. Henry Rose, *Class Actions and the Poor*, 6 Pierce L. Rev. 55, 56 (2007). In 1964, Congress passed the Economic Opportunity Act, which allowed for the creation of the Legal Services Corporation, a federally funded program that gave federal funds and grants to organizations that provided legal assistance to indigent citizens. Andrew Haber, *Rethinking the Legal Services Corporation's Program Integrity Rules*, 17 Va. J. Soc. Pol'y & L. 404, 411 (2010).

Organizations funded by the Legal Services Corporation were, initially, successful in advocating for unpopular cases. For example, deciding an LSC funded case in 1968, *King v. Smith*, the Supreme Court held that the federal standards for government benefit programs preempted conflicting state standards. 6 Pierce L. Rev. 55, 57. Also, deciding two LSC companion cases in 1970, *Goldberg v. Kelly* and *Wheeler v. Montgomery*, the Court upheld procedural due process requirements for welfare recipients when government officials terminated the recipient’s welfare benefits. *Id*.

The LSC quickly became a victim of its own success and attracted vocal opponents including, the then governor of California, Ronald Reagan. 17 Va. J. Soc. Pol'y & L. 404, 415. During the 1980s, the Reagan administration displayed openly hostility to the LSC, and Reagan built up a strong opposition to LSC funding. 6 Pierce L. Rev. 55, 59. Opponents to the LSC were successful in largely reducing the LSC’s budget and in 1996 were able to pass the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (“OCRAA”). *Id*. at 57.

Under OCRAA, organizations receiving funding from the LSC are barred from several activities including class action law suits, claiming attorney's fees, representing incarcerated clients or foreign nationals, and litigation designed to change federal or state welfare systems. 17 Va. J. Soc. Pol'y & L. 404, 420. These restrictions added to the costs of representing indigent citizens while the LSC struggled with a tighter budget. The indigent client should be aware that organizations receiving LSC funding are restricted by these limitations and that funding for indigent citizens does not exist at the levels it did prior to 1996.

**LEGAL AID ORGANIZATIONS**

Legal Aid Organizations have been around for many years and, if indigent citizens do not receive funding from the LSC, can provide an alternative without the LSC restrictions. One example of an early legal aid organization is the Legal Aid Society of New York, which began in 1876 when German lawyers, merchants, and businessmen founded the German Society of New York to provide legal representation to recent German immigrants. *NLADA, History of Civil Legal Aid*, <http://www.nlada.org/About/About_HistoryCivil> (last visited June 18, 2011) [hereinafter NLADA]. These organizations have historically relied on funding from private sources and are exempt from the general prohibition of practicing law by corporations. Francis C. Amendola et al., *Practice of Law by Benevolent and Charitable Corporations*, 19 C.J.S. Corporations § 669 (2011). In Colorado, indigent citizens can contact the Legal Aid Foundation of Colorado that the bar found in 1981. *Legal Aid Foundation of Colorado*, <http://www.legalaidfoundation.org/about-us/> (last visited June 18, 2011). Citizens can also contact the National Legal Aid and Defender program. NLADA.

Nevertheless, Legal Aid Organizations have been criticized for under-representing unpopular cases that challenge local businesses or government interests since patronage shapes case selection. 52 UCLA L. Rev. 1, 130. Legal Aid Organizations are protected from being directly controlled by their funding source. Under the Model Rules of Professional Conduct 5.4(c), a lawyer “shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.” *Rule 5.4 Professional Independence of a Lawyer*, Ann. Mod. Rules Prof. Cond. Rule 5.4. Furthermore, Rule 1.8(f) prohibits a lawyer from accepting compensation from one other than the client unless the donor does not interfere with the lawyer's independence of professional judgment or the attorney-client relationship.” Ann. Mod. Rules Prof. Cond. Rule 1.8(f). Nevertheless, indigent citizens with unpopular cases may be indirectly limited by these organizations because the case selection is indirectly shaped by the financial dependence these organizations have on charities, local businesses, and the bar. 52 UCLA L. Rev. 1.

**LAW SCHOOL CLINICS**

The loss of LSC funding has created a gap in the legal alternatives for the indigent citizen, and recognizing the importance of law school clinic in providing services for the indigent citizen, the American Bar Association (ABA) amended its accreditation standards in 1996, requiring ABA accredited schools to “offer live-client or other real-life practice experiences.” Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 Fordham L. Rev. 1971, 1972 (2003). However, indigent citizens should be aware that the selection of cases can be limited because politicians, attorneys, business interests, and university officials have attacked law school clinics for their choices of clients and cases. *Id*. at 1976. For example in the early1990s, while protecting the spotted owl, the University of Oregon Law School's Environmental Law Clinic voluntarily moved its activities off campus and reorganized as a public interest law organization because of mounting public pressure driven by the timber industry. *Id*. at 1981-82. In 1980, the University of Colorado’s law school came under criticism from James Watt, the then director of the Mountain States Legal Foundation, in reaction to a lawsuit challenging a nativity scene that had been filed by a University of Colorado law professor and students. Watt tried and failed to pass legislation that prohibited “law professors at the University of Colorado from assisting in litigation against a governmental unit or political subdivision.” *Id*. 1977-78. Like the limitations on case selection in legal aid organizations, the client selection of the law school clinic may have indirect biases.

**THE RISE OF PRO BONO**

The gap in LSC funding has also caused the legal institution to look towards options like pro bono work; however, the pro bono institution suffers from case bias limitations as well. The institutionalization of pro bono representation has grown out of the negative reaction to the government funded approach. 52 UCLA L. Rev. 1, 19-25. In 1993, the ABA amended Model Rule 6.1, to provide that each lawyer “should aspire to render at least (50) hours of pro bono public legal services per year” targeted to “persons of limited means.” *Id*. at 32.

Initially, law firms took up the challenge as a vehicle to advance the public good and a source of professional legitimization; however, under the Model Rules of Professional Conduct, a private lawyer is generally not permitted to take on a pro bono case that is directly adverse to another client represented by the same firm. *Id*. at 116. Large pro bono referral organizations sprung up to provide a conduit between the law and the indigent citizen that are not adverse to the firm. *Id*. at 42. The online Pro Bono Institute can be a great resource for indigent citizens. *Pro Bono Institute*, <http://www.probonoinst.org/> (last visited June 21, 2011). Also the Colorado Bar Association provides an online list of referral services. *Colorado Pro Bono Opportunities*, <http://www.cobar.org/repository/Access%20to%20Justice/ProBonoOpps2009v.2.pdf> (last visited June 21, 2011).

Nevertheless, these pro bono institutions have had the same criticism of case bias against cases that affect business interests. After 911, many indigent citizens were in need of pro bono legal help and the Association of the Bar of the City of New York created the Facilitator Project to help refer these clients to New York law firms. 52 UCLA L. Rev. 1, 146-47. The focus of the pro bono work related to arranging funerals and burials, applying for aid, administering estates, and finding new homes and jobs. The Facilitator Project crafted an engagement letter that narrowed the scope of the representation to safe representation while preventing litigation against possible business targets. *Id*.; *Trial Lawyers Care - Free Legal Advice For 9-11 Victims*, <http://www.911lawhelp.org/info/news/NALP.pdf> (last visited June 21, 2011).

**CONCLUSION**

There are several options for indigent citizens when trying to find legal representation, and these options each have their own strengths and limitations. Citizens with potentially recoverable actions can pursue representation on a contingency basis. Indigent citizens whose legal issues will create broader social issues can look to the public interest lawyer. Citizens can also look to legal aid and law school clinics to find legal representation and if the indigent citizen’s needs are innocuous can find these resources beneficial. However, legal aid and law clinics can be limited if the representation may involve unpopular legal actions. Indigent citizens with unpopular civil actions may be largely under represented. The Legal Services Corporation had initial success in providing assistance for unpopular claims but has been eviscerated since its introduction in the 1960s. Pro bono institutions have tried to fill the gap but critics have found them to fall to the same problems and lack of representation for clients with unpopular cases. While the institution of the law in the United States has created many options for the indigent citizen, those options may be more limited when the need is unpopular or against business or government interests.