## **Civil Indigent Representation: A Responsibility or Not for Our Community?**

Thank you for this opportunity to speak with you today about the issues related to civil indigent representation within our state and nation. My remarks today are focused on the needs within our state for civil indigent and pro bono representation. I will not cover the issues related to criminal indigent representation, which is an issue also facing our community and for which there already exists dedicated funds within our state budget for the criminally accused to obtain legal representation. Criminal indigent defense funding is provided based upon the accused's constitutional rights for a fair trial, based on our United States Supreme Court's decisions on this issue. There is no such constitutionally mandated right to civil counsel recognized by either our state or federal courts or government for civil representation except where a loss of liberty may be involved; an example of this would be a mental facility commitment proceeding. Consequently, there is no state government fund for civil legal representation except for very limited matters such as juveniles within the juvenile court system that are in need of legal protection or are alleged to be dependent upon the community for care and other various services or assistance; in this same context, the juvenile's parents or guardians may qualify or need representation. There are also other limited cases where an individual may be the subject of a petition for protective services and may qualify for state or community funds available for legal representation fees. These are deemed to be civil indigent representation matters, where the state or community fund, if it exists, dictates how much the attorney providing the legal representation will be paid. The legal fees amounts paid are usually as low as 25% of what lawyers might normally charge for such representation, and the kinds or types of cases that qualify are very limited. The funds for these cases are also extremely low and sometimes, virtually nonexistent.

Legal Services Corporation is an excellent example of a publicly funded entity that provides limited civil legal representation to those who can qualify based on how much they earn or the category or type of matter at issue. The federal government limits the kinds of cases and matters Legal Services may participate in. Legal Services is primarily funded through Congressional budget appropriations every year, and in some states, Legal Services may receive some state budget funding. Private donations and fundraising for Legal Services may also help provide money to pay for lawyers to focus on specific kinds of cases. For example, Alabama State Bar President led the charge to raise funds to provide Mortgage Foreclosure assistance within our state last year. These private funds allowed Legal Services to hire an attorney that has offered limited representation in foreclosure matters, along with some negotiation or litigation services when necessary. Without the monies donated by the Alabama Bar Foundation and the Civil Justice Foundation, this dedicated attorney would not exist and these services would not be available.

Pro bono civil representation is provided when a lawyer agrees to provide legal counsel or representation no cost to the client. Obviously, with the limited funds available for civil indigent representation I have just outlined for you, our community and state rely upon those within our bar association who are willing to take cases for free as part of their commitment to the community and profession. Our state bar has a program called the Volunteers Lawyers Program, described most often as

the VLP. Through the VLP's work with Legal Services and other types of indigent representation groups within our state, individuals are identified that may have need of legal counsel. These individuals are then assigned to, or matched with, lawyers who have agreed to take pro bono cases. As you can imagine, the greatest need is for family law cases where the poor and disadvantaged are without funds to be able to address the need for divorce or related matters. The second largest area of need is for consumer credit matters, such as foreclosure, bankruptcy and credit card matters. Probate and estate counsel is also greatly needed. Roughly two years ago, our state bar association led the nation in creating a program called Wills for Heroes. This program provides free estate planning documents for our law enforcement, fire, hazard and military providers. It is worth mentioning that it is anticipated that our state will be one of the ones most affected by returning military forces who may be facing significant foreclosure and debt related matters because of the length of their service and absence from their normal jobs and families. We have certainly seen some of this already from those returning from their service in Iraq and other areas.

One of our Founding Fathers noted that it is easy to dodge our responsibilities, but harder to dodge the consequences of our responsibilities. I am not certain to which one of those courageous leaders we can attribute this observation, but I can state that I know we are a free country today because those courageous individuals were willing to give of themselves to their fellow citizens. They were willing to defend another colony even if they themselves were not being terrorized or occupied by the British. They fought to be free of tyranny and were thirsty for self governance and justice for all. They wanted to decide how or if they should be taxed, and how their money should be spent. My question to you is whether you believe that the single mother left to raise two children by a deadbeat dad is due indigent representation to deal with eviction or foreclosure due to being abandoned? If there is a veteran returning to his home being foreclosed upon because he made half his wages while serving our country, is he due legal assistance? The older couple who have no funds to seek legal help because of a loss of a job, or of an investment fund and now need to seek protection through our bankruptcy laws- do they deserve access to legal representation? (NOTE: ADD EXAMPLES WITH LOCAL APPLICATION IF YOU CAN). These are but a few examples of those who need civil legal assistance through these programs.

Finally, I know you are aware of the large numbers of those living in poverty in our state, but are you aware that almost half of those described as low and indigent households experience one or more legal issues or problems annually? Available data shows that roughly only a fourth of those low income households received the legal assistance they needed. Add to this statistic that there are a large number of our low income households that are educationally challenged, if not illiterate. Inability to communicate ---to be able to read or write ---- only increases the problems for those without financial resources to hire an attorney. (NOTE: Add into this paragraph local data or statistics on households living in poverty and/or dropout rates or literacy rates.)

You ask what we are doing within the Bar to address these issues. I have already mentioned some successful projects like the Wills for Heroes project and the Foreclosure Assistance effort. Our Bar seeks your help and support in improving these efforts, and in recognizing the lawyers who are already providing quality legal representation to the indigent for low or no fees. Our Bar is trying to better recognize and honor those attorneys providing these services, while also educating the public about the

needs for such work. One of the two handouts I have provided to you today covers many of the points I have discussed with you. We ask that you share this information with anyone you think it can benefit. If possible, provide it to your human resources officer or personnel director. Post it in your office or company break room if you are allowed to do so. Give it to your church group, your PTA, or any group with a diverse membership that may be able to reach those who have these kinds of needs. Please feel free to make copies. We want to educate the public through leaders like you about the services available for civil legal representation. Our goal is to try and reach those who need these services more effectively. Success on any major scale requires us to accept responsibility, and not be afraid of failure. Success in providing increased access to civil justice for our citizens demands that we work diligently to improve the availability of civil legal services for those who are poor and disadvantaged, and to do all we can as a state bar association to raise the awareness and public participation in this fight for improved access to justice for all. Our Bar has recognized this responsibility for many years, and has this year added even greater emphasis to our professional responsibility to indigent representation.

An example of this greater emphasis is illustrated in the one page handout I have provided you today regarding the first National Pro Bono Week which is set to occur the week of October 24-30, 2010. This week is to emphasize and highlight the work being done by lawyers and others on behalf of our poor and disadvantaged citizens through a variety of activities. We hope to highlight the civil indigent representation being done now, and the work needed in the future. Some of these activities include obtaining proclamations from city and county governments recognizing those in our local communities who represent the poor and indigent on a daily basis (ADD IN IF YOUR LOCAL GOVERNMENT HAS DONE THIS), speaking to community leaders like the members of this (club, group or ?) and organizing clinics in some areas to provide free legal counsel and advice to citizens who need legal assistance and cannot afford it. (ADD IF YOUR COUNTY OR CIRCUIT IS HAVING ONE AND WHERE.) Our state bar association plans to have a celebration and recognition of these wonderful VLP and public interest lawyers annually from now on, and we also hope that we educate the public about the need for this work by this annual celebration.

(I will now call on \_\_\_\_\_\_, from the local LSA office/VLP office or ? to briefly discuss their work in our community, and at the end of their remarks, we will take any questions you may have, as time permits.)