

## **CONSUMER LAW PRIORITIES 2016**

### **General Aspirations**

- Protect wages, housing, employment, social security or to otherwise stabilize a client
- Advocate for consumer/municipal protection in public forums;
- Defend debtors in collection actions filed by debt buyers;
- Enforce debtors' rights under state and federal law;
- Coordinate with ongoing Legal Aid projects to prioritize clients from certain groups, i.e. clients introduced through a drug court, veteran's hospital, MLP, LEP community outreach, etc. and considering minority populations and those with no other resources;
- Identify and address systemic issues that perpetuate poverty;
- Work with outside organizations such as Attorney General's Office to combat abuse and exploitation of low-income Arkansans
- Partner with other workgroups to provide comprehensive services.

### **Targeted Cases for Brief and Extended Services**

#### **The Debt Buyer**

- Lawsuit served – where a debt has passed to a third-party collector, which has sued on a debt, extended services to protect clients from illegal collection actions
- Creditor Harassment – where a creditor is violating federal laws through harassment or some other means, brief services in the form of demand letters to creditor; in particularly egregious harassment cases, extended services through FDCPA and other available remedies
- Garnishments – where exempt income or property has been garnished or executed, extended services to protect rights and property of client; provision of pro se materials to stop wage garnishment on most cases; same priorities for liens on property through the use of bankruptcy when resources are available.
- Deficiency Judgments – Be alert for debt buyers seeking to collect as foreclosure market may become a haven for deficiency-seeking third-party collectors; if client has meritorious defense, extended services
- Other Debt Collection – where original creditor sues, provide brief services in the form of answer and advice on how to proceed in the case; if meritorious defense exists, extended services to client
- Coordinate with the Consumer Federal Protection Bureau consent decrees regarding actions filed suing debt buyers.
- Cases in which a judgment has been entered and must be set aside will be considered on a case by case basis.

#### **The Used Car Dealer**

- Violations – where a used car dealer has violated state or federal laws, rules or regulations, whether the violations be of the UDTPA (Unconscionable and Deceptive Trade Practices Act), the UCC (Uniform Commercial Code), or any

other, extended services to help clients be justly compensate for dealer's wrongdoings

- Buyer's Guide –be mindful of any dealership not abiding by Used Car Buyer's Guide rule
- Investigation – all advocates tasked with investigation of a car dealer case shall familiarize themselves with the most prevalent state and federal laws, rules and regulations with regard to used car dealerships;
- Deficiency Judgments – see “Deficiency Judgments” in “**The Debt Buyer**”
- Wrongful shut off of car due to late payment.

### **Other Claims with an Adverse Party**

- Bankruptcy – Cases are limited to resources available through volunteer attorneys. Cases accepted for referral are those where debt affects the wages and housing of the client or if there is substantial debt that was obtained outside the control of the client and the debt affects the livelihood of the client and his/her family, extended services, which may include stopping foreclosure actions when resources are available. In NW Arkansas, referrals for Chapter 7 Bankruptcy are made to the Law School's Bankruptcy Clinic at the beginning of the fall and spring semester.
- Public Utilities – where client's utilities have been affected and referral, when appropriate, to the Public Services Commission have not produced a result, extended services to allow client just access to utilities
- Medical Services – where a client is low-income and qualifies for charity care or has a Medicaid/Medicare dispute that is in collection, brief and extended services to correct any problems client has with creditor
- Contracts – where there is a meritorious claim for breach of contract and where breach cannot be adequately litigated at small claims level, extended services; where issue can be resolved through other means, brief services; where confusion over term exists or client seeks review of contract, advice only

### **The Reentry Project**

- Criminal Record Sealing – Where Petition to Seal is likely to be approved by Court and falls within a petition to seal statute, extended services; where petition to seal is likely to not be approved by Court, but falls within a petition to seal statute, case-by-case acceptance, with input from reentry project participants; where no petition to seal statute allows for the sealing of the criminal record, advice
- Access to Children – where reentry client seeks to gain access to children through custody/visitation modification or through dissolution of guardianship, extended services with input from Family Law workgroup
- Other Family – resolve issues dealing with child support, where legal services, such as divorce or reduced child support, for reentry client will clearly decrease

the likelihood of drug use or will allow client to focus on drug treatment, extended services with input from Family Law workgroup

- Housing – where background check is wrongfully being used to deny housing to reentry client or where client is being evicted because of background check, extended services with input from Housing workgroup
- Employment – where background check is wrongfully being used to deny employment to reentry client or where licenses need to be reinstated (and is not part of an ongoing sentence), extended services
- License suspension and license reinstatement related to criminal record, specifically driver's license and CDL licensing
  - Community Education
  - Target groups for reentry needs should be identified and accessed through thorough surveys and canvassing of community leaders and potential clients.
  - Record sealing workshops should be held to provide general community education and to establish initial contacts with prospective clients.
  - Close relationships with drug courts, probation officers, and halfway houses should be fostered.
  - Social Media should be utilized to promote community education events and to provide general reentry information to target groups.
- Petitions for Sexual offenders to terminate requirement to register; advise and provide pro se filing documents.
  
- Other – where legal services will increase the likelihood of successful integration into society or decrease the likelihood of recidivism and those legal services are meritorious, extended services Upon closing a case for extended services, client follow-up procedures should be strictly adhered to, allowing results to be accurately evaluated.

### **Other Matters**

- Student Loan matters and cases – support enforcement of existing protections
- Fair Debt Collection Practices Act- where facts indicate possibility of successful outcome
- Fair Credit Reporting Act- help clients dispute and clear reports, pursue violations
- Income Tax – where there is a tax dispute with state or federal collectors, extended services for meritorious claims through Low Income Taxpayer Clinic.
- Income Tax—educate non-English speaking taxpayers in their tax rights and responsibilities. See attached Low Income Taxpayer Priorities for more detail.
- Identity Theft – brief services to victims in collecting reports and helping clients navigate the credit reporting system
- Incorporation for Nonprofits – where a nonprofit has legitimate basis for incorporation and for application for tax-exempt status, extended services to client wishing to start the nonprofit – referral to University of Arkansas School of Law Transaction Clinic if no available attorney

## **Advice and Limited Services**

With limited attorney resources it is not possible to provide extended services to every client that applies for assistance. Clients not accepted for extended services may be given advice to help them with their legal problem, may receive pro se materials they can use to preserve legal rights, may be referred to the private bar for representation and may be referred to the consumer law library on the legal aid website. If there are no staff and pro bono attorney resources available, clients will be referred to the private bar for assistance. All cases that do not fall within the priorities listed above may qualify for Advice and Limited Services if staff is available to assist and advise the client and if they are not disqualified for some reason through conflicts, LSC restrictions, etc.

Attorneys and Advocates in the Consumer Workgroup will develop and maintain the advice letters so that they are up-to-date with the current laws and regulations. If an Attorney or Advocate believes advice in stock letter is not sufficient, they have the authority to make the necessary changes to provide the best and most useful advice to the client population. Any sweeping changes to a letter or set of letters should be discussed at a workgroup call.

### **PRIORITIES FOR LITC CLINIC REPRESENTATION**

*Priorities specific to taxes are separate but related to the Consumer substantive work group.*

#### **Income Taxes (not listed in any particular priority order)**

- Assisting with responses to collection activities, including liens and levies;
- Innocent Spouse Relief cases;
- Audit reconsiderations for examinations, including Earned Income Tax Credit, exemptions, filing status, and self-employment income, among others;
- Assisting with IRS examinations;
- Offers In Compromise;
- Identify theft;
- Audit and Tax Court Representation, including *Pro se* petitioners referred by U.S. Tax Court (will usually involve one of the priority issues);
- Worker misclassification (1099 –MISC instead of W-2);
- Tax liens;
- Responding to IRS notices;
- Tax debts and Installment Agreements;
- Non-filers coming into voluntary compliance;
- State Income Tax issues; and
- Other meritorious tax claims.

Tax Court assistance will be provided on both small and regular case dockets, and will be made available to unrepresented clients who otherwise meet LAA LITC case acceptance guidelines. Assistance may be provided by LAA staff members or attorneys and enrolled agents who volunteer for LAA's Equal Access to Justice Pro

Bono Panel. All activities of both staff and volunteers are covered by LAA's malpractice insurance.

The level of assistance provided to each individual client may range from counsel and advice or brief services to full representation. Determination regarding the level of assistance will be made by the Tax Clinic Director, after a review and assessment regarding the merits of the case and a factual evaluation based on clinic priorities.