

2019



CASE ACCEPTANCE PRIORITIES



2019 CASE ACCEPTANCE PRIORITIES

Legal Aid's priorities consist of four core areas: Access to Safe and Affordable Housing; Protection from Domestic Violence; Economic Justice; and Consumer Rights. These core areas reflect Legal Aid's strategic focus to support families; preserve homes; maintain economic stability; ensure safety, stability and health; and to identify and address the needs of vulnerable populations.

CASE ACCEPTANCE DECISIONS

Workgroups shall make decisions according to case acceptance priorities. Staff may provide advice, limited services, and referrals to any eligible applicant, including case types not considered for extended representation. Referrals to pro se resources will be made only after considering the circumstances and the likelihood of the applicant being successful proceeding pro se. Extended representation may involve negotiation; document preparation; administrative or court representation; appellate practice; systemic advocacy; transactional work; community economic development; or legislative and administrative rulemaking, as permissible.

When evaluating a case for extended representation, workgroups will consider:

1. The likelihood of **legal success**;
2. The amount of **program resources required** to address the legal problem;
3. The **availability of program resources** for effective representation;
4. Any particular **vulnerability of the applicant**;
5. **Alternative community and pro bono resources**;
6. The **seriousness** of the legal matter, including its impact on the applicant and whether the matter is common or systemic in nature; and
7. The long-term **benefit of representation** to the client and/or client community.

PRO BONO RESOURCES

To maximize the use of volunteer resources, Legal Aid may accept cases outside of case acceptance priorities when volunteer resources are available. In these cases, Legal Aid will notify clients that if no volunteer resource is available, only advice, limited services, or referral will be provided.

TARGETED PROJECTS AND POPULATIONS

Legal Aid may provide specialized services to address the needs of certain populations. Priorities and financial guidelines may be modified for specific geographic areas; projects; or targeted

underserved or vulnerable populations or areas experiencing disasters. For special projects without separate funding, financial guidelines may be modified up to 200% of the national eligibility level. Expanded priorities may be specified by an addendum to these priorities.

When specialized grant funding exists, Legal Aid may also expand income eligibility or case priorities to meet funding obligations. For example Equal Justice Works, Title III, LITC, MLP, HUD, Bank of America Settlement Funds, VOCA, National Health Law Program, Arkansas Advocates for Children and Families, Natural Wonders Funding, other special grants that may be received during the year, and donation funding may exceed 200% when/if allowed by those specific grants or funding sources. All expansions will comply with LSC regulations.

For 2019, targeted projects include medical-legal partnerships, victims of Adverse Childhood experiences in targeted areas as determined by the executive director, low-income taxpayer clinic, housing issues including fair housing, and employment opportunity.

EMERGENCY CASES

Emergency situations may arise where Legal Aid is compelled to undertake legal representation on a case outside case acceptance priorities. Subject to the executive director's or designee's approval, emergency representation is allowable under the following conditions:

- Client is eligible for legal services; and
- Legal assistance is immediately necessary to:
 - (a) Secure or preserve the necessities of life;
 - (b) Protect against or eliminate a significant risk to health and safety;
 - (c) Address significant legal issues that arise because of new or unforeseen circumstances; or
 - (d) To prevent an extreme miscarriage of justice.

In emergency cases, the staff member shall document the emergency condition in the case management system and send the information to his/her work group leader, Regional Manager, and the executive director. Subsequent reports shall be made to the Board regarding the case.

COMMUNITY EDUCATION AND OUTREACH

Legal Aid will develop a separate Community Education and Outreach plan annually, as a stand-alone document or part of each Substantive Groups work plan. The plan reflects an intentional emphasis on increasing Legal Aid's visibility and participation in eligible-client communities and increasing community awareness of legal rights and responsibilities.

REVIEW OF PRIORITIES

The Board of Directors and program staff shall review priorities annually with input from justice community members, including the private bar, the judiciary, court staff, Access to Justice Commission, the Center for Arkansas Legal Services, and client-eligible community members and service organizations. Statistical data, progress reports, anecdotal information, client satisfaction surveys results, emerging legal issues, legal needs study results, needs surveys completed by

clients and community members, and other appropriate information will be considered in determining critical legal needs.

SUSPENSION OF CASE ACCEPTANCE

The Executive Director or designee may declare a temporary moratorium on non-emergency case acceptance during resource shortages, human or financial, to allow staff members to retain their strategic focus and meet their professional responsibility to current clients.

CASE HANDLER AGREEMENT (45 CFR 1620.6)

All staff attorneys, paralegals, and all other staff providing direct legal assistance to clients shall sign an Agreement to review and abide by Case Acceptance Priorities.

CONSUMER LAW PRIORITIES 2019

Our mission: To assure due process by championing equal justice for low income consumers.

Our vision: Protecting income and assets for those with no access to justice.

General Aspirations

- Protect wages, housing, employment, Social Security, or to otherwise stabilize a client.
- 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., while considering minority populations and those with no other resources.
- Identify and address systemic issues that perpetuate poverty.
- Work with outside organizations such as the Attorney General's Office to combat abuse and exploitation of low-income Arkansans.
- Partner with other workgroups to provide comprehensive services.
- Acceptance of fewer cases by the work group will allow members to focus on priority areas.

Case Representation Priorities

The Consumer work group will accept cases in the following subject matters, detailed within, for extended services:

- Criminal record sealing
- Bankruptcies where loss of wages, transportation or housing is threatened
- Debt Collection harassment, Unfair debt collection
- Fair Credit Reporting issues
- Auto sale fraud
- Student Loans
- Income tax controversies
- Financial exploitation of the elderly, home repair scams

Priority Areas

Reentry

- Criminal Record Sealing –
 - Where a felony Petition to Seal is likely to be approved by a Circuit Court and falls within a petition to seal statute.
 - For multiple felonies in cases where we can seal all the felony records but exceptions can be made where one conviction is causing harm.
- Criminal Record Sealing- Misdemeanors, Arrests, Nol Prosequi- If a misdemeanor record is particularly detrimental to housing or employment (recent thefts, possession, assault) as resources allow.

Bankruptcy

Chapter 7 bankruptcy petitions

- When the wages of the client are being garnished or subject to garnishment to protect and stabilize the family.

- When the transportation of the client is subject to repossession, to stop repossession of the car, or to recover the car for the client.
- When client is facing loss of their home- bankruptcy priorities may be expanded to include depending on resources and staffing,

Debt Collection

- Violations of consumer laws under the Fair Debt Collection Practices Act and Fair Credit Reporting Act– when the client has a cause of action and a likelihood of prevailing.
- Debt collection defense-when the client has a meritorious case, such as debt buyer, medical provider, student loan servicers or deficiency actions.
- Fair Credit Reporting- where a private background check company or Credit Reporting Agency has refused to remove wrongful reporting and there is demonstrated harm to the client.
- Telephone Consumer Protection Act- refer to Private Bar
- Equal Credit Opportunity Act- refer to Private Bar

Auto Fraud

- Violations – when a used car dealer has violated state or federal laws, rules, or regulations.

Identity Theft

For those affected by data breaches, file ID theft and police reports, provide instructions on how to freeze those accounts opened as a result of theft, and provide assistance in utilizing the Fair Credit Reporting Act to block the erroneous item(s) from their credit report within four days to qualify for a home or car loan.

Income Tax

- Assist with responses to collection activities, including liens and levies.
- Innocent Spouse Relief cases.
- Audit representation and audit reconsiderations.
- Collection alternatives, including Offers In Compromise.
- Identify theft.
- US Tax Court representation, including *Pro se* petitioners referred by U.S. Tax Court.
- Worker misclassification (1099 –MISC instead of W-2).
- Non-filers coming into voluntary compliance.
- Other meritorious tax claims.

The Low Income Taxpayer Clinic will appear at each US Tax Court calendar call in Little Rock. The LITC will provide US Tax Court assistance on both small and regular case dockets. The LITC will be made available to unrepresented clients who otherwise meet Legal Aid LITC case acceptance guidelines. 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.

Financial Exploitation of the Elderly

- When an elderly client has been or is being exploited by a car dealer or debt buyer.
- Consumer scams affecting elderly applicants.
- Home repair scams or exploitation by contractors as resources allow.

Advice and Limited Services

All cases receive some minimal advice regarding the cause of action, the timing to pursue the claim, and how to contact a private attorney. Brief services for cases that can be done quickly and provide the client some type of relief.

The Consumer work group and the Low Income Taxpayer Clinic will continue community education efforts.

- Continue implementation of financial literacy program with the Arkansas Coalition of Marshallese and Credit Counselling of Arkansas.
- Educate taxpayers about the costs involved in tax refund loans and methods for avoiding them.
- Educate taxpayers regarding tax return preparers.
- Regularly scheduled outreach to the VA Clinic in Fayetteville. The veterans' project will provide advice and brief services. The veterans' project will accept cases for extended services at the discretion of the veterans' attorney in consultation with work group leaders.

Veterans

George Butler provides advice and brief services to veterans at our veterans help desk each Monday at the VA Clinic at 222 W. Township, Fayetteville, AR and provides services to Veterans and elderly across our 31 county service area. Extended services for veterans are within priorities for extended services for the following:

- Divorce
- Custody
- Visitation
- Consumer scams

Continue education and outreach to providers at the VA, Vet Center and other community and government groups and agencies serving veterans.

Pro Bono

- Contracts – Where there is a meritorious claim for breach of contract.
- Cases not included in these priorities (such as tort matters, civil rights matters, and other sympathetic and vulnerable clients needing assistance) may at times be screened and referred to the private bar as priority cases for vulnerable families or elderly clients.
- Veterans Benefits cases referred through our VA Help Desk program.

PROTECTION FROM DOMESTIC VIOLENCE WORKGROUP PRIORITIES

Adverse childhood experiences (ACEs) have a significant and detrimental impact on a child's development. For cases that involve a child, especially a child under the age of 6, an ACEs risk assessment will be conducted. Rather than focusing on just one experience (e.g. domestic violence), cases involving a significant risk of ACEs will be a priority, even in the absence of physical harm.

These priorities may be expanded for specific grants, including survivors of campus sexual assault and minority victims of crime in certain counties.

ADVICE/BRIEF SERVICES

Advice or brief services provided to qualifying clients with family law cases, even if the case does not meet priorities for extended services.

ADOPTIONS

Adoption defenses, if there is a meritorious defense.

See Civil Gideon priorities for additional adoption defense priorities.

See Pro Bono priorities for adoption petition priorities.

BIRTH CERTIFICATES

Pro se forms for clients to correct, amend, or to get a birth certificate. Extended representation for clients who, in the judgment of Legal Aid staff, lack the capacity to represent themselves.

CHILD CUSTODY AND VISITATION

It must be in the best interest of the child(ren) for our client to have custody.

Initial custody proceedings, modifications, and defenses, if there is risk of violence to the client from the opposing party and/or there is a significant risk of ACEs.

If the client is establishing paternity, then he must show that he has provided supervision, care, and support for the child(ren) or that he was prevented from doing so, through no fault of his own.

Extended services when criminal justice system intervention or law enforcement fails to return an abducted child – this includes international child abduction cases.

Limited scope representation to protect the client's civil rights, i.e. UCCJEA compliance, due process, where statutory requirements are not met, and if essential elements of cases

are not proven.

CHILD SUPPORT

Child support defense cases, if child support was based on Supplemental Security Income.

Advice and referral to *pro se* forms for clients:

- released from prison within the last 6 months; or
- to defend against contempt; or
- to modify or stop support.

Limited scope representation to protect a client's civil rights, including due process rights and right to counsel.

See Civil Gideon priorities for clients facing jail time for contempt.

CIVIL GIDEON

Limited scope representation at the trial court level in cases affecting fundamental rights. This includes pleadings and briefs so clients may request appointment of counsel. Full representation at the appellate court level when the trial court refused to appoint counsel and there is a good record for appeal.

DIVORCE

Initiate or defend a divorce, if there is a risk of violence to the client or child(ren), as determined by a risk assessment.

Limited scope representation to protect a client's civil rights, i.e. UCCJEA compliance, due process, etc.

Post-judgment enforcement actions for survivors of domestic violence or ACEs victims, if a lack of action will potentially have a significant, harmful impact.

See Pro Bono priorities for more divorce priorities.

EMANCIPATIONS/REMOVAL OF DISABILITIES

Emancipation or removal of disabilities for minors who are homeless, pregnant, abused in the home, or there is a strong nexus to educational attainment.

GUARDIANSHIPS, ADULT

Guardianship of incapacitated adults if the proposed ward is:

- in immediate danger; or

- a severely disabled minor that will soon be 18 (or has recently turned 18)

AND

- there is strong medical evidence of incapacity available through an affidavit from a physician;
- there are no viable less restrictive alternatives to guardianship; and
- the guardianship would be in the best interest of the proposed ward.

Adult guardianship defenses or termination, if the facts are meritorious.

See Civil Gideon priorities for guardianship defenses.

See Pro Bono priorities for guardianships in non-emergency cases.

GUARDIANSHIPS, MINOR

It must be in the best interest of the child(ren) for our client to be appointed as guardian.

Initial or substitution of guardian cases if:

- there is a significant risk of ACEs to the child(ren) from the current caregiver, parent, or guardian;

OR

- the proposed guardian has cared for the child(ren) for an extended period of time; or
- the parents have abandoned the child(ren);

AND

- the child(ren) are being denied education, healthcare, or other necessities; and
- other, non-custodial alternatives, are insufficient or unavailable.

See Pro Bono priorities for guardianships to administer the estate of a minor.

IMMIGRATION

U-Visa and T-Visa cases for survivors of domestic violence or trafficking with a related case, such as a divorce or order of protection.

ORDERS OF PROTECTION

Representation to survivors of domestic violence and/or sexual assault/abuse:

- who have filed for an Order of Protection on behalf of themselves or their children; and
- the facts of the case meet the statutory definition of domestic abuse*; and
- there is a qualifying relationship.

*physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or sexual conduct between family or household members, whether minors or adults, that constitutes a

crime under the laws of this state.

Representation to survivors of domestic violence and/or sexual assault/abuse served with an Order of Protection if:

- we are representing the client in a companion family law case; and
- the outcome of the Order of Protection would affect our representation of the client.

Advice to Respondents who were:

- referred by a domestic violence shelter; or
- former clients in a family law case involving the same opposing party.

PRO BONO

All priorities are expanded to maximize *pro bono* resources. Specific expansion of case acceptance priorities for *pro bono* are listed below.

Adoption petitions if:

- the opposing party's consent is not required by law; and
- the adoption would provide a financial benefit to the child(ren); and
- the adoption would be in the best interest of the child(ren).

Name changes for survivors of domestic violence.

Petitions for divorces if:

- the client's only source of income is Supplemental Security Income;
- there are clear grounds for divorce; and
- the client has no other resources to secure private counsel.

Petitions for divorce if the client is 60 years of age or older.

Minor guardianships if required to administer the estate of a minor, and the estate is too small to pay for an attorney.

Adult guardianships of an incapacitated adult if:

- the proposed ward is unable to provide for his or her own health, welfare, or housing;
- there is strong medical evidence of incapacity; and
- there is no foreseen contest to the guardianship.

Termination of adult guardianships, if uncontested by the guardian.

Economic Justice Workgroup Priorities

Disability Rights

- Enforce and protect the rights of individuals with disabilities in situations not covered by other priorities

Education

- Special education services: initial and/or continuing eligibility, inappropriate placement, manifestation determination review issues, other denial of free and appropriate public education, and due process hearing complaints
- Truancies, suspensions, and/or expulsions in cases of suspected special education or disability-related issues
- The workgroup will hold three community education sessions about special education

Employment

- Discrimination claims (Title VII, ADEA, ADA, PDA, etc.);
 - In light of frequent applications for services and limited workgroup capacity, discrimination claims will be evaluated and handled as follows:
 - Applicants without colorable claims or with claims requiring significant investigation to establish a colorable claim will be referred to the EEOC without further investigation.
 - Applicants whose interview suggests colorable claims of discrimination will receive brief services to help them prepare a draft EEOC charge to be edited and filed on their own with suggestion to seek representation from the private bar. In these cases, the EEOC charge will be prepared based strictly on what the applicant has told us and will involve no independent investigation or corroboration by Legal Aid. All applicants will be informed that their claim can be evaluated for extended representation by Legal Aid after they have received two turndowns from the private bar and have initiated a claim with the EEOC.
 - For applicants returning with two turndowns, cases will be accepted for representation through the EEOC process based on (1) merit; (2) the egregiousness of employer conduct; (3) known wrongdoing by the particular employer or by employers in the applicant's region; (4) the status of the EEOC investigation; (5) the possible recovery for the applicant; and (6) availability of

workgroup resources in light of the anticipated investment required.

- Where Legal Aid represents a client through the EEOC process and where the EEOC issues a right-to-sue letter, a separate acceptance decision must be made to file a lawsuit. Cases will be evaluated based on (1) merit; (2) the egregiousness of employer conduct; (3) known wrongdoing by the particular employer or by employers in the applicant's region; (4) information obtained through the EEOC investigation; (5) the possible recovery for the applicant; and (6) availability of workgroup resources in light of the anticipated investment required.
- Cases where applicants first come to us after the EEOC has issued a right-to-sue letter will be considered **only** in exceptional circumstances AND where the EEOC investigation file can be obtained by or provided to Legal Aid at least 45 days prior to the expiration of the deadline to file a lawsuit. Case acceptance decisions will be made based on the following factors: (1) merit; (2) the egregiousness of employer conduct; (3) known wrongdoing by the particular employer or by employers in the applicant's region; (4) information obtained through the EEOC investigation; (5) the possible recovery for the applicant; and (6) availability of workgroup resources.
- Fair Labor Standards Act, Arkansas Minimum Wage claims, and Family and Medical Leave Act claims will be reviewed to determine whether immediate acceptance, referral to the private bar, or referral to the appropriate department is more appropriate:
 - All applicant claims of unpaid wages, minimum wage violations, or overtime pay violations will be given advice and then referred to the appropriate law clinic at the University of Arkansas law school.
 - In the event the law school clinic cannot accept referrals, applicants will be referred to the Arkansas or US Department of Labor as appropriate
 - Given current workgroup resources, FLSA, state minimum wage, and FMLA claims will not be accepted absent exceptional circumstances (e.g. high amount in controversy, employer history of abuse known to Legal Aid, claims by multiple employees against same employer) OR a claim that can be combined with a discrimination claim

- Violations of the NLRA will be referred to NLRB, with assistance in preparing the affidavit to be determined according to merit and, if the NLRB decides to file suit, subsequent assistance at trial to be determined according to merit
- Unemployment claims: denials, terminations, fraud determinations, and/or overpayments;
 - Unemployment appeals in which LAA did not represent the claimant at the hearing level will be considered if the denial implicates an issue that could significantly affect our wider client population (e.g. transportation, pregnancy, employers absent from hearings, etc.) and the record can be obtained by or provided to Legal Aid at least 10 days prior to the deadline to file a notice of appeal.
- Defense of CNA registry license cases (allegations of nursing facility resident abuse, neglect, or misappropriation of resident property)

Healthcare

- Community-based services and supports: denial of services and supports including mental health, long-term care, assistive technology, independent living and home and community-based services. This item includes, but is not limited to, ongoing advocacy regarding the existing ARChoices program and anticipated changes in the assessment and care allocation methodologies
- Issues with health care access under the Affordable Care Act, existing Medicaid programs, the Medicare Savings Program, and proposed changes to Medicaid Expansion through Arkansas's pending 1115 waiver to reduce income eligibility limits and impose work requirements. This item includes, but is not limited to, application delays, due process issues, technical glitches, uncovered periods, and assistance with debt collection (referred, as appropriate, to Consumer WG)
 - The workgroup acknowledges recent changes to immigrant eligibility for ARKids and endeavors to provide community education tailored to the newly-eligible groups
 - With respect to non-Medicaid Affordable Care Act coverage issues, subject to available workgroup knowledge and experience, eligible clients with legal issues (as opposed to issues within an assister's purview) with initial applications, renewals, or terminations will be considered for advice or brief services at the enrollment stage, full representation in the event of application processing delays, and case-specific determinations about level of involvement where application delays have led to billing issues or collection efforts.

- Medicaid: denials, terminations, or reductions of coverage, services, equipment, and/or medications; overpayments (including fraud-related allegations)
- Due to current workgroup capacity, Medicare-related issues that do not also implicate MSP or Medicaid will generally not be accepted for extended representation absent exceptional circumstances. Advice and brief services will be provided according to merit.

Social Security

- Social Security retirement and dependent (survivor, spousal, child, widow) benefits cases will not receive extended services unless (1) there is clear evidence of a wrongful denial, reduction, or determination of benefit amount; (2) the amount in question is significant; (3) the case is otherwise meritorious; and (4) brief services would not adequately address the issue.
- Social Security (SSI/SSDI) overpayments will not receive extended services unless (1) there is clear evidence of a wrongful determination of an overpayment or of a meritorious basis for waiver; (2) the amount in question is significant; (3) the case is otherwise meritorious; and (4) brief services would not adequately address the issue.
- Social Security cessations and child-to-adult redetermination cases.
 - As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be receiving ongoing medical treatment; (2) be compliant with all treatment or have justifiable reason for non-compliance; and (3) on the basis of the intake interview, appear to have a meritorious case.
 - When evaluating such cases, advocates should consider whether the time before the hearing allows for submission of additional evidence.
- SSI/SSDI Cases to Establish Initial Eligibility (adults):
 - Adult initial eligibility applications awaiting hearing before an Administrative Law Judge will be referred to the private bar unless:
 - a. the applicant is (1) homeless, (2) a patient of an MLP partner clinic; or (3) so obviously disabled with cognition or mental health (in screening or interview) that the private bar is unlikely to adequately serve her; and
 - b. the case is meritorious.

***All callers with SSI/SSDI eligibility cases will be screened at the eligibility phase, and callers not meeting the criteria will not speak with an advocate.
 - Adult initial eligibility applications at the initial or reconsideration stages will not be accepted unless:

- a. the applicant is a patient of an MLP partner clinic with a supportive provider; AND
 - b. the case is meritorious.
- When evaluating such cases, advocates should consider whether the time before the hearing allows for submission of additional evidence.
- SSI Child Cases:
 - Child initial eligibility applications awaiting hearing before an Administrative Law Judge will be accepted if the case is meritorious. Child initial eligibility applications at the initial and reconsideration stage will not be accepted. Extensive advocate experience has shown that cases based on ADHD, unspecified learning disabilities, and/or asthma generally lack merit, and such cases will be evaluated with this previous experience in mind.
 - a. As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be in treatment (in mental health clinic, in school services, or through primary care or specialist care); (2) taking any medications prescribed; and (3) on the basis of the intake interview, appear to have a meritorious case.

All applicants waiting for an ALJ hearing who are patients of an MLP partner clinic with a supportive provider should be evaluated for merit.

- b. Receiving services through IDEA or Section 504 will also be considered for the threshold issue, though the workgroup acknowledges that lack of services may be understandable, either due to a recently-developed issue, lack of parent request, or wrongful school district practice.
- Child cessation cases will be accepted if the case is meritorious. Extensive advocate experience has shown that cases based on ADHD, unspecified learning disabilities, and/or asthma generally lack merit, and such cases will be evaluated with this previous experience in mind.
 - a. As a threshold requirement for merit evaluation, which involve lengthy CD reviews, applicants will be required to (1) be in treatment (in mental health clinic, in school services, or through primary care or specialist care), (2) taking any medications prescribed, and (3) on the basis of the intake interview, appear to have a meritorious case.
 - b. Receiving services through IDEA or Section 504 will also be considered, though the workgroup acknowledges that lack of services may be understandable, either due to a recently-developed issue, lack of parent request, or wrongful school district practice.

- When evaluating such cases, advocates should consider whether the time before the hearing allows for submission of additional evidence.

Other Public Benefits

- TEA, SNAP, childcare, and Work Pays: denials, terminations, reductions, and/or overpayments, including fraud-related allegations (e.g. Intentional Program Violations)
- Benefits available to kinship families, including foster care board payments, subsidized guardianships, and adoption subsidies.

Language and Disability Access

- As feasible, the workgroup will advocate around access-related issues, including language and disability access

MLP-related Issues

- Legal Aid has active Medical-Legal Partnerships with the following healthcare providers: Arkansas Children's Hospital (Little Rock), Mid-Delta Health Systems (Clarendon), Mid-South Health Systems (West Memphis).
- Legal Aid has inactive or in-information MLPs with the following healthcare providers: Lee County Cooperative Clinic (Marianna), Arkansas Children's Hospital Satellite Clinic (Jonesboro)
- Applicants who call who are patients of the partner healthcare providers should have the intake done and then be referred to the advocates associated with the relevant MLP for case acceptance decisions
- The active MLPs aim to collaborate on issues of health access

2019 Goals

To guide acceptance decisions within the priorities above, the Economic Justice workgroup will focus on the following goals for 2019:

1. Health Access. Continue and deepen Medicaid advocacy, including (1) opposing widespread denial and reduction of Medicaid-funded in-home care services (under the ARChoices program) by the Arkansas Department of Human Services through affirmative litigation (if feasible pre-litigation negotiation fails), administrative advocacy, client education, and commenting on proposed regulations; (2) planning and implementing a systemic response to help clients challenge or comply with the proposed changes to Arkansas Works that reduce eligibility limits

and impose work requirements, including community education efforts for clients and service providers, streamlined intake procedures, administrative fair hearings, and other appropriate advocacy; and (3) investigating service-related issues and denials under both traditional Medicaid and Private Option, including benefits available to children through ArKids A and ArKids B (with special attention to Early and Periodic Screening, Diagnosis, and Treatment).

2. Tech-Focused Issues. Advocacy around the ARChoices algorithm provided Legal Aid with specific knowledge about algorithm-based decision-making by government agencies and other tech-focused issues. Arkansas currently has multiple tech-focused issues relevant to our client communities: (1) new ARChoices algorithms to determine home-care benefit levels; (2) use of algorithms to determine the amount of Medicaid mental health services a beneficiary can receive; (3) use of online-only reporting system for Arkansas Works work requirements; and (4) proposed revamping of DHS's software systems by a vendor with a demonstrated history of causing widespread harm to clients (most recently in Rhode Island). In addition, many states use algorithms to detect fraud in the SNAP or UI programs without adequate validation or beneficiary safeguards. And, the Social Security system increasingly uses automated data matching to determine beneficiary resources without adequate validation or beneficiary safeguards. The workgroup endeavors to keep apprised of these issues, share knowledge and resources, and, as appropriate for client needs and workgroup resources, advocate around them.

3. Continue Existing SNAP Fraud Advocacy. We will continue 2018's focus area of SNAP cases involving fraud allegations and consider fraud determinations in other public benefit types, including, for example, unemployment insurance.

4. Build advocates' skills and ability to identify/undertake higher-impact projects. This will involve training on (1) litigation skills and best practices (including discovery, subpoenas, preservation, due process concepts, etc.); (2) affirmative litigation concepts (standing, mootness, exhaustion, preclusion, etc.); and (3) discussion of recurring substantive issues. The goal is to attune advocates to cases that present opportunities to effect systemic change on problematic issues and then to undertake such cases as appropriate, preferably with opportunity to work on impact cases spread among workgroup advocates. In line with this, the workgroup will ensure that new and longstanding group members have ample opportunity for training, mentorship, feedback, and professional development.

5. Regulation Review and Commenting. State and federal regulations relating to the Medicaid and SNAP programs impact client lives, yet the interests of clients are generally unrepresented in the promulgation process. The workgroup will endeavor to monitor such regulations, offer comments as appropriate, and evaluate whether such comments make any meaningful difference.

6. Other (time permitting). Other issues or activities of interest to the workgroup include expanded outreach and education, language access advocacy, general low-wage worker support, and integration of law school and pro bono resources. However, the workgroup acknowledges that these goals will be secondary to the goals outlined above.

Note: Starting in 2016, each workgroup member reduced her caseload from around 60 cases to roughly 40 cases to allow time for more in-depth advocacy. The group aims to maintain this reduced caseload, provided that the reduction enables more impactful work.

2019 Case Acceptance Priorities Housing Workgroup

Civil Rights

1) Discrimination

Case Acceptance Priorities:

- 1) Fighting housing discrimination based on an individual's disability, color, national origin, religion, sex, or familial status through vigorous enforcement of violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- 2) Ensuring language access in housing through enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
- 3) Protecting survivors of domestic abuse through enforcement of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), 42 U.S.C. § 14043e-11(d) and Ark. Code Ann. § 18-16-112.
- 4) Violations of other federal, state, or local laws, regulations, or ordinances that protect civil rights and ensure equal treatment in housing.

2) Constitutional Rights

Case Acceptance Priorities:

- 1) Ensuring that tenants and homeowners receive all constitutionally required protections through enforcement of constitutional tort claims under 42 U.S.C. § 1983 and the Arkansas Civil Rights Act.
- 2) Attacking any policies or practices that create a state sanctioned debtor's prison.
- 3) Affirmative or defensive litigation challenging any discriminatory, illegal, or arbitrary law, ordinance, regulation, or policy.

Eviction Defense

1) Criminal Eviction

Case Acceptance Priorities:

- 1) Affirmative or defensive litigation as necessary to end the use of A.C.A. § 18-16-101.

2) Civil Eviction Defense

Case Acceptance Priorities:

- 1) Meritorious civil eviction defense.
- 2) Enforcement of the statutory right to cure under A.C.A. § 18-17-701.
- 3) Attacking illegal and abusive eviction practices through affirmative litigation and counterclaims. Legal Aid will help tenants seek judgments that will adequately compensate them for their loss and adequately deter future transgressors.

2) Federally Subsidized Housing

Case Acceptance Priorities:

- 1) Meritorious federally subsidized housing cases, including eviction defense and subsidy terminations. Representation at administrative grievance hearings is permitted.
- 2) Affirmative or defensive cases challenging illegal or arbitrary policies of housing authorities or other government funded housing providers.

Tenant's Rights

1) Safe and Habitable Homes

Case Acceptance Priorities:

- 1) Unsanitary/unhealthy housing conditions: cases where housing conditions are causing poor tenant health. Affirmative or defensive cases challenging any laws or policies leading to a tenant's inability to seek redress for poor housing conditions.
- 2) Assistance in enforcing lease provisions; federally subsidized housing quality standards; and, local housing codes.
- 3) Pursuing landlords that have demonstrated a pattern and practice of providing substandard housing.
- 4) Using Fair Housing protections to improve housing quality for disabled individuals.

2) Fair Lease Terms

Case Acceptance Priorities:

- 1) Cases involving unconscionable or illegal lease terms.
- 2) Cases involving excessive or illegal fees or charges.

Foreclosure Defense

Case Acceptance Priorities:

- 1) Foreclosure defense cases may be accepted for extended representation if:
 - a. The property in issue is the homeowner's primary residence; and
 - b. Homeowner has equity in property; or
 - c. Homeowner has a means to pay indebtedness.
 - d. In all cases, a legal defense must exist, i.e., predatory loans and lending practices, inability to show standing, substantial failure to comply with relevant statutes, failure to comply with federal regulations, etc.
- 2) Applicants who may benefit from housing or debt counseling will be referred to a HUD approved housing counseling agency.
- 3) Bankruptcy: Legal Aid may initiate a bankruptcy to stop a foreclosure in the following circumstances:

The property at risk is the applicant's principal residence; AND

- 1) The applicant can afford the indebtedness or will be able to afford the indebtedness through and after the successful completion of a Chapter 13 plan or a Chapter 7 liquidation, OR
- 2) The intervention of the automatic stay will enable the applicant to successfully complete a mortgage modification, after which the applicant will be able to afford the indebtedness, or will be able to afford the indebtedness through and after the successful completion of a Chapter 13 plan or a Chapter 7 liquidation.
- 3) The intervention of the right to cure under 11 U.S.C. 1322(b)(2) would enable an applicant, who has otherwise waived or extinguished their equitable and statutory rights of redemption, to reinstate a mortgage that the applicant will be able to afford, or will be able to afford after and through the successful completion of a Chapter 13 plan or a Chapter 7 liquidation.
- 4) Meritorious defenses to foreclosure chain of title/promissory note, where the federal court might be a more favorable forum or the additional debts the applicant has makes a resolution through bankruptcy more favorable.

Land Loss and Asset Protection

Case Acceptance Priorities:

LAND LOSS

All land loss cases will be evaluated on a case-by-case basis and will only be accepted for extended services after consideration of the resources necessary and available, the value of the benefit to the client, and the impact value of the case.

- 1) Deed preparation to assure property ownership and preservation.
- 2) Assisting homeowners with pursuing disaster relief, FEMA, or other emergency housing or assistance.

- 3) Land/sale contracts: Enforcing the buyer's rights if the buyer has a substantial interest in the property, the buyer has a meritorious legal claim, and the property is the buyer's primary residence.
- 4) Bankruptcy: Lien stripping of secondary loans if the equity in the home is too low to protect the lien and the relief from the second payment would enable them to afford the indebtedness on the home.
- 5) Bankruptcy: Creditor Representation
 - a) Protection of an applicant's property interest in their principal residence when a co-owner has filed bankruptcy.
 - b) Protection and enforcement of property divisions pursuant to divorce decrees that pertain to an applicant's principal residence.

WILLS, ESTATES, AND POWER OF ATTORNEY

All non-emergency wills, estates, and power of attorney cases will be priority only to the extent that pro bono resources are available. Emergency wills or power of attorney cases may be considered for limited and/or extended services if resources permit.

- 1) Simple estate planning if the client is 60 years of age or older or has a terminal illness.
- 2) Simple estate planning for clients under the age of 60 if there is a family homestead distribution at issue.
- 3) Powers of Attorney for the elderly, disabled or chronically ill, or to secure healthcare, education or other necessities for children.

MEDICAL-LEGAL PARTNERSHIP PRIORITIES ARKANSAS CHILDREN'S HOSPITAL (Proposed Changes for 2019)

Cases will be considered for services through the ACH MLP if the client is an active patient, or family member of an active patient, at Arkansas Children's Hospital or one of its partner clinics. Priority will be given to cases where there is a nexus to health. Otherwise, cases will be referred to the Helpline at Legal Aid or CALS.

ADVANCED PLANNING

Staff have discretion to handle any cases with merit under the advanced planning heading.

- **Last wills and testaments, trusts, powers of attorneys and advanced directives:** these cases may receive advice and forms if staff or pro bono resources are not available.
- Assist parents of patients with special healthcare needs, as well as help minor patients with their advanced planning needs to plan for their transition to adulthood. Cases will be reviewed to determine whether immediate acceptance or referral to a pro bono partner is more appropriate.
- **Powers of attorneys for minors:** advice and referral to self-help resources, consistent with the perceived ability of the client to use these resources. Case will be accepted for brief services if exigent circumstances exist.

EDUCATION

- **Special education services:** initial and/or continuing eligibility, inappropriate placement or services, Manifestation Determination Review (MDR) issues, Functional Behavior assessment (FBA) issues, due process hearing complaints, and school discipline issues when connected to a child's disability or health condition;
- **Disability discrimination:** initial and/or continuing eligibility for 504 protection, denial of medical services and truancy when connected to a child's disability or health condition; and
- **Bullying issues:** when connected to a child's disability or health condition and a civil, legal remedy is available.

EMPLOYMENT

- If the client lives in the Legal Aid of Arkansas service area, employment cases will be referred to the Economic Justice workgroup for consideration. If the workgroup cannot accept the case, refer to a pro bono resource if appropriate. Otherwise, advice only unless there are exigent circumstances directly impacting health.
- **Discrimination claims:** when connected to a patient's disability or health condition.

- Discrimination cases will be reviewed to determine whether referral to Economic Justice workgroup, referral to a pro bono partner or a referral to the Equal Employment Opportunity Commission (EEOC) is more appropriate;
- **Family Medical Leave Act (FMLA) claims:** will be reviewed to determine whether the claim is connected to the patient or client's disability or health condition. If so, determine whether referral to the Economic Justice workgroup is possible, referral to a pro bono partner or a referral to the U.S. Department of Labor is more appropriate; and
- **Unemployment Insurance claims:** denials, terminations and/or overpayments when connected to a patient's health condition.
 - Unemployment denials in which the MLP did not represent the claimant at the hearing level will be considered if the denial implicates an issue that could significantly affect the wider client population (e.g. transportation, pregnancy, employers absent from hearings, etc.). These cases will be reviewed to determine whether referral to the Economic Justice Workgroup is possible, referral to a pro bono partner or a referral to the U.S. Department of Labor is more appropriate.

FAMILY LAW

- **Orders of Protection:** extended services for victims of domestic violence and/or sexual assault or abuse when a direct health impact is or may be present for the ACH patient or family member;
- **Divorce:** initiate or defend a divorce if there is an ongoing or immediate risk of violence to the ACH patient or patient's family member and a direct health impact is or may be present.
 - Risk of violence will be evaluated using a risk assessment. Cases that do not meet these criteria will be directed to a pro bono resource, if available, or to the appropriate Legal Aid agency.
- **Custody and visitation modification:** it must be in the best interest of the child(ren) for our client to have custody; cases only accepted for extended services if there is an immediate risk of harm, if there is some personal safety issue, or if there are barriers to medical or educational services.
- **Minor guardianships:** extended services if there is an ongoing or immediate risk of harm to the ACH patient, or the patient's parent(s) or primary physical custodian(s) have abandoned the patient, or the parent(s) are incarcerated for a significant period of time and the patient is being denied access to education, healthcare or other basic needs that may impact the patient's health. Also, there must be clear indication that the guardianship is in the best interest of the patient.
- **Adult guardianships:** refer case to the Walmart pro bono team or other pro bono assets if medical evidence supports incapacitation, the ACH or other appropriate provider is willing to

provide supporting affidavit, and no one in the household has worked for Walmart in the last 7 years. If someone in the household has worked for Walmart in the last 7 years or Walmart pro bono team is unavailable, the case may be referred to another pro bono partner, if the resource is available, there is medical evidence to support incapacitation and the ACH or other appropriate provider is willing to provide a supporting affidavit.

- If no pro bono partner is available, evaluate for in-house representation after obtaining supporting medical affidavit or limited scope representation with appropriate pro se forms depending upon available resources.
- **Adoptions:** adoption petitions may be referred to a pro bono resource, if available. If no pro bono resource is available, case will be accepted if a direct health impact is or may be present and adoption is in the best interest of the child.
- **Name change:** limited scope representation or brief services if the youth is homeless, pregnant, or has been abused in the home. All other cases will be referred to pro se resources.
- **Emancipations:** limited scope representation or extended services if a direct health impact is identified.
- **Birth Certificates:** pro se forms will be provided for the correction, amendment, or procurement when the birth certificate or lack of birth certificate has a direct health impact on the patient, unless age or disability would make it difficult for the client to proceed on his or her own, then referral to pro bono resource and if unavailable, evaluate for extended representation.
- **Child support:** cases involving first time procurement of child support or enforcement of active orders will be referred to the Office of Child Support Enforcement.
- **Civil Gideon:** refer to Domestic Violence workgroup, pro bono resource, or CALS where there is a case at the trial court level with legal issues affecting fundamental rights.

IMMIGRATION

- **Meritorious U-Visa applications:** refer case to a pro bono partner or other service organization, such as the Arkansas Justice Collective or Catholic Charities.
- Other immigration issues will be reviewed and referred to a pro bono partner, if resource is available.

PUBLIC BENEFITS

- **Medicaid/Medicare:** timeliness issues, denials, terminations, or reductions of coverage, services, equipment, and/or medications; overpayments. Medicaid service denial issues will be referred to a pro bono partner or to the Legal Aid Economic Justice workgroup, if consistent with the group's current area of emphasis.

- **Social Security (SSI/SSDI) overpayments:** will not receive extended services unless (1) there is clear evidence of a wrongful determination of an overpayment or of a meritorious basis for waiver; (2) the amount in question is significant; (3) the case is otherwise meritorious; and (4) brief services would not adequately address the issue.

Child cessations and child-to-adult redetermination cases:

- Provide advice or brief services unless it is clear that there has been a wrongful cessation or denial on redetermination;
- As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be receiving ongoing medical treatment; (2) be compliant with all treatment or have defensible reason for non-compliance; (3) on the basis of the intake interview, appear to have a meritorious case; and (4) ACH provider is willing to support the disability claim.

SSI Child Cases:

- Initial eligibility applications for Child SSI that are awaiting hearing before an Administrative Law Judge (ALJ) will be accepted if the case is meritorious.
- Child initial eligibility applications and reconsideration will not be accepted, unless there is an exigent circumstance (e.g. parent/guardian is limited in their advocacy efforts, language barriers).
- As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be in treatment (in mental health clinic or in school services); (2) taking any medications prescribed; (3) on the basis of the intake interview, appear to have a meritorious case; and (4) ACH or other appropriate provider is willing to support the disability claim.
 - Receiving services through IDEA or Section 504 will also be considered for the threshold issue, though the MLP acknowledges that lack of services may be understandable, either due to a recently developed issue, lack of parent request, or wrongful school district practice.
- **Veterans' benefits:** denials, terminations, reductions, and/or overpayments; and
- **State benefits (TEA, SNAP, childcare, and Work Pays):** denials, terminations, reductions, fraud investigations, and/or overpayments, subject to the availability of resources, including non-attorney advocates within the Legal Aid organization and pro bono partners.

INSURANCE

- **Life insurance:** denial of coverage for ACH patients; and
- **Private health insurance:** denials, terminations or reduction of coverage, services, equipment, and/or medications, where upon evaluation claims appear meritorious.

HOUSING

In addition to published program housing priorities, the MLP will consider the following cases for extended representation:

- **Unsanitary/unhealthy housing conditions:** defense of evictions or termination of lease cases in cases where housing conditions are causing poor health outcomes, assistance in enforcing local housing codes and lease provisions;
- Meritorious eviction or foreclosure defense cases where eviction or foreclosure is arising out of a loss of income due to the patient's health condition;
- Clients being evicted for nonpayment of rent will receive advice unless other facts support brief or extended services;
- Fair housing cases, including requests for reasonable accommodation where there is support from the medical team; and
- Other housing related issues deemed to have a direct impact on health.

CONSUMER

- **Bankruptcy:** cases will be referred to a pro bono partner if resource is available, or vetted in-house consistent with Legal Aid priorities, if within the Legal Aid service area;
- **Criminal record sealing:** accepted for services when sealing the record will impact the ACH patient's life for the better that could affect health (i.e. access to better housing or employment);
- **Termination of utilities:** appropriate services when terminating the patient's utility service will impact the child's health and the ACH provider is willing to sign medical letter in support.

OTHER CASES

Other cases may be accepted for services through the MLP if ACH providers identify an unmet basic need with a significant health nexus and an appropriate legal resource or intervention exists.

MLP INCOME ELIGIBILITY

- At least 90% of MLP clients must be at 200% of the federal poverty level or below.
- In cases of extreme hardship or other exigent circumstances, cases that are otherwise within MLP priorities with applicants who are above 200% of the federal poverty level may be accepted with approval of the Executive Director.

ACH MLP GOALS - 2019

To guide acceptance decisions within the priorities above, the Medical Legal Partnership will focus on the following goals for 2019:

1. Pro Bono Resources:

- Improve the referral process, including creating an information sheet for new attorneys, a brochure for clients, and evaluating realistic ways of communicating with pro bono partners regarding cases that have been referred out so that the MLP and the ACH providers that have referred the clients to us can stay up to date and informed as to how those referrals are beneficial to their patients.
- Through in-person opportunities, discuss with and learn what areas individual attorneys/firms will be most likely to accept cases within (e.g. their area of expertise or areas that they are particularly passionate about).
- Provide a collection of contacts, procedures, and guidance for sustainable and efficient use in the future.

2. Outreach and Training:

- Provide outreach and information sessions for ACH patients and their families, and partnering with various community organizations for presentations;
- Provide training and education for ACH staff and community partners to improve efficiency and effectiveness of screeners implemented at the clinical level.

3. Increasing Presence at Clinical Level

- Implementing weekly consultation hours to make available to clinics (when requested) to answer questions, interact with patients, and otherwise ensure continuity with all members of the interdisciplinary patient care teams.
 - Weeks where trainings are provided, consultation hours will be dedicated to said trainings.

4. Streamlining Process to Receive Advice on Common Patient Inquiries:

- Make information on how to apply for SSI readily available upon request in as many common areas as possible so as to reduce the number of referrals not yet eligible for legal action to be taken.
- Simplify advice and instructions for 504 education plans with example information provided to better inform and more quickly assist with the initial inquiry needed by the school to be made by the parent and ensure that cases which appear meritorious upon intake, are followed-up with in the event the request is denied.