

## The How and Why of Christian Legal Aid

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### I. God's Heart: The Call on the Christian Attorney

A. There is no greater privilege than to reflect the character of God.

1. **So who is God? What is He like? What does He care about?**

a) **Deuteronomy 10:17-18**: "For the LORD your God is God of gods and Lord of lords, the great God, mighty and awesome, who shows no partiality and accepts no bribes. He defends the cause [mishpat] of the fatherless and the widow, and loves the foreigner residing among you, giving them food and clothing.

b) **Psalm 146:7-9**: "He executes [mishpat] for the oppressed and gives food to the hungry. The LORD sets prisoners free, the LORD gives sight to the blind, he lifts up those who are bowed down, the LORD loves those who live justly. The LORD watches over the immigrant and sustains the fatherless and the widow, but he frustrates the way of the wicked."

c) **Psalm 68:5**: "A father of the fatherless and a judge for the widows, [i]s God in His holy habitation"

(1) Keller: We should pay special attention to the ways that God introduces Himself → shows how closely He aligns Himself with the vulnerable

2. See this in New Testament where Jesus is revealed as the exact representation of the Father's nature (Hebrews 1:3) → who did He spend time with? How did He spend his time?

a) This is who GOD is!

3. We can't really see who God is without seeing His heart for the vulnerable

4. As Christian attorneys, we have a unique opportunity to reflect God's character in a hurting world. We are the *only* ones who can uniquely represent His character in defending the cause of the vulnerable and opening our mouth to advocate for the rights of the poor and needy in our justice system.

B. Who are we called to serve?

1. The references to *mishpat* consistently reveal a concern for the same groups of people: widows, orphans, immigrants, those in need → “quartet of the vulnerable”
2. James 1:27: “Pure religion and undefiled before God and the Father is this, to visit the fatherless and widows in their affliction, and to keep himself unspotted.”
  - a) Reflect on the principle at play here: a counter-cultural care for those with the least power → in ancient society, these groups (i.e. widows) had very little ability to navigate systems on their own

C. Advocate: If not us, then who?

1. Proverbs 31:8-9: “Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.”
2. While many can advocate in a broad sense, attorneys have a monopoly on the ability to speak up for the rights of those who are destitute and defend the rights of the poor and needy

D. Advocate *and* Counselor

1. **ABA Model Rule 2.1:** In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.
  - a) The ABA rule recognizes that no problem is *purely* legal
  - b) As Christian attorneys, we not only offer people legal advice, but (through the Holy Spirit and where appropriate) recognize that issues require holistic solutions
    - (1) Christian attorneys can speak to relevant spiritual, moral, and ethical issues that are relevant to the legal matter at hand
    - (2) Recognize boundaries: Doesn’t mean you are someone’s pastor, mental health professional, etc. Ultimately, remember, you are not the Savior! Call is not to be the hero but to steward your own expertise
      - (a) Examples of how Christian Legal Aid organizations partner with other ministries/entities to offer wrap-around services
  - c) Always treat people not only as “clients” but as they truly are: image bearers with inherent God-given dignity and value

- d) **Discussion Question: What opportunities do Christian attorneys have to reflect God's heart? How can *you* uniquely reflect God's heart in your legal practice?**

**E. Ethical Call: ABA Model Rule 6.1: Voluntary Pro Bono Public Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

1. provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
  - a. Persons of limited means or
  - b. Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
2. Provide any additional services through:
  - a. Delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  - b. Delivery of legal services at a substantially reduced fee to persons of limited means; or
  - c. Participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

1. Essentially, call is to:
  - a) Render at least 50 hours of pro bono service each year, with a majority of those hours to persons of limited means (or organizations that serve persons of limited means); and
  - b) Voluntarily contribute financial support to organizations that provide legal services to persons of limited means
2. ABA Comments: "Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay..." Model R. Prof. Conduct 6.1, cmt. 1 (ABA 2011).

3. No state bar has adopted this voluntary standard as a requirement to be a member of a bar in good standing → NY only state to require 50 hours to initially be admitted
4. DC Comments reflect that it is a long-standing, historical commitment that the legal profession itself bears the responsibility of ensuring that “all persons in our society should be able to obtain necessary legal services.” D.C. R. Prof. Conduct 6.1, cmt. 1, (D.C. Bar 2007).
  - a) Rights and responsibilities of individuals in US are “increasingly defined in legal terms and that, as a consequence, legal assistance with coping with the web of statutes, rules, and regulations is imperative for persons with modest and limited means, as well as for the relatively well-to-do.” *Id.*
5. **Discussion Question: When thinking about the model rule, what are the biggest challenges in your personal and professional context to completing 50 hours of pro bono work annually?**

## II. The Need: America’s Access to Justice Crisis

- A. America’s Justice Gap:
  1. Legal Services Corporation (LSC) defines the justice gap as the “difference between the civil legal need of low-income Americans and the resources available to meet those needs.” Legal Services Corp., *The Justice Gap Report*, 14 (2022).
- B. LSC estimates by its most recent Justice Report that low-income Americans did not receive any or enough legal help for 92% of their civil legal problems. *Id.* at 19.
  1. NCAJ keeps track of the only “civil legal aid attorney count” and estimates that most states have “fewer than 3 civil legal aid lawyers for every 10,000 people living below the federal poverty guideline.” What is Access to Justice?, Nat’l Center for Access to Justice, <https://ncaj.org/what-access-justice>.
  2. LSC organizations themselves must turn away 50% of requests that come through their doors
    - a) Working in legal aid requires constant triaging because you know you do not have enough resources to help everyone so you must prioritize either the strongest cases or the most devastating consequences.
    - b) Even of clients that receive assistance→ 71% of cases did not receive enough legal help, i.e. may have been offered brief services

because no resources to place for full representation. *The Justice Gap Report* at 19.

- c) **Example:** Previous employer had to turn away all clients with housing conditions issues because the housing team was inundated with eviction cases.
  - d) Has consequence for both *clients* who are deprived of justice (single mother with three small children living in a mold-ridden, rodent-infested apartment that endangers their health, entitled to rent abatement but does not know how to navigate) and *lawyers* who are trying to stay afloat in the sea of need and become demoralized by amount of issues they must turn away
3. The number of cases turned away is especially alarming when you consider that low-income Americans sought help with only 19% of their legal problems, and only 25% of those that substantially impacted their life. *The Justice Gap Report* at 18.
- C. Who are we even talking about serving when we say “low-income Americans”?
1. **Children:** Currently 15.2 million children living below 125% of the poverty line. *Id.* at 22.
    - a) For context, this is 21% of *all* children in America.
      - (1) 125% of FPL for a family of four is \$34,687.50
  2. **Seniors:** 7.6 million seniors living below 125% of FPL. *Id.* at 29.
  3. **Racial wealth gap:** Black and Hispanic households are more than twice as likely to have household incomes below 125% of poverty than non-Hispanic whites. *Id.* at 23.
- D. What’s at stake:
1. While there’s is no civil Gideon, civil legal issues have drastic impact on people’s lives → freedom may also be at stake given trend of criminalizing failure to pay fines
    - a) Housing
    - b) Evictions create cascading effects that destabilize family:
      - (1) Lose housing subsidy if applicable
      - (2) Negatively impacts children’s educational outcomes
      - (3) Makes steady employment difficult
      - (4) Negatively impacts credit
    - c) Family
    - d) Employment
    - e) Income maintenance: disability, unemployment
- E. Representation matters:
1. The system is not built for people to represent themselves.

2. Power discrepancy: in areas such as housing, employment, and consumer issues, it is much more common that the other side will be represented.
  - a) 90-95% of landlords represented in DC's landlord tenant court. Housing Right to Counsel Project, DC Bar Pro Bono Center, <https://www.dcbar.org/pro-bono/what-we-do/housing-right-to-counsel-project#:~:text=The%20Housing%20Right%20to%20Counsel%20Project%20guarantees%20free%20representation%20to,who%20are%20sued%20for%20eviction.>
3. Studies show that having a lawyer makes a significant impact on the outcome of your case
  - a) Study on NYC's Universal Access program showed that having an attorney decreased probability of being evicted by, controlling for other variables, 41.1 to 77.8%. Mike Cassidy & Janet Currie, *The effects of legal representation on tenant outcomes in housing court: Evidence from New York City's universal access program*, 15 J. Pub. Econ. 222 (2023).
  - b) Domestic violence survivors are 50% less likely to get a protective order if you appear without an attorney. Jed S. Rakoff, "Why You Won't Get Your Day in Court," *New York Review of Books*, Nov. 2.
4. Non-quantifiable impact of having a lawyer with you in court:
  - a) Navigating the justice system is overwhelming, and potentially traumatizing for those already perhaps going through an intensely emotional/difficult time in life
    - (1) Discuss: What does it mean that Jesus is our Advocate?
    - (2) There is power in having someone stand next to you as you face a court appearance:
      - (a) Ex: power of having a lawyer next to you in domestic violence court if you have to go against your abuser
  - b) Counseling aspect: ABA Model Rule 2.1: even if case is not successful, it is inherently empowering to have someone in your corner that can lay out options, explain what the options mean, and know that you were given a fair shot

### III. Stepping Toward: Serving in a Christian Legal Aid Clinic

- A. What Types of Legal Issues?
  1. CLA network covers a broad range of legal issues
  2. Most common types of issues:

- a) Family law (custody, child support)
  - b) Housing (landlord/tenant disputes, evictions, subsidized housing)
  - c) Employment (wage theft)
  - d) Misdemeanors (traffic offenses, disorderly conduct, criminal trespass)
  - e) Consumer law (foreclosure, credit protection)
  - f) Elder law (wills, probates)
  - g) Government benefits (Social Security, disability, TANF)
  - h) Domestic violence
- B. What if I Lack Experience?
1. As an attorney, your ability to read legal documents, understand generally how courts work, and perform legal research are already huge things you have to offer, even without substantive knowledge of the particular legal area
- C. What Kind of Legal Help Does CLA Provide?
1. **Legal Advice** (often 30-60 minute meeting)
    - a) Identify legal issues
    - b) Help determine legal options
    - c) Help strategize steps for resolving the problem
  2. **Brief Services**
    - a) Assist client with completing documents
      - (1) Example: helping file complaint for custody, answer to complaint for nonpayment of rent
  3. **Limited Representation**
    - a) Draft demand letter
    - b) Growing in popularity
    - c) Ghost-write motion
    - d) Appear in court for limited time (i.e. appearing at hearing to argue specific motion, not for duration of the case)
  4. **Full Representation**
    - a) Enter appearance and represent client at all stages of litigation
  5. **Community Legal Education**
    - a) Conduct “Know Your Rights” seminar giving basic overview of legal issue
    - b) Examples: landlord/tenant issues, debtor/creditor issues, elder law issues, immigration issues
- D. Client Meeting
1. How to prepare
- E. Tips for Serving
1. Trauma-Informed Advocacy

Commented [1]: This is state specific

#### IV. What if No Christian Legal Aid Exists in My Area?

A. CLS can help you start a Christian Legal Aid with coaching and resources

B. How to Start a CLA Program

1. Starts with conviction → pray!
2. Identify key founding team
  - a) Need support of other attorneys and potential partners
3. Determine model and organizational structure

a) **Different Models**

**(1) Informal association of attorneys**

- (a) Malpractice insurance considerations
- (b) Very few barriers to begin
- (c) Lacks liability protection, vision, or financial ability

**(2) Program of existing ministry**

- (a) Find host organization willing to “adopt” your CLA clinic:
  - (i) Law school clinic
  - (ii) Gospel Rescue Mission
  - (iii) Salvation Army
- (b) Advantages: legal protection/inherit budget, less start up costs
- (c) Disadvantages: give up autonomy

**(3) Independent organization → create nonprofit corporation**

- (a) Advantages:
  - (i) Provides legal liability protection
  - (ii) Autonomy to raise and manage funds, develop own leadership, and cultivate own vision
- (b) Requirements:
  - (i) Board of Directors
  - (ii) Governing Documents:
    - (a) Articles of incorporation
    - (b) Bylaws
  - (iii) Employer Identification Number
  - (iv) 501(c)(3) application
  - (v) CLA can help you with all of these steps!

b) Different Organizational Structures:

**(1) Volunteer-based Clinic**

- (a) Many CLA clinics operate as a monthly volunteer-based clinic

- (b) Examples: Good Samaritan Advocates, Richland County Legal Clinic, Christian Legal Aid of Tucson
- (c) Advantages: lower start-up costs, do not need to focus on development to pay staff
- (d) Disadvantages: limited reach, organizational challenges without def

**(2) Staffed Clinic**

- (a) To begin immediately with a paid director, need fundraising to support clinic
  - (i) Could be a part-time director
- (b) Clinics can also grow and transition from volunteer-based to having a paid ED

**(3) “Low Bono” or “sliding scale” law firm:**

- (a) ABA Model Rule 6.1 Comment 7: “Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.”
- (b) Low bono services meet a crucial need: large gap between those who qualify for services at traditional legal aid and those who can afford to pay for private attorney

- c) Incorporate & identify BoD if needed

4. Identify vision:

- a) Choose location
  - (1) Think about what demographic your clinic will serve
- b) Decide on practice areas

5. Recruit Volunteers

- a) Need sustainable volunteer retention model
- b) Train volunteers on substantive legal issues
- c) Identify experts → Ex: do not need to have your expert family law attorney at every clinic, but rather, have experts be on “stand-by” for volunteers

6. Build Relationships in Community

- a) This is key throughout the process

7. Advertise to potential clients!

**C. Other Logistical Considerations:**

1. **Volunteer scheduling procedures**
2. **Client intake process**
  - a) Recruit non-attorneys as intake volunteers
  - b) Key role! Important ministry opportunities
3. **Set Up Documentation System**
  - a) Think about what fits your organization's needs:
  - b) If solely providing advice, perhaps do not need more than client intake documents
  - c) If keeping extensive files, will need dedicated legal case management software
4. **Malpractice Insurance**
  - a) Attorneys provide through own private practice
  - b) National Legal Aid & Defenders Association (NLADA)
  - c) Through CLA
5. **Ministry Aspects:**
  - a) "Christian Legal Aid" can mean a variety of things
  - b) Decide what level of requirement you would like for volunteers' faith commitment/staff requirements
6. **Forms & Other Policies:**
  - a) CLA Resource Library can provide basic forms you will need
  - b) Examples:
    - (1) Volunteer information and confidentiality form
    - (2) Volunteer Statement of Faith (if using)
    - (3) Client intake form
    - (4) Client consent/waiver form
    - (5) Client advice form

**V. In Focusing on the "How" of CLA, Never Forget the "Why"**

- A. Deuteronomy 15:10-11:
  1. Sometimes this phrase is thrown around as a dismissal because "the poor will always be with us."
  2. But when we look at the OT Scripture Jesus is quoting, the next phrase is "...Therefore I command you to be openhanded toward your fellow Israelites who are poor and needy in your land."
- B. Matthew 25: 35-36 → do we want to see more of Jesus? Do we long for Him?