

CONSUMER LITIGATION AND CLASS ACTIONS:

Why Legal Aid and Consumer Law Go Hand in Hand

BY SOPHIA A. ROMERO, ESQ.¹

When one thinks of legal aid, one might think of free legal help for children in foster care, adults under guardianship or victims of domestic violence. However, an important part of what legal aid does is assist financially vulnerable members of our community.

Legal Aid Center of Southern Nevada handles cases involving both state and federal consumer protection statutes on topics ranging from car repair, illegal repossession and predatory lending, to the federal Fair Debt Collection Practices Act and Fair Credit Reporting Act.

Why Legal Aid?

Graduating from Gonzaga University School of Law, I did not know about legal aid or the type of services it provides. What I did know is that I loved the practice of consumer law. I was fortunate to have participated in the consumer law clinic during my second and third years of law school. Through the clinic, I attended National Consumer Law Center conferences, became a member of the National Association of Consumer Advocates and met consumer law attorneys from across the country. I planned



to move to Nevada and hang a shingle, but after helping a local consumer attorney on a couple of cases, I decided I needed some hands-on experience in Nevada before going out on my own. He suggested I do some work with Legal Aid Center of Southern Nevada to get my feet wet. Legal Aid Center hired me as a law clerk, and after a few short weeks, I knew I would never leave. At that time, it was especially evident that if you wanted to practice consumer law, Legal Aid Center was the place to do it. Thankfully, Legal Aid Center soon secured funding for an additional consumer attorney, and I was lucky enough to get the job.

After practicing consumer law for almost 11 years, two in law school and nine at Legal Aid Center, I am still as passionate about helping those in need as the day I started.

Consumer Law and Legal Aid

Consumer law and legal aid go hand in hand. While there are always exceptions, victims of consumer fraud often have low income. They are less financially literate, have less formal education, and English may not be their first language. To Legal Aid Center's clients, most of whom live paycheck to paycheck, purchasing a car that breaks

down on the way home, having wages garnished because of a default judgment on a time-barred debt or getting stuck on the payday loan debt treadmill can literally mean the difference between keeping or losing a job or having enough money to keep a roof over their heads.

While Legal Aid Center can sometimes recover attorneys' fees in consumer matters through fee-shifting statutes, we often help clients when there is no way to recover fees. For example,

no fees can be recovered when obtaining the title to a mobile home. Mobile homes are often sold in private-party transactions, from person to person, multiple times without the proper documentation ever being completed. Until recently,² to obtain title to a mobile home, a lawsuit had to be filed to quiet the chain of title and obtain an order that title be issued. Clients in these cases do not have the resources to hire a private attorney to navigate this process. Without legal aid, these clients would not be able to obtain title to their own home, which is usually their only asset.

Legal aid programs are in a unique position to see clients and cases that would not normally come across the desk of a private attorney.

Importantly, consumer law helps to level the playing field between legitimate businesses and those that would try to get a competitive advantage by cutting corners. Legal Aid Center has often been able to work with the reputable businesses in our community to determine best practices and, like the consumer law profession in general, has acted as a private attorney general when needed to go after those businesses in the community that take advantage of vulnerable consumers.³

Unique Challenges and Opportunities

Practicing consumer law at Legal Aid Center involves traditional civil litigation, but it also presents its own unique challenges and opportunities.

Resources

One of the most prevalent challenges for all legal aid programs is having the resources available to successfully litigate and adequately represent the client, no matter the area of law. One way this issue is addressed is cy pres funds. As a non-profit organization that practices consumer law, Legal Aid Center is in a unique position to receive cy pres awards meant to benefit consumers. While cy pres funds are always welcome, the nature of the funds is inherently unreliable, as there is no way to predict upcoming awards or award amounts.

Another way Legal Aid Center overcomes limited resources is by engaging the private bar in pro bono work. Sometimes pro bono counsel may take a case to represent one client. Other times a firm might co-counsel with Legal Aid Center on a class action to help fill gaps in resources. Co-counseling with the local bar is always preferred, but Legal Aid Center also has the ability to co-counsel with consumer law specialists from around the country.

Educating the Private Bar

I recently attended a national class-action symposium for consumer attorneys, and I cannot tell you the number of jaws that dropped when I introduced myself as a legal aid attorney. Practicing consumer law through the legal aid lens on a daily basis, I am still shocked by the number of attorneys, both new and seasoned, who do not realize that legal aid programs that do not receive Legal Services Corporation (LSC) funding have the ability to seek attorneys' fee awards and file class-action cases.⁴ The Nevada Supreme Court, in *Miller v. Wilfong*, 121 Nev. 619 (2005), made it clear that legal service organizations are allowed to seek and be awarded attorneys' fees so long as the *Brunzell* factors are met. Similarly, non-LSC-funded legal aid organizations have no limitation on the types of cases they may file.

Heightened Professionalism

Another unique challenge for Legal Aid Center, especially in regard to consumer litigation, is sometimes litigating against local firms that provide invaluable pro bono work in other areas, such as representing children in foster care, and are otherwise our valued partners. Due to the nature of consumer law, there is often an inherent David and Goliath aspect to these cases. This means that Legal Aid Center is representing consumers against multi-million-dollar businesses that can afford to hire top law firms. These same firms also tend to do substantial and critical pro bono work, routinely winning pro bono awards for their incredible service. This dynamic allows for a continuous exercise in professionalism. While both sides zealously represent their respective clients to the best of their ability, all attorneys involved maintain a cordial and professional relationship and a mutual respect for one another's work and ethical obligations.

Responding to the Needs of the Community

One of the best parts of practicing law for Legal Aid Center is the ability to respond to the needs of the community. This is most evident during times of great need. For example, when the housing crisis hit in 2007, Legal Aid Center responded with foreclosure attorneys to help people save their homes. Similarly, after October 1, 2017, Legal Aid Center was able to respond with attorneys, both in-house and pro bono, to assist victims with any legal needs that arose as a result of the tragedy.

However, the ability to find and meet the needs of the community exists even when there is no pressing crisis. Legal aid programs are in a unique position to see clients and cases that would not normally come across the desk of a private attorney. This is true for several reasons. First, many times our clients are being sued in small claims or justice court for a relatively low-dollar amount. Second, someone defending a low-dollar case often feels defeated and might not even attempt to seek private representation because they cannot afford

CONTINUED ON PAGE 36

CONSUMER LITIGATION AND CLASS ACTIONS

it or feel certain they will lose. Third, clients in these situations often have no idea what consumer protections are available to them, or the statutory requirements imposed on the other side, so they frequently do not know they have a defense or counterclaim. Finally, in cases where our client needs to sue, the private bar simply might not handle the types of issues presented because there is no chance for recovering attorneys' fees and no means of payment. In instances such as these, Legal Aid Center steps in to meet the needs of these clients.

Class Actions – Helping the Greatest Number of Clients

Class actions allow Legal Aid Center to help the most number of victims in any given situation. For example, two of our most recent class action cases began with individuals being sued either in small claims court or in justice court. The first class began with a client who was being sued by a debt buyer on an auto deficiency after the four-year statute of limitations had passed. The second class began with a client, also being sued on an auto deficiency, who received what we

believed to be an improper notice of intended disposition. Experience has taught us that, in each of these scenarios, these practices are systemic and not limited to one client.

In these cases, our next step is research. We look at the court's website to determine how many suits the entity has filed. If necessary, we review court documents to be sure we have the basis for a viable class. Research on the front end helps us ensure we are not alleging a class where no class exists. Although rarely done, legal aid also has the unique ability to reach out to clients in order to provide them pro bono services.⁵ Once we determine that a class likely exists, we decide how best to proceed and whether to co-counsel. In the two class examples above, Legal Aid Center was able to help 2,474 people. The goal of class action cases is to stop bad actors from preying on primarily vulnerable people and to make our clients whole.

Cy Pres – Paying it Forward

Just like any other class action, if there is a monetary benefit to the class, class actions initiated by legal aid must designate a court-approved cy pres beneficiary. In these instances, we nominate organizations that are most likely to provide direct services to people similarly situated to the intended class

beneficiaries. For example, in a third class action involving the illegal lockout of tenants, the Nevada Community Foundation received cy pres funds that were distributed to HELP of Southern Nevada to prevent homelessness by providing housing assistance to low-income residents of Clark County.

While doing consumer work is rewarding on its own, the practice of consumer law for Legal Aid Center provides unique experiences and rewards. Practicing consumer law is truly a labor of love, and doing it for legal aid allows the passion for helping others to truly be fulfilled.

1. The author would like to thank Taylor Altman, Esq., Venicia G. Considine, Esq., and Jim Berchtold, Esq., for reviewing and providing feedback on the article.
2. See NRS 489.562
3. *Jacobson v. Healthcare Financial Services, Inc.*, 516 F.3d 85, 91 (2nd Cir. 2008)
4. LSC funded legal aid programs do have the ability to recover attorneys' fees in certain circumstances and if specific requirements are met.
5. NRCP 7.3

SOPHIA A. ROMERO

is a staff attorney in the Consumer Rights Project of Legal Aid Center of Southern Nevada. She is the Nevada state chair for the National Association of Consumer Advocates. She has litigated both individual and class action cases on behalf of Nevada consumers since 2011. She is licensed in Nevada and New Mexico.

