



RACIAL JUSTICE &
EQUAL ECONOMIC
OPPORTUNITY PROJECT
NATIONAL CONSUMER LAW CENTER

CRIMINAL JUSTICE
POLICY PROGRAM
HARVARD LAW SCHOOL

The Advocacy Gap: Meeting the Urgent Need for Counsel to Represent Individuals in Criminal Justice Debt Proceedings

October 10th, 2017

John Pollock, Public Justice Center, National Coalition for a Civil Right to Counsel

Robin Murphy, National Legal Aid & Defender Association

With Moderator

Abby Shafroth, National Consumer Law Center

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Please join us in Washington, DC this November for NCLC's annual Consumer Rights Litigation Conference!

November 16th-19th, 2017
Lobby Day, November 15th

This will be a particularly special and energizing conference, with more courses offered than ever before, all featuring high-quality and well-known speakers addressing **the 900+ consumer attorneys** expected to attend. We hope you will join us to network, brainstorm, and choose from over **60 breakout sessions** taught by leaders in the field of consumer law, making the CRLC the most **important event of the year** for consumer advocates!

For more details, please visit <https://www.nclc.org/conferences>





Moderator – Abby Shafroth

National Consumer Law Center

Abby Shafroth is a staff attorney at the National Consumer Law Center and focuses on the intersection of criminal and consumer law as well as student loan and for-profit school issues. She is the co-author of two reports in the *Confronting Criminal Justice Debt* series: *The Urgent Need for Reform* and *A Guide for Litigation*. She is also a contributing author of the National Consumer Law Center's *Student Loan Law and Collection Actions* treatises.

Prior to joining NCLC, Abby litigated civil rights and employment class and collective actions at Cohen Milstein Sellers & Toll PLLC in Washington, D.C. She also previously worked as an attorney at the Lawyers' Committee for Civil Rights Under Law and as a law clerk for the Honorable Richard A. Paez of the Ninth Circuit Court of Appeals. Abby is a graduate of Harvard College and Harvard Law School.



Other Webinars in this Series

Upcoming webinars:

- **Using Bankruptcy Law to Aid Criminal Justice Debtors (Oct. 17th, 2pm ET)**
- Intro to Harvard Criminal Justice Policy Program's 50-State Criminal Justice Debt Law Web Tool (date TBD)
- Ensuring that People Are Not Jailed Due to Poverty: Reforming Policies and Representing Clients in Criminal Justice Debt "Ability to Pay" Proceedings (date TBD)
- Affirmative Litigation of Criminal Justice Debt Abuses—Theory and Practice (date TBD)

Prior webinars:

- Confronting Criminal Justice Debt: Introduction and Impact on Communities of Color (Oct. 4, recording online now)

Register for upcoming webinars and download recordings of past webinars at:
<https://www.nclc.org/webinars.html>





Presenter – John Pollock

Attorney, Public Justice Center, and
Coordinator, National Coalition for a Civil Right to
Counsel

John Pollock is a Staff Attorney for the Public Justice Center who has served for the past 8 years as the Coordinator of the National Coalition for the Civil Right to Counsel. He focuses entirely on working to establish the right to counsel for low-income individuals in civil cases involving basic human needs such as child custody, housing, safety, and public benefits. Previously, John was the Enforcement Director for the Central Alabama Fair Housing Center and a Law Fellow for the Southern Poverty Law Center. He graduated from Northeastern University School of Law in 2005. Among other articles, he is the author of *The Case Against Case-By-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases*, 61 Drake L.J. 763 (Spring 2013) and *It's Not Triage if the Patient Bleeds Out*, 161 U. Penn. L.R. 40 (2012).



Presenter – Robin C. Murphy

Chief Counsel, Civil Programs, National Legal Aid & Defender Assoc. (NLADA)

Robin has committed her career to advocacy on behalf of underserved individuals and groups to protect and promote their legal rights. As NLADA's Chief Counsel she provides legal advice to private non-profit legal advocacy programs throughout the nation who receive funding from the Legal Services Corporation (LSC). She advocates with the LSC and their Board of Directors for LSC regulations, policies, procedures and oversight that maximize legal services programs' ability to effectively provide high quality services in their client communities.

Prior to joining NLADA, Robin enforced federal civil rights laws as a supervisory attorney at the US Department of Education Office for Civil Rights. In addition, she has spent over twenty years practicing at non-profit legal advocacy and government organizations throughout the country engaging in litigation, policy and legislative advocacy to protect and promote the legal rights of individuals unable to afford counsel primarily serving individuals with disabilities, children and survivors of domestic violence.

Criminal Justice Debt

aka

- Court Debt
- Legal financial obligations (LFOs)
- Monetary sanctions
- Fines and Fees

Types of Criminal Justice Debt

- Fines (penalties)
- Restitution
- “User fees” / costs
- Surcharges
- Later add-ons: interest, collection costs, payment plan costs, late and missed payment penalties

Importance of Criminal Justice Debt Representation

- Harsh consequences of criminal justice debt:
 - Huge debts that may snowball with interest and collection costs
 - Garnishment
 - Frequent status hearings that interfere with job
 - License suspension (1 in 6 drivers in VA)
 - Restrictions on expungement, right to vote
 - Longer periods of probation
 - Warrants, arrest, and incarceration for failure to pay
 - Increased interaction with criminal justice system

The Advocacy Gap

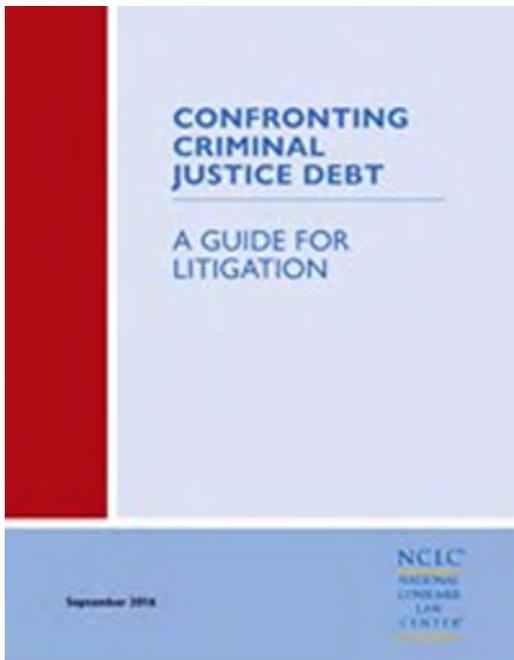
Criminal

Civil



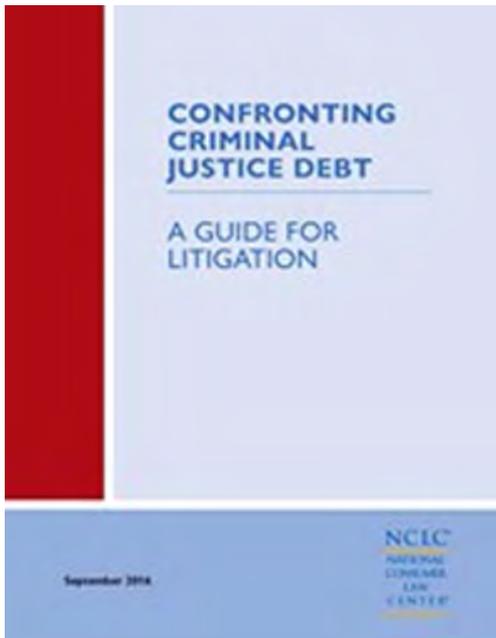
Resources:

Litigation Guide



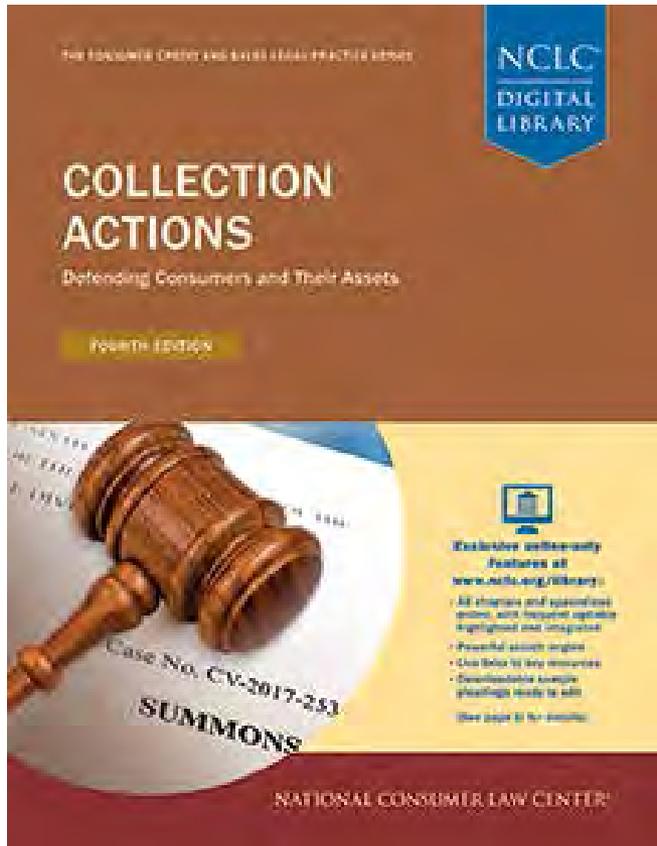
- Aimed at civil and criminal litigators/practitioners
- Primarily focused on individual representation
- Includes practice checklists

Topics in Litigation Guide



- Constitutional backdrop
- Defending against imposition of fines and fees
- Seeking modification of debt after imposition
- Defending against collection
- Bankruptcy
- Protections against garnishment
- Affirmative claims

New Criminal Justice Debt Chapter



www.nclc.org/library



Other Resources

50 State Web Tool for Criminal Justice Debt

Criminal Justice Policy Program at Harvard Law School
50-State Criminal Justice Debt Reform Builder ^{beta}

Home | National Comparison | State Analysis | Law Explorer | Reform Builder | Contact Us

Arizona

§ See all AZ provisions
Change state

§ Relevant Provisions
✔ Policy Recommendations
+ Add to board

Methodology

Hover over a state on the map to see key criminal justice debt metrics. Currently the map is color-coded by the number of fees and surcharges. Click to navigate to a state summary page with additional statistics, queries in to the full law database, and details about our methodology.

North Carolina
66 total fees & surcharges
Mandatory driver's license revocation?
Yes
Has any mandatory fees or surcharges?
Yes
Has required fee for parole or probation?
No

Arizona Fees and Fines State Summary

Across the country, onerous fines and fees pose a fundamental challenge to a fair and effective criminal justice system.

✔ Additional policy background

Explore the law in Arizona

- § Data of all fees and surcharges
- § Data of all fines for misdemeanors and felonies
- § See all financial penalties in Arizona

Arizona snapshot

Arizona has 25 fees and surcharges

- ✔ See policy recommendations
- § Explore the data

Arizona has a required charge for parole or probation

- § Explore the law in Arizona

Arizona Poverty Penalties and Poverty Traps

Poverty traps such as incarceration and driver's license revocation constrain an individual's ability to earn a living and pay court costs. Poverty penalties attach cascading costs and penalties to the collection practices.

- ✔ Additional policy background
- ✔ See all poverty penalty and poverty traps

Arizona Ability to Pay

Sound policy considerations counsel in favor of robust procedures for conducting ability to pay determinations not only at the enforcement stage but also when financial obligations are imposed.

- ✔ Additional policy background
- ✔ See all ability to pay policy recommendations in CJPP's Policy Guide

by Criminal Justice Policy Program at Harvard Law School
available at cjdebtreform.org

Other Resources

- NLADA Court Debt Listserv
- DOJ Fines and Fees Resource Guide
<https://ojp.gov/docs/finesfeesresguide.pdf>
- National Center for State Courts, National Task Force on Fines, Fees and Bail Practices Resource Center:
<http://www.ncsc.org/Topics/Financial/Fines-Costs-and-Fees/Fines-and-Fees-Resource-Guide.aspx>

NCCRC

National Coalition for a
Civil Right to Counsel



The Right to Counsel in Cases Involving Failure to Pay Court Fees and Fines

By John Pollock
Coordinator, NCCRC
10/10/17

WE HAVE NO MONEY TO PROVIDE YOU WITH LAWYERS IN CIVIL CASES...

... IT'S A SHAME YOU'RE NOT INVOLVED IN SOMETHING CRIMINAL.



FORE-CLOSURE

DOMESTIC ABUSE

CHILD CUSTODY



Status of the
right to counsel in fees
and fines cases

Turner v. Rogers: key facts

- 2011 decision from SCOTUS
- Child support civil contempt (key determination still ability to pay)
- Defendant jailed over a year
- Contempt initiated by custodial parent, not gov't, and custodial parent was pro se

Turner v. Rogers: fed gov't position

- “In the context of civil contempt for child support as well, automatic appointment of counsel could delay the proceedings, create an asymmetry in representation between non-custodial parents and custodial parents who may appear pro se ... and impose considerable financial cost on the government without an automatic increase in accuracy.”
- “The Court has declined to recognize a categorical constitutional right to appointed counsel in the context of other non-criminal proceedings that can result in confinement.”
- “[W]ith the provision of easy-to-understand forms on assets and income and, if necessary, a colloquy with the trial court, it will often be simple for a delinquent child-support obligor to demonstrate his present inability to discharge his obligation without the assistance of appointed counsel.”

Turner v. Rogers: holding

- No categorical RTC in child support contempt matter initiated by private party, even where resulting in incarceration
- Reaffirmed criminal/civil divide (previously rejected by fed courts)
- No presumption in favor of counsel when liberty at stake
- Analysis may change when gov't is plaintiff
- Does not address state constitutions

When is there a right to counsel in fees and fines cases?

- Imposition of fees/fines in criminal proceeding?
 - Yes, under 6th Amendment, if incarceration imposed in addition to fees/fines. *Argersinger v. Hamlin*, 407 U.S. 25 (1972), *Scott v. Illinois*, 440 U.S. 367 (1979).
 - Yes, under 6th Amendment, if criminal contempt proceeding and incarceration imposed in addition to fees/fines. *Turner v. Rogers*, 564 U.S. 431 (2011).
 - Yes, under 6th Amendment, if suspended incarceration sentence imposed in addition to fees/fines. *Alabama v. Shelton*, 535 U.S. 654 (2002).
 - Otherwise no, if only fees/fines imposed. But if no counsel, Sixth Amendment does/may bar jailing for later parole/probation revocation or civil contempt. *Shayesteh v. City of South Salt Lake*, 217 F.3d 1281 (10th Cir. 2000), *United States v. Foster*, 904 F.2d 20 (9th Cir. 1990), *United States v. Perez-Macias*, 335 F.3d 421 (5th Cir. 2003), *United States v. Pollard*, 389 F.3d 101 (4th Cir. 2004).

When is there a right to counsel in fees and fines cases?

- Probation/parole revocation for failure to pay fees/fines?

- Yes, under Sixth Amendment, if court reviving previously deferred criminal sentencing. *Mempa v. Rhay*, 389 U.S. 128, 135 (1967).
- Some states guarantee counsel for all probation/parole revocation cases via statute or state constitution's due process clause.
- Otherwise, case-by-case under 14th Amendment (complex matter, argument difficult to develop). *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973) (14th Amendment).

- Civil contempt involving incarceration for failure to pay fees/fines?

- Some states guarantee counsel for all such cases via statute or state constitution's due process clause.
- Some states have statutory right to counsel. Some states recognized right to counsel under 14th Amendment prior to *Turner*, but unclear law now (may depend on nature of prior ruling).
- Otherwise, where gov't not prosecuting, case-by-case approach under 14th Amendment (unusually complex). Where gov't is prosecuting, law is unclear. *Turner v. Rogers*, 564 U.S. 431 (2011) (14th Amendment).

When is there a right to counsel in fees and fines cases?

- Driver's license suspension or wage garnishment for failure to pay fees/fines?
 - No 6th Amendment right to counsel. *Scott v. Illinois*, 440 U.S. 367 (1979) (6th Amendment right to counsel attaches upon actual incarceration).
 - Caselaw on 14th Amendment right to counsel is negative
 - Could be right to counsel under state statute or state constitution (e.g. NJ).
- Affirmative litigation (bankruptcy, remission of fines, unlawful collection practices?)
 - No known right to counsel at the federal or state level.

Right to counsel in fees and fines cases expansion efforts

- Litigation:
 - Alabama (Montgomery, Alexander City)
 - California (San Francisco)
 - Georgia (DeKalb County)
 - Louisiana (New Orleans)
 - Mississippi (Biloxi, Jackson)
 - Missouri (Ferguson, Jennings)
 - Nebraska (Douglas County)
 - New Jersey (Burlington County)
 - Tennessee (Rutherford County)
 - Washington State (Benton County)
- Legislation: Louisiana, Mississippi, New Hampshire, Utah
- Court rule: New Hampshire

Policy arguments for RTC in fees/fines cases: lawyer needed for proper ability-to-pay determination

- Civil incarceration requires present ability to pay; courts often focus on past ability
- Civil incarceration can't be for punishment
- Imputation of income
- Judicial bias / morality judgments affecting ability-to-pay determination

Policy arguments for RTC in fees/fines cases: absurdity of right depending on type of case

All of these involve the same ability-to-pay determination:

- Deferred/suspended I sentence
- Contempt (civil? criminal?)
- Probation / parole violation
- Warrant for failure to pay / appear (not a conviction or sentence!)

Policy arguments for RTC in fees/fines cases: the criminal/civil divide

- *State v. Roll*, 298 A.2d 867 (Md. 1973) (“Today, the line between civil and criminal contempt is frequently hazy and indistinct. Often the same acts of omissions may constitute or at least embrace aspects of both ... “)
- *Key v. Key*, 767 S.E.2d 705 (N.C. App. 2014) (“The district court's imposition of a criminal punishment and its exclusion of any finding that Defendant was delinquent at the time of the order's entry and of a purge provision lead us to conclude that the court mistakenly labeled the contempt ‘civil’ rather than ‘criminal.’ ”)
- *Tyll v. Berry*, 758 S.E.2d 411 (N.C. App. 2014) (“Given the differences between an indigent individual's right to appointed counsel in a civil contempt proceeding and his right to counsel in a criminal contempt proceeding, we must initially determine whether the contempt proceeding and order in this case involved civil or criminal contempt. Here, the contempt order did not specify whether the trial court held defendant in civil or criminal contempt.”)

Policy arguments for RTC in fees/fines cases: rejecting the criminal/civil distinction

- *Ridgway v. Baker*, 720 F.2d 1409 (5th Cir. 1983)
("The right to counsel turns on whether deprivation of liberty may result from a proceeding, not upon its characterization as 'criminal' or 'civil.'")
- *DeWolfe v. Richmond*, 76 A.3d 1019 (Md. 2013)
"[R]egardless of whether the source of an indigent defendant's right to state-furnished counsel was Article 24 [due process] or Article 21 of the Declaration of Rights [6th Amendment equivalent], we have reaffirmed that the right attaches in any proceeding that may result in the defendant's incarceration.")

Policy arguments for RTC in fees/fines cases: rejecting “keys to their own prison”

Pasqua v. Council, 892 A.2d 663 (N.J. 2006) (“Defendants argue that plaintiffs possessed the keys to the jailhouse door. That makes sense only if one accepts the notion that plaintiffs had the wherewithal to pay their child support arrears. It is the purpose of the child support hearing to establish that very point. It is at that hearing that an indigent parent untrained in the law, and perhaps anxious and inarticulate, needs the guiding hand of counsel to help prove that his failure to make support payments was not due to willful disobedience of a court order but rather to his impecunious circumstances.”)

Better approaches to fees/fines cases: **The Colorado approach (HB 1311) (2016)**

The court shall not issue a warrant for failure to pay money, failure to appear to pay money, or failure to appear at any post-sentencing court appearance wherein the defendant was required to appear if he or she failed to pay a monetary amount; However, a court may issue an arrest warrant or incarcerate a defendant related to his or her failure to pay a monetary amount only through the procedures described in paragraphs (a) to (d) of this subsection (3).

[Subsection (3): impose part or all of suspended sentence, consider a motion to revoke probation, or institute proceedings for contempt of court]

Better approaches to fees/fines cases : The Utah approach (SB 71) (2017)

- By default, criminal case debt that is past due is treated as civil judgment
- Court can treat delinquent criminal case debt as contempt upon motion of prosecutor, judgment creditor, or court's own motion

RTC in fines and fees cases: Policy Recommendations



An Additional Recommendation from the Constitution Project's National Right to Counsel Committee Regarding Counsel in Civil Contempt Proceedings

To be added to the existing recommendations in
Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel

Approved by the Committee on June 28, 2010

Recommendation 23: Except in direct summary contempt proceedings, states should ensure that, in the absence of a valid waiver of counsel, quality representation is provided to all persons unable to afford counsel in proceedings that result in a loss of liberty regardless of whether the proceeding is denominated civil or criminal in nature.



“Before we send a man to prison, shouldn’t we at least be positive that he’s not rich?”

Questions?

John Pollock

Coordinator, Nat'l Coalition for a Civil Right to Counsel

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<http://www.civilrighttocounsel.org>



LSC FUNDED PROGRAMS:
OPPORTUNITIES AND LIMITATIONS TO
COMBAT INEQUITABLE AND
UNCONSTITUTIONAL IMPOSITION
AND ENFORCEMENT OF COURT FINES
AND FEES

ROBIN C. MURPHY, CHIEF COUNSEL, CIVIL
PROGRAMS, NLADA

NATIONAL CONSUMER LAW CENTER

OCTOBER 10, 2017

The background is a dark teal gradient. In the corners, there are decorative white line-art elements resembling circuit traces or neural network connections, with small circles at the end of the lines.

INTRODUCTION:

Why should legal services
programs do this work?

SOME REASONS WHY LEGAL AID PROGRAMS SHOULD DO THIS WORK

- Essential for removing barriers to breaking the cycle of poverty
- Court debt is a contributing factor for evictions, utility shutoffs, foreclosures, etc.
- Right to counsel not guaranteed for many court debt related procedures
- Direct services needed to make policy and complex litigation gains meaningful
- Disparate impact on communities of color

DEPARTMENT OF JUSTICE REPORT FINDINGS OF CIVIL RIGHTS VIOLATIONS : FERGUSON, MISSOURI:

- The Ferguson Police Department has a pattern or practice of:
- Conducting stops without reasonable suspicion and arrests without probable cause in violation of the Fourth Amendment;
- Interfering with the right to free expression in violation of the First Amendment; and
- Using unreasonable force in violation of the Fourth Amendment.

DEPARTMENT OF JUSTICE REPORT

FINDINGS OF

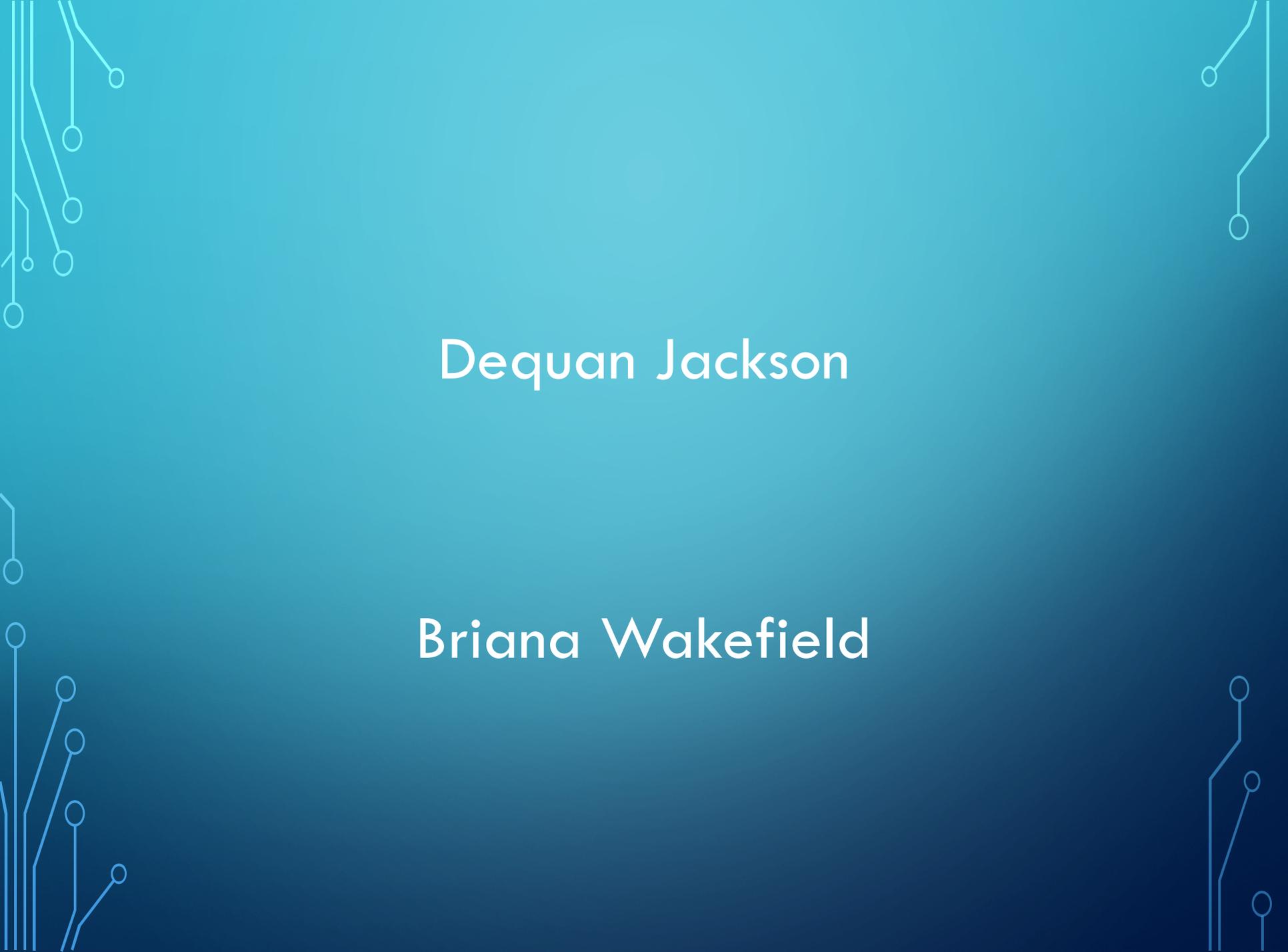
CIVIL RIGHTS VIOLATIONS:

FERGUSON, MISSOURI

- The Ferguson Municipal Court has a pattern or practice of:
- Focusing on revenue over public safety, leading to court practices that violate the 14th Amendment's due process and equal protection requirements.
- Court practices exacerbating the harm of Ferguson's unconstitutional police practices and imposing particular hardship upon Ferguson's most vulnerable residents, especially upon those living in or near poverty. Minor offenses can generate crippling debts, result in jail time because of an inability to pay and result in the loss of a driver's license, employment, or housing.

DEPARTMENT OF JUSTICE REPORT FINDINGS OF CIVIL RIGHTS VIOLATIONS: FERGUSON, MISSOURI

- There is a pattern or practice of racial bias in both the Ferguson Police Department and municipal court:
- The harms of Ferguson's police and court practices are borne disproportionately by African Americans and that this disproportionate impact is avoidable.
- Ferguson's harmful court and police practices are due, at least in part, to intentional discrimination, as demonstrated by direct evidence of racial bias and stereotyping about African Americans by certain Ferguson police and municipal court officials.

The image features a teal-to-blue gradient background. In the four corners, there are decorative white line-art elements resembling circuit traces or fiber optic paths, each ending in a small circle.

Dequan Jackson

Briana Wakefield

THREE KEY REGULATIONS FOR LSC PROGRAMS

- 45 C.F.R. §1613 - Restrictions on legal assistance with respect to criminal proceedings
- 45 C.F.R. §1615 – Restrictions on actions collaterally attacking criminal convictions
- 45 C.F.R. §1637 - Representation of prisoners
 - Keep in Mind
 - LSC eligibility criteria, 45 C.F.R 1611, 1626
 - Priorities in use of Resources, 45 C.F.R. 1620

FOUR QUESTIONS: REGARDING ELIGIBILITY

- 1. Does your advocacy constitute representation in a criminal proceeding set out in 45 C.F.R. 1613?
- 2. Does the representation entail a collateral attack on a criminal conviction as defined in 45 C.F.R. 1615?
- 3. Is this representation of a client who falls within the definition of a prisoner in 45 C.F.R 1637?
- 4. If the client falls within the definition of a prisoner in 45 C.F.R 1637, does the representation fall with the two categories of prohibited representation (1) civil litigation or (2) an administrative proceeding challenging the conditions of the client's incarceration?

IS YOUR ADVOCACY REPRESENTATION IN A CRIMINAL PROCEEDING AS DEFINED IN 45 CFR 1613?

“Criminal proceeding” means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated “criminal” by applicable law and punishable by death, imprisonment, or a jail sentence.

45 C.F.R. 1613.2

LSC guidance states that a criminal proceeding is one: “which is intended to determine the client’s guilt or innocence of the offense charged in the complaint, information or indictment.”

LSC External Opinions dated June 2, 1981 and May 17, 1993

ADVOCACY NOT PROHIBITED BY 45 CFR 1613

- Post-conviction proceedings, such as probation revocation, court debt remission hearings, garnishments, suspension of licenses or registrations, or modification of a court fine payment schedule.
- Matters defined by a state as criminal proceedings that are solely punishable by fines and no possibility of incarceration.
- Petitions for expungement and representation.
- Civil contempt relief
- Juvenile matters

OTHER EXCEPTIONS TO 45 CFR 1613 LIMITATIONS

- Court appointments
- Criminal representation in Indian tribal courts

IS THIS AN ACTION THAT COLLATERALLY ATTACKS A CRIMINAL CONVICTION?

- 45 C.F.R. 1615.2 of the LSC regulations prohibits legal assistance using LSC or private funds:
 -
 - “(a) in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action ... or
 -
 - (b) alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.”

DOES THE CLIENT FALL WITHIN THE DEFINITION OF PRISONER AS DEFINED IN 45 CFR 1637?

The key definitions used by LSC in its regulation on representation of prisoners in 45 C.F.R. §1637.2 include:

“Incarcerated means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.”

“Federal, State or local prison means any penal facility maintained under government authority.”

LSC'S DEFINITION OF PRISONER IN 45 CFR 1637 DOES NOT INCLUDE:

- Probationer or Parolee
- Person on house arrest
- Person on work release living in a group home or at home with a monitor
- Intermittent release is determined on case by case basis
- _Advocates may, in certain circumstances, continue representation if an individual is incarcerated after representation begins

LSC PROGRAMS ARE NOT PREVENTED FROM PROVIDING ALL SERVICES TO PRISONERS?

1637.3 prohibits only two types of representation of incarcerated individuals:

- civil litigation and
- representation in administrative proceedings challenging the conditions of the prisoner's incarceration

Permitted:

- Advice and counsel and brief services
- Legal Information
- Administrative proceedings that do not challenge a client's conditions of incarceration

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COULD AN LSC PROGRAM REPRESENT
DEQUAN JACKSON?

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COULD AN LSC PROGRAM
REPRESENT BRIANA WAKEFIELD?

EFFECTIVE ADVOCACY BY LSC PROGRAMS REGARDING FINES AND FEES

- Litigation
- Policy Advocacy with Courts
- Public Rulemaking

LITIGATION

- **J.E. (2015). DV victim forced to pay for attorney fees to defend against meritless contempt brought by her abuser in her own protective order, without due process of law.**
- **E.S. (2014) Liberian parent forced to choose between sending a remittance to Liberia to reduce chances of her mother contracting Ebola, and repaying a court appointed attorney fee established without due process of law**
- **Juvenile court appointed attorney fee debt established without due process of law for parent in CINA action leads to foreclosure**

DOJ/ATJ 2016 DEAR COLLEAGUE LETTER

- (1) Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;
- (2) Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;
- (3) Courts must not condition access to a judicial hearing on the prepayment of fines or fees;
- (4) Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
- (5) Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;
- (6) Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and
- (7) Courts must safeguard against unconstitutional practices by court staff and private contractors.

POLICY ADVOCACY WITH THE COURTS

45 CFR 1612.5 Permissible Activities Using Any Funds

“(7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.”

National Center for State Courts

National Task Force on Fines, Fees and Bail Practices: Resource Center

Bench Card for Judges

PUBLIC RULEMAKING

45 CFR 1612.6 Permissible activities using non-LSC funds.

(e) Recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

Resource List for Fines & Fees Reforms

- **U. S. Department of Justice**
- **U.S. Department of Justice, Civil Rights Division: Ferguson Police Report** https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf
- **U.S. Department of Justice, Civil Rights Division and Office for Access to Justice: Dear Colleague Letter Regarding Law Enforcement Fees and Fines**, (March 14, 2016)
-
- <https://www.google.com/search?q=department+of+justice+dear+colleague+letter+March+14%2C+2016&oq=department+of+justice+dear+colleague+letter+March+14%2C+2016&aqs=chrome..69i57.20046j0j7&sourceid=chrome&ie=UTF-8>
- **Department of Justice: Office of Justice Programs: Resource Guide: Reforming The Assessment And Enforcement Of Fines and Fees**
- <https://ojp.gov/docs/finesfeesresguide.pdf>

Resource List for Fines & Fees Reforms

- **National Center for State Courts**
- **National Task Force on Fines, Fees and Bail Practices Resource Center**
- <http://www.ncsc.org/Topics/Financial/Fines-Costs-and-Fees/Fines-and-Fees-Resource-Guide.aspx>
- Includes:
- **Task Force Products such as:**
- Lawful collection of legal financial obligations: A bench card for judges
- **Policy Papers and Resolutions such as:**
- [Resolution 3 Encouraging Education on and Use of the Bench Card on Lawful Collection of Court-Imposed Legal Financial Obligations Prepared by the National Task Force on Fines, Fees, and Bail Practices](#) (February 1, 2017)
- [The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations](#) (2015-2016)
- **State Reports and Resources**
- **National Reports**

Resource List for Fines & Fees Reforms

- **Criminal Justice Program at Harvard Law School**
- <http://cjpp.law.harvard.edu/>
- **Confronting Criminal Justice Debt:**
- A Comprehensive Project for Reform is a collaboration of the Criminal Justice Policy Program and [the National Consumer Law Center](#) (NCLC). It focuses on the fees and fines imposed by criminal justice system
- The project consists of three parts:
- **Confronting Criminal Justice Debt The Urgent Need For Comprehensive Reform**
- <http://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-1.pdf>
- **Confronting Criminal Justice Debt: A Guide For Policy Reform**
- <http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>
- **Confronting Criminal Justice Debt: A Guide For Litigation**
- <http://cjpp.law.harvard.edu/assets/CJD-LitigationGuide.pdf>
-
- **New Resource: 50 State Criminal Justice Debt Reform Builder**
- <https://cjdebtreform.org/>
-

National Legal Aid & Defender Association Guides

Court Debt Memo July 2016

Reentry Memo April 2015

**What Can and Cannot Be Done Revised July
2016**

Questions?



Just a Reminder

- Tomorrow you will receive an email with:
 - The recording and materials for this webinar
 - A survey
 - Instructions for receiving a certificate of attendance.

- Thank you to our speaker!

