



Northwest Justice Project

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César Torres
Executive Director

February 12, 2007

Ms. [REDACTED]
[REDACTED]
[REDACTED]
Seattle, WA [REDACTED]

Re: Group representation referrals to Northwest Justice Project

Dear Ms. [REDACTED]:

Thank you for your telephone call last week in which you requested further clarification about Northwest Justice Project's (NJP) criteria for representing clients in housing-related cases. Specifically, you are working with a group of persons participating in the [REDACTED]. These persons have identified certain issues of concern surrounding the [REDACTED] participation, and, as you indicated, this group has considered pursuing its objectives through litigation or other legal means. You wished to know whether, and under what conditions, this group could qualify for legal representation by NJP. In the course of our discussion, you further requested clarification about NJP's ability to represent any groups, not simply the group you are currently working with. I agreed to review NJP's program policies and clarify the rules regarding group representation and organizing activity. I hope the balance of this letter answers your questions.

NJP is allowed to represent certain types of groups. However, the restrictions on our funding prohibit NJP from using any program resources to "initiate the formation or to act as an organizer" or any association, network, or other organization. In other words, NJP can only represent groups that form on their own. NJP cannot form or organize persons into a group, nor can NJP provide any assistance in the creation of an organization.

I have enclosed a copy of NJP's relevant program policy regarding Group Eligibility for Assistance, so that you may review the details. To summarize the rule, however, there are generally two ways a group can qualify for representation: by "membership," or by "issue."

Group representation based on "membership" is based on the financial status of its members. Basically, NJP can represent individuals who have incomes at or below 125% of federal poverty level (FPL). So, NJP can obviously represent a group comprised solely of individuals having incomes at or below 125% FPL. Yet with many groups, some members may have incomes less than 125% FPL, and others may have incomes above the eligible limit. And certainly there is no "federal poverty level" for organizations. So, when a group has some members who are financially eligible for NJP services and others who may not be,

the following rules apply: 1) the group is financially eligible if either (i) a majority of the group's members, or (ii) the group's "organizing or operating body," are persons who would have qualified financially for NJP services had they sought assistance as individuals, and 2) the group must have "no practical means of obtaining funds to hire private counsel."

If a group does not qualify for representation based on membership, the group may yet qualify based on "issue." This could be the principal issue for which the group exists, or the issue for which the group seeks legal representation. As a general rule, a group will most likely qualify for services from NJP based on an "issue" if the group primarily consists of low-income persons and the group's mission or purpose is consistent with NJP's program priorities. But on this question, the details are important.

A group that does not necessarily have a majority or operating nucleus of "financially eligible" members, but is dedicated principally to providing services to persons who would be financially eligible (for NJP services), can also qualify for representation by NJP – provided the legal representation is related to the services at issue. In simpler language: regardless who is actually in a group, NJP can represent a group that exists to serve low-income people, but only in cases where the legal issue is directly-related to whatever that group does for low-income people. For instance, NJP could represent a group that operates a homeless shelter in a legal matter where the shelter's operations are threatened – but NJP could not help the same group sue its accountant for improperly managing the books (even though such a case might stabilize the shelter's revenue, which would improve its financial viability, and in turn enable it to expand or offer additional services, etc...).

The other type of "issue" representation that NJP is allowed to conduct is to represent any group or organization that "has as its principal function or activity the furtherance of interests of low-income persons in the community" in cases where the both (i) the representation is related to the group's activities (in furtherance of the interests of low-income persons), and (ii) the client organization has no practical means of obtaining funds for legal representation. An example of such a group might actually be your organization, [REDACTED]; i.e., NJP could theoretically represent [REDACTED] in a case where [REDACTED] was seeking to take action on behalf of low-income persons, but only if [REDACTED] had no practical means of hiring counsel on its own. However, NJP must use its non-LSC (federal legal services funding) funds to conduct such representations. As a practical matter, the inability to use our federal LSC funds makes such group representations highly impractical in housing-related cases, since virtually all of our housing-related advocacy is funded with our LSC grant.

The above remarks describe NJP's policy for when groups meet the basic eligibility criteria. However, just because a group is "eligible" does not mean the group is suitable for legal representation. I have listed below the typical characteristics I feel groups must have in order for an attorney to viably represent the group, particularly in a litigation matter:

- 1) The group must have at least a few truly dedicated, "invested" members;
- 2) The group must have its own purposes and objectives;
- 3) The group must have an effective decision-making apparatus;
- 4) The group must have at least one "officer;"

- 5) The group should have a name; and
- 6) Unless the group is very small, the group should have a written “charter”

Allow me to briefly summarize my reasons for these criteria. First, I often find that group representation differs remarkably from individual representation, in that individuals have a personal stake in their cases and are therefore highly motivated to participate in the litigation. With group representation, there often is no “personal stake;” members become disinterested and many such groups even tend to disintegrate over time. Thus, the involvement of at least a few truly-committed members is indispensable. Along with that, the group must have its own goals and objectives – not just exist for the convenience of their attorney.

Particularly where the group is pursuing multiple objectives, or a single but “multi-faceted” objective, the group must have a decision-making scheme appropriate to its size and composition. Where the group is very small, a “consensus” model or even decision-making by unanimous vote may be appropriate. Where the group is large, a majority-rule model may be preferable. And the group must be able to act in a reasonably prompt and efficient manner. Legal representation is not feasible if the group cannot reach decisions, or if the group can only conduct business at meetings that are infrequent or poorly-attended.

I have posed the remaining criteria for more technical reasons. For one, any group that seeks legal representation should have a name. Not only does a name facilitate legal representation as an independent means of identification, but a strategically-chosen name communicates a helpful message (whether to the group’s opponents, or the public, or to courts, etc.). Next, at least one person in the group must be responsible for speaking and signing papers on behalf of the group, and the person’s authority to do so should be memorialized in writing. The group should also have someone keeping track of the group’s written records and any money or property the group may have or obtain.

I strongly urge any group containing more than just a few members – or any group whose membership is subject to change – to adopt a written charter. The charter need not be extensive, but should include (i) the organization’s purpose; (ii) who the organization’s members are, or else the criteria for becoming a member; (iii) the officers the organization will have, and their and powers duties; (iv) the method by which the organization will make decisions; and (v) the manner in which the charter may be amended. These fundamental components establish the rudimentary legitimacy of a group and its collective decisions. A very large or sophisticated organization may wish to include more extensive information in the charter, or supplement the charter with “bylaws” or other more detailed rules.

Thank you again for inquiring about NJP’s ability to represent groups. As always, as legal services attorneys we look to maximize the benefits our work not only for the individuals we serve directly, but for all the low-income residents in our community. Group representation often enables us to achieve broader impacts that may not be as possible when representing individual clients. Thus, please feel free to refer groups to NJP when you feel they may be qualified for our services and presenting legal issues germane to our priorities.

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If you have further questions about this issue, please contact me by telephone at (206) 464-1519, ext. 234, or by e-mail to EricD@nwjustice.org.

Sincerely,

Eric Dunn
Staff Attorney