A "CIVIL GIDEON" FOR THE INDIGENT FILIPINO LITIGANT: THE NECESSITY OF A STATUTORY ANCHOR IN EFFECTUATING THE RIGHT TO COUNSEL OF INDIGENTS IN CIVIL CASES*

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"Access to justice by the impoverished is held sacrosanct under Article III, Section 11 of the 1987 Constitution"
—Justice Noel Tijam[1]

I. INTRODUCTION

The law permeates every single aspect of our lives. Constitutional Law seeks to identify the ideals of our society's framework and formulate the necessary provisions in the creation of an organic law for society to adhere to it—defining the metes and bounds of the various reiterations of Philippine government for the present and future. Taxation determines how precisely a government is to survive as financed by the people who provide this so-called "lifeblood of the government."[2] Civil Law prescribes the rules of conduct that every person in a society is bound to follow, the freedoms in both personal

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1 Ayala Land, Inc. v. Lactao, G.R. No. 208213, Aug. 8, 2018.

2 Northern Lines, Inc. v. Ct. of Tax Appeals, G.R. No. L-41376, 163 SCRA 25, 37 (1988), *citing* Commissioner of Internal Revenue v. Pineda, G.R. No. 22734, 21 SCRA 105, (1967); Vera v. Fernandez, G.R. No. 31364, 89 SCRA 199, 204 (1979); Atlas Consol. Mining & Dev. Corp. v. Comm'r of Internal Revenue, G.R. No. 26911, 102 SCRA 246, 262 (1981).

and transactional relations and the repercussions thereof once these rules of conduct are breached or when said freedoms are abused. Criminal Law goes a step further and penalizes conduct that we have deemed inimical to have in our communities, by a fine or deprivation of liberty. These, and many more characterizations of the law, consist of only the tip of the iceberg.

Such is the magnanimity of the law, with its broad and pervasive nature. As such, a legal practitioner has concurrently been recognized and expected to efficiently wield the tools capable of sifting and filtering what laws and rules are relevant when a question or conflict arises. It is only but a natural consequence of such proficiency that the services of a lawyer are indispensable to a society and consistently in high demand—as the adage goes, "with great power comes great responsibility."[3] Such services, however, do not always come *pro bono*, as lawyering too is a livelihood just like any other job. These services are also not automatically provided and catered completely to the whims and caprices of any client. Ultimately, the practice of law must not deviate from its very nature as a profession geared towards actualizing the law, whose "basic ideal is to render public service and secure justice for those who seek its aid."[4]

Unfortunately, these legal services that theoretically lead to justice are not readily demandable for indigent litigants in civil disputes, while on the other hand, the Constitution explicitly provides for its indispensability in criminal cases. For one, it is easy to look for the legal basis as to the mandatory right to representation in criminal proceedings. This right is explicit and extensive at a constitutional level, covering both periods before and during trial, as provided in Sections 12(1) and 14 of Article III.[5] Jurisprudence is also replete with exhortations that counsel is mandatory in criminal proceedings,

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[3] *Spider-man* (Columbia Pictures 2002).

[4] RUBEN AGPALO, LEGAL AND JUDICIAL ETHICS 1 (2009), *citing* Mayer v. State Bar, 2 Cal.2d 71, 39 P.2d 206 (1934).

[5] CONST. art. III, § 12(1) provides: "Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

CONST. art. III, § 14(2) provides: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

in whatever stage.[6] There is even a specific statute, Republic Act No. 7438, mandating public officers to ensure that an accused is provided with counsel during custodial investigation even if he cannot afford one.[7] However, on the other end of the scale towards civil cases, there is hardly any explicit declaration in jurisprudence nor in law. Only Sections 1[8] and 11[9] of Article III provide a general basis at most, which applies to litigations in general; there is no *legis specialis* providing for the right to representation vis-à-vis civil litigation.

With that as the context, the Author seeks to delve into an unavoidable aspect of the profession—the right of every person to adequate legal service without forgetting the primary correlative right of every lawyer for compensation for the services rendered. Thus, the question proposed is simply this: where else in our legal system can the ethical responsibility of lawyers to accept or reject indigent clients in civil dispute be found? Collaterally, what can be done to augment its enforcement? The Author submits that the right to representation of indigents in civil disputes currently finds its niche in legal ethics through the Code of Professional Responsibility, which are the rules that determine the standard of conduct of lawyers. It is also found in the Constitution through the due process clause[10] and in Article III, Section 11, which provides the mandatory duty to make available courts and quasi-judicial agencies for indigents in civil disputes and criminal proceedings in the practice of law. This, however, is not enough.

This Note does not proclaim that there is already an immediate actionable basis present in Sections 1 and 11, Article III of the Constitution and in the Canons of the Code of Professional Responsibility. As seen in the present circumstances to be discussed herein, explicit legislation and rule-

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[6] *See* People v. Duero, G.R. No. 52016, 104 SCRA 379 (1981); People v. Obrero, G.R. No. 122142, 332 SCRA 190 (2000); People v. Valdez, G.R. No. 129296, 341 SCRA 25 (2000); People v. Rodriguez, G.R. No. 129211, 341 SCRA 645 (2000); People v. Del Rosario, G.R. No. 127755, 305 SCRA 740 (1999). All these cases, among other things, require a strict adherence to the mandatory presence of counsel should any evidence be admissible, and should any waiver of counsel be acceptable.

[7] Rep. Act. No. 7438 (1992), § 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.*

[8] CONST. art. III, § 1 provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[9] CONST. art. III, § 11 provides: "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."

[10] CONST. art. III, § 1 provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

making by the Supreme Court are still necessary. The Congress and the Court should thus not hesitate to ensure that this right is not buried nor forgotten.

II. PRESCRIPTIONS AND CONSEQUENT OBLIGATIONS IN THE CODE OF PROFESSIONAL RESPONSIBILITY AND IN OTHER LEGAL INSTRUMENTS

A. Code of Professional Ethics

A code of "[l]egal [e]thics is the embodiment of all principles of morality and refinement that should govern the conduct of every member of the bar."[11] Theoretically, this Code is what guides the lawyer in practicing law, and helps the lawyer participate as part of the "machinery of justice administered by the Court."[12] A Code of Ethics is thus a means to an end; the means is the conduct of a lawyer, and the end is justice.

The Code of Professional Responsibility (hereinafter "CPR") provides the following general rule for lawyers to follow regarding representing indigent clients:

Canon 14: A lawyer shall not refuse his services to the needy.[13]

The aforementioned Canon with its corresponding rules provided in the CPR qualify the discretion of a lawyer in refusing his services to the needy. Three conclusions from the said Canons, read with other and Rules[14] and Canons found throughout the CPR, can be made as follows:

First, Canon 14 is qualified by Rule 14.01, which additionally provides that such refusal cannot be dependent solely on the client's race, sex, creed, status of life, or because of the lawyer's own opinion regarding the guilt of said person.[15] This rule is crucial in qualifying Canon 14 as it helps clarify one of the very few explicit statutory moorings that protect indigent litigants in civil cases. These two provisions do not distinguish between civil or criminal disputes, as (1) Canon 14 clearly does not distinguish, and (2) the reference to

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[11] AGPALO, *supra* note 4, at 2 n.6.

[12] AGPALO, *supra* note 4, at 2.

[13] CODE OF PROF. RESP., Canon 14.

[14] By "Rules", the Author refers to the Rules that follow each of the 22 Canons in the CPR.

[15] CODE OF PROF. RESP., Rule 14.01. This provides: "A lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person."

"guilt" in the last clause of the provision only adds to the qualifications that a lawyer cannot use in refusing an indigent. Reading these two provisions together, Canon 14 stands as the general rule, while Rule 14.01 comes in should a lawyer refuse an indigent, wherein it cannot be based on race, sex, creed, or status of life of the indigent subject of a criminal or civil proceeding. Additionally for a criminal case, refusal cannot also be based on the opinion of the lawyer regarding the guilt of the person.

Second, Rule 14.03 adds that if a lawyer can carry out the work effectively or competently, without a conflict of interest between him and the prospective client or between a current client and the prospective client, *then he may not refuse to accept* representation of an indigent.[16] It is clear that the obligation to represent the indigent is only hinged on three things: (1) the lawyer's competency, (2) efficiency, and (3) absence of a conflict of interest. The requisites of competency and efficiency are again reiterated in Rule 18.01,[17] where despite being incompetent or inefficient, a lawyer can still handle a case by obtaining the services of a collaborating counsel. Thus, being incompetent and inefficient, in itself, are not absolute disqualifications. According to these Rules, only a conflict of interest stands as an absolute disqualification.

Third, upon accepting the cause of the indigent, Rule 14.04 is unequivocal in requiring the lawyer to *observe the same standard of conduct governing his relations with paying clients.*[18] This third conclusion can be read in conjunction with Canon 18, which requires a lawyer to serve his client with competence and diligence,[19] wherein a lawyer should be adequately prepared for any legal

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[16] CODE OF PROF. RESP., Rule 14.03. This provides: "A lawyer may not refuse to accept representation of an indigent client unless:

a) he is in no position to carry out the work effectively or competently; or
b) he labors under a conflict of interest between him and the prospective client, or between a present client and the prospective client."

[17] CODE OF PROF. RESP., Rule 18.01. This provides: "A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter."

[18] CODE OF PROF. RESP., Canon 14, Rule 14.04. This provides: "A lawyer who accepts the cause of a person unable to pay his professional fees shall observe the same standard of conduct governing his relations with paying clients."

[19] CODE OF PROF. RESP., Canon 18. This provides: "A lawyer shall serve his client with competence and diligence."

matter at hand,[20] inform the client of the status of the case,[21] respond immediately to a client's request for information,[22] and not neglect these cases entrusted to him, otherwise he will be held liable.[23] To provide an avenue to still actualize these duties even when a lawyer may be incompetent and inefficient when alone, the CPR allows a lawyer to work with collaborating counsel with the consent of his client.[24]

It is important to note the temporal nature of these abovementioned obligations, read together with Canon 14. The presumption that (1) a lawyer is competent or (2) if he alone is not, he is at least competent together with collaborating counsel, arises once the lawyer or lawyers have accepted the case and initiated preparations pertinent to it, with the client being consistently informed of whatever development. Simply, once the lawyer takes on the case of an indigent, there is no defense of incompetence. There is only a professional liability once the lawyer is shown to be incompetent. Otherwise, the lawyer should have not accepted the case at all, when even with the aid of collaborating counsel, one has determined that he or she is incompetent to handle that case.

In sum, Canon 14, as a general rule, covers legal services in *all proceedings for all indigents. There is no exclusion.* The purpose of Rule 14.01 is to provide the general reasons that *cannot* stand as basis for declining any indigent client, with an additional requirement for criminal cases where a lawyer cannot deny representation solely because of an opinion on a person's innocence or guilt. Rules 14.02, 14.03, and 14.04 meanwhile provide for specific circumstances for declining and/or accepting clients. Specifically: (1) Rule 14.02 provides for situations when a lawyer cannot refuse, except for specific grounds as *counsel de officio, amicus curiae*, or from a request from the Integrated Bar of the Philippines (IBP); (2) Rule 14.03 when it is an issue of competence

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[20] CODE OF PROF. RESP., Canon 18, Rule 18.02. This provides: "A lawyer shall not handle any legal matter without adequate preparation."

[21] CODE OF PROF. RESP., Canon 18, Rule 18.04. This provides: "A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."

[22] CODE OF PROF. RESP., Canon 18, Rule 18.04. This provides: "A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."

[23] CODE OF PROF. RESP., Canon 18, Rule 18.03. This provides: "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

[24] CODE OF PROF. RESP., Canon 18, Rule 18.01. This provides: "A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter."

or of conflict of interest; and (3) Rule 14.04 as an imposition of an equal standard of diligence for paying and non–paying clients. Additionally, Canon 18 describes the general duties of a lawyer upon accepting a case and allows him to seek the aid of collaborating counsel should a lawyer be not capable of handling a case alone.

These Canons and Rules stand as the main authority for affording indigents an actualization of their right to representation in civil and criminal cases, by attaching to lawyers this ethical responsibility, among others, as officers of the court. Unfortunately, beyond this, there is a dearth of legal basis requiring lawyers to represent indigents, most especially for civil cases.

B. The Constitution, Statutes, and Rules

The 1987 Constitution, first through Article III, Section 1[25], ensures that there is due process vis-à-vis the right to be heard, before there is any deprivation of life, liberty, or property. This rule is the general concept, applicable to all proceedings, may it be administrative, civil, or criminal. Now, with regard to criminal proceedings, Sections 12(1) and 14(2) of the same Article provide specific rules for criminal cases. To illustrate, Article III, Section 12(1) and Section 14(2) provide the following:

> SEC. 12. (1) Any person under investigation for the commission of an *offense* shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.[26]
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> SEC. 14 (2) In all *criminal prosecutions*, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused

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[25] CONST. art. III, § 1. This provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[26] CONST. art. III, § 12 (1). (Emphasis supplied.)

> provided that he has been duly notified and his failure to appear is unjustifiable.[27]

One only needs to look at the text of these provisions to see the exclusivity of their application to criminal proceedings, as one speaks of an *offense*, while the other speaks of *criminal prosecutions*. Section 12(1) was adopted by our jurisdiction from the landmark case of *Miranda v. Arizona*,[28] where the U.S. Supreme Court delineated what we now know as the Miranda Rights for custodial investigations and criminal proceedings in general. Consistent with *Miranda,* our courts have only applied Section 12(1) in cases involving the requirement of having competent and independent counsel present in custodial investigations specifically for criminal cases.[29] On the other hand, Section 14(2) does not even need judicial interpretation as it is unequivocal when it refers to *criminal prosecutions*. It also delineates the minimum indispensable requirements of a *criminal trial*. Clearly, these provisions do not extend the mandatory right to counsel beyond criminal proceedings.

Now, with regard to the right to representation of indigents in civil cases, it may be argued that there is a penumbral obligation arising from Article III, Section 11 of the Constitution where there is a guarantee of access to courts, quasi-judicial bodies, and adequate legal services where a lawyer may not deny anyone by sole reason of poverty.[30] Arguably, Section 11 may stand as the fundamental law that prescribes mandatory legal aid to indigents in civil cases—however it is still not explicit. On its face, the text of the provision only speaks of a general principle requiring free access and adequate legal assistance to the impoverished, but it does not demand the right of representation in civil cases of the needy, enforceable to the same degree in criminal proceedings and with the same tenor of Sections 12(1) and 14(2). The contrary is instead more likely. Section 11 is generally worded making it applicable to both proceedings. This implies that indigent litigants involved in either criminal or civil proceedings should have free and easy access to the courts. This is where the Public Attorney's Office (PAO) comes in. Pursuant to its charter, it offers free legal services to indigents in both civil and criminal cases.[31] Furthermore, Article III, Section 11 as a general principle alone

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[27] CONST. art. III, § 14(2). (Emphasis supplied.)

[28] Miranda v. Arizona, 384 U.S. 436 (1966).

[29] *Supra* note 6.

[30] CONST. art. III.

[31] Rep. Act No. 9406 (2007), § 3. This section provides the following: "A new Section 14-A, is hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292, otherwise known as the 'Administrative Code of 1987', to read as follows: 'SEC. 14-A Powers and Functions. - The PAO shall *independently discharge its mandate to render, free of charge, legal representation, assistance, and counselling to indigent persons in criminal, civil, labor, administrative and other*

cannot compel exemption from docket fees and other fees that come with availing of counsel. Specific legislation and Rules promulgated by the Court are still required to breathe life into Section 11, such as Republic Act No. 6033,[32] Republic Act No. 6034,[33] and the new Rule on Community Legal Aid Service,[34] to name a few.

There is no explicit provision, enforceable to the same degree as the right to counsel of indigents in criminal cases, that is unequivocal regarding the right of representation of indigents in civil cases. To illustrate that void with regard to this right, the following is a simplified visual representation of the current legal framework, which classifies the privileges available to indigent litigants in both criminal and civil cases:

	Criminal	*Civil*
As to the right to be heard	Article III, Section 1	
As to the degree of accessibility of the Courts and quasi–judicial bodies	Article III, Section 11	
As to the mandatory nature of representation	Article III, Sections 12(1) and 14(2) of the 1987 Constitution; Rep. Act. No. 7438 (1992)	Code of Professional Responsibility, Canons 14 and 18.
As to the power of the Court to appoint counsel de officio	Rule 138 (Section 31), Rule 116 (Section 7) and Rule 124 (Section 2)	
As to the coverage of the free service by the Public Attorney's Office	Rep. Act No. 9406 (2007). Section 3 of the said law, in part, provides the following: "[...]. - The PAO shall independently discharge its mandate to render, free of charge, legal representation, assistance, and counselling to *indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases.*"	
As to the waiving of fees and providing allowances for indigents	Rule 3, Section 21; Rule 141, Section 19; Rep. Act. No. 6034 (1969)	
As to the priority of the case when it is an indigent litigant	Rep. Act. No. 6033 (1969) prioritizes a criminal case when it	*none*

quasi-judicial cases. In the exigency of the service, the PAO may be called upon by proper government authorities to render such service to other persons, subject to existing laws, rules and regulations.'" (Emphasis supplied.)

[32] An Act Requiring Courts to Give Preference to Criminal Cases Where the Party or Parties Involved are Indigents (1969).

[33] An Act Providing Transportation and Other Allowances for Indigent Lawyers (1969).

[34] Adm. Matter No. 17-03-09-SC (2017).

	involves an indigent litigant	
As to the coverage of various mandatory legal aid	Rep. Act No. 9999, Rule 138-A, Bar Matter No. 2012, A.M. No. 17-03-09-SC	

The only specific locus of the duty to represent is found in the CPR —this is the only rule that theoretically enables Article III, Sections 1 and 11 of the Constitution to impose a duty to represent indigents in civil cases. This does not solve the problem before us as the CPR is likewise only general in coverage, imposing the same duty to lawyers in civil or criminal proceedings. The disparity is thus glaring on the opposite side of the spectrum, because in addition to the CPR, there are *two constitutional provisions and a Republic Act* that specifically apply to indigents in criminal proceedings. As it stands, the right to representation of indigents in civil cases is an ethical duty, but not a statutory nor constitutional duty imposed upon lawyers.

There is an absence of any explicit legislative statute nor constitutional provision, clarifying and mandating this right of indigent litigants. It is also clear that all the current legislation and rules promulgated by the Court do not address this void by its horns; in fact, what these laws and rules afford in civil, they also afford in criminal proceedings.

III. PARALLEL RECOGNITION IN THE UNITED STATES BY THE AMERICAN BAR ASSOCIATION AS TO THE NECESSITY OF A STATUTORY RIGHT TO REPRESENTATION IN CIVIL DISPUTES

As demonstrated, Philippine laws are not as instructive nor compelling with regard to the right of indigents to representation in civil cases. Our jurisprudence has not tackled the conundrum directly as well: there has been no case within our jurisdiction that resolves the matter on all fours. The Integrated Bar of the Philippines has also not adopted any resolution nor made any action to deal with the question. However, in the United States, from which we borrowed much of our tenets in the Code of Professional Ethics,[35] the question has been dealt with by their Supreme Court, and the American Bar Association has taken up the cudgels of a movement aiming to afford this right to indigents. In their jurisdiction there is an absence as well of an explicit statute, and worse, there is an *existing contrary jurisprudential basis*.[36]

[35] AGPALO, *supra* note 4, at 1 n.4.

[36] Jessica Christian Mary Almeida, *The Right to Counsel in Legal Matters: A Legal and Moral Analysis*, SETON HALL UNIVERSITY LAW SCHOOL STUDENT SCHOLARSHIP (2013); *See* Lassiter v. Dep't of Soc. Welfare & Serv., 425 U.S. 18 (1981).

The American Bar Association (ABA) adopted the Basic Principles of a Right to Counsel in Civil Legal Proceedings back in August 2010 as a unified and common move across the different bar associations in America to ensure and actualize that the right to counsel of party litigants is not impaired, otherwise known as the "Civil Gideon."[37] "Gideon" refers to the U.S. Supreme Court ruling in *Gideon v. Wainwright*[38] where the United States Supreme Court voted 9–0 to declare that every person had a right to counsel in a criminal proceeding, regardless if it is a capital or a non-capital offense. In this case, Mr. Gideon was charged with breaking with intent to commit a misdemeanor, which is a recognized felony under Florida law. During trial, Gideon requested that he be appointed a lawyer but the trial judge in Florida denied his request, reasoning that under Florida law said privilege was only afforded to poor defendants charged with capital offenses. Gideon was thus forced to represent himself, but he was unsuccessful in obtaining an acquittal and was sentenced to five years in state prison. He then filed a petition for *habeas corpus* with the Florida Supreme Court ("S.C.") and alleged that the denial of the trial court's judge of his request for counsel infringed his constitutional rights. Unfortunately, the Florida S.C. denied his petition.

The U.S. Supreme Court decided in favor of Gideon and in the process reversed the earlier doctrine established by *Betts v. Brady*[39]. It held that ruling in favor of Mr. Gideon was more in tune with the protections afforded by the 14th Amendment, with these words of Associate Justice John Marshall Harlan:

> The fact is that, in deciding as it did – that "appointment of counsel is not a fundamental right, essential to a fair trial" – the Court in *Betts v. Brady* made an abrupt break with its own well considered precedents. *In returning to these old precedents, sounder, we believe, than the new, we but restore constitutional principles established to achieve a fair system of justice.* Not only these precedents, but also reason and reflection, require us to recognize that, in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him […] The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and

[37] American Bar Association, ABA Basic Principles for a Right to Counsel in Civil Legal Proceedings (Aug. 2010), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_105_revised_final_aug_2010.authcheckdam.pdf.

[38] 372 U.S. 335 (1963).

[39] 316 U.S. 455 (1942).

> national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. *This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.*[40]

Citing the words of Justice George Sutherland in the landmark 1932 case of *Powell v. Alabama*,[41] the Court characterized this right in the following manner:

> *The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.* Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. *Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.*[42]

While *Gideon* is a criminal case, the ABA used this as a springboard in seeking to extend the same protections to indigent parties in civil cases. Specifically, the protection that the ABA suggested when its House of Delegates passed an earlier recommendation in 2006,[43] was to extend protection to plaintiffs who could not afford protection for *civil cases that involved primary human needs such as shelter, sustenance, safety, health, and child custody.*[44] The ABA acknowledged that "[i]t appears just as difficult to argue a civil litigant can stand 'equal before the law [...] without a lawyer to assist him.'"[45]

More importantly, the ABA pushed precisely for a "Civil Gideon" because U.S. jurisprudence currently employs a clear distinction between the

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[40] 372 U.S. 335, 343–44 (1963). (Emphasis supplied.)

[41] 287 U.S. 45 (1932). In Powell, the U.S. Supreme Court reversed a conviction rendered by a State court because there was a violation of the right to counsel against indigent African-American litigants. This was the first of its kind.

[42] 372 U.S. 335, 344–45 (1963). (Emphasis supplied.)

[43] American Bar Association, Recommendation 112 A (Aug. 7, 2006), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_resolution_06a112a.pdf.

[44] *Id.* (Emphasis supplied.)

[45] *Id.* at 5.

right of indigents to counsel in civil cases from the need for counsel in criminal cases. This distinction is embodied in the decision of the U.S. Supreme Court in *Lassiter v. Department of Social Welfare & Services*,[46] which clarified that "it is the defendant's *interest in personal freedom*, and not simply the special Sixth and Fourteenth Amendments right to counsel in criminal cases, which triggers the right to appointed counsel[.]"[47] *Lassiter* involved a mother whose parental rights over her infant were revoked after the Department of Social Welfare and Services in Durham petitioned for its revocation. This was because this mother, Mrs. Lassiter, had been convicted of second-degree murder of her other child. During the trial, Mrs. Lassiter had actually hired counsel, however she was not able to inform her lawyer of the hearing dates. The trial court, proceeding despite the absence of Mrs. Lassiter's counsel, eventually ruled against her. Once the case reached the U.S. Supreme Court, it affirmed the trial court in ruling also against Mrs. Lassiter in a highly contested 5–4 decision. The U.S. Supreme Court explained the principle behind the decision in this wise:

> Significantly, as *a litigant's interest in personal liberty diminishes, so does his right to appointed counsel.* [...] Finally, the Court has refused to extend the right to appointed counsel to include prosecutions which, though criminal, do not result in the defendant's loss of personal liberty. The Court in *Scott v. Illinois*, 440 U.S. 367, for instance, interpreted the "central premise of *Argersinger*" to be "that actual imprisonment is a penalty different in kind from fines or the mere threat of imprisonment," and the Court endorsed that premise as "eminently sound and warrant[ing] adoption of actual imprisonment as the line defining the constitutional right to appointment of counsel.
>
> In sum, the Court's precedents speak with one voice about what "fundamental fairness" has meant when the Court has considered the right to appointed counsel, and we thus draw from them the presumption that *an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty*. It is against this presumption that all the other elements in the due process decision must be measured.[48]

The operative phrase that defines the distinction is this: "*an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty*."[49] However, despite this jurisprudential standard in the U.S., the

[46] 452 U.S. 18 (1981).
[47] *Id.* at 25.
[48] *Id.* at 26–27. (Emphasis supplied.)
[49] *Id.*

ABA forwards that if *Gideon v. Wainwright* was able to overturn the improper doctrine in *Betts v. Brady*, it would not be impossible to reverse the doctrine of *Lassiter*.[50] To support its argument that such right is in fact capable of recognition, the ABA pointed out that in other jurisdictions the right to counsel in civil cases is explicit and based in statute. These jurisdictions have already recognized and codified this right long ago:

> Other European and commonwealth countries also have come to recognize *a statutory right to counsel in civil cases*. France created such a statutory right in 1852, Italy did so when Garibaldi unified the country in 1865, and Germany followed suit when it became a nation in 1877. Most of the remaining European countries enacted right to counsel provisions in the late 19th and early 20th century. Several Canadian provinces, New Zealand and some Australian states have provided attorneys to the poor as a matter of statutory right for decades, although the scope of the right has changed in response to legislative funding and priorities.[51]

Coming from this legal context both in the U.S. and internationally, the chief goal of the ABA is "to promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition[.]" Thus, in order to effectively enforce this right, the following correlative obligations must be put in place:

1. Increase funding for legal services to the poor in civil and criminal cases.
2. Communicate the availability of affordable legal services and information to moderate-income persons.
3. Provide effective representation for the full range of legal needs of low and middle income persons.
4. Encourage the development of systems and procedures that make the justice system easier for all persons to understand and use.[52]

The ABA stressed that if an efficient system that actualized the rights of these party litigants was to be recognized, these aforementioned safeguards should also have to be guaranteed, as a matter of right for lawyers and litigants alike. Finally, the ABA also clarified that the aforementioned recommendations are not exclusive as jurisdictions may provide for a right to counsel in additional categories of proceedings or for especially vulnerable

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[50] American Bar Association, *supra* note 43, at 6.
[51] *Id.* at 7. (Emphasis supplied.)
[52] *Id.* at 2.

individuals with specific impairments or barriers requiring the assistance of counsel to guarantee a fair hearing.[53] As such, to stress the continuity, vibrancy and unique application of this movement in different states throughout America, Robert J. Derocher made the following remark in a 2017 article now found in the ABA website:

> Since the passage of that 2006 resolution, several state and metropolitan bars have passed similar measures or are contemplating them. Task forces have been created, pilot projects launched, and discussions held, all in the vein of vastly improving access to justice for indigent citizens in many high-stakes civil court proceedings.[54]

These are admittedly policy recommendations by the ABA which may not all be applicable in our case. However, the similarities with our jurisdiction are undeniably apparent. Tthe continued inaction in this gray area of representation in our statutes and case law may result in our own version of a *Lassiter* for, at the moment, our legal context does not differ much from the United States. For one, American lawyers also have a Code of Ethics,[55] which supposedly imposes the duty of representation for indigents in civil cases. Two, both jurisdictions have a mandatory requirement for representation in criminal cases. We have in fact borrowed the *Miranda* doctrine from the United States in this wise. The U.S. Supreme Court have already gone ahead and distilled, through their various rulings, the distinction between representation in civil disputes and representation in criminal cases. However, the fact that an actual case or controversy is yet to arise in our dockets regarding the right to counsel in criminal cases vis-à-vis the right to counsel in civil cases is not a cause of concern, because there is nothing stopping our Court from deciding in the same way by borrowing the same principle in *Lassiter*.

The Author submits that the standard of the U.S. Supreme Court as held in *Lassiter* should not apply in our jurisdiction. There is no need for a threat to personal liberty before an indigent is vested with the right to be

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[53] *Id* at 12–13.

[54] Robert J. Derocher, *Access to Justice: Is Civil Gideon A Piece of the Puzzle?*, AM. BAR ASS'N WEBSITE, *available at* https://www.americanbar.org/groups/bar_services/publications/bar_leader/2007_08/3206/gideon/ (June 15, 2017).

[55] The ABA currently follows the 1983 Model Rules of Professional Conduct. Prior to this, there was the 1969 Model Code of Professional Responsibility, and before that, the 1908 Canons of Professional Responsibility. *See* American Bar Association, Model Rules of Professional Conduct, AM. BAR ASS'N WEBSITE, at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/ (last visited July 2, 2019).

represented in civil cases. The economic and political realities in our nation vary so much from that of the United States that a threat to personal liberty are, as the Author submits, too high a threshold before representation in civil disputes becomes an actionable right. The well-known lethargy of our courts, the rampant infection of politics in our judiciary, the high costs of availing counsel, and the glaring inequalities in our nation are enough factors to militate against the applicability of *Lassiter.* This regrettable context of our nation is so pervasive that it requires a separate and comprehensive discussion entirely. For now, it suffices to stress the reminder of former Chief Justice Reynato Puno in *Republic v. Meralco*:[56]

> *American decisions and authorities are not per se controlling in this jurisdiction. At best, they are persuasive for no court holds a patent on correct decisions.* Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto. More importantly, *they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.*[57]

True enough, there is something that sets our laws apart. Unlike the proponents in the ABA and other groups who forward the Civil Gideon based only on due process considerations,[58] we have a provision in Article III,

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[56] G.R. No. 141314, 401 SCRA 130, 134 (2003).

[57] *Id.* (Emphasis supplied.)

[58] Almeida, *supra* note 36, at 2–4; Tarik N. Jallad, *A Civil Right to Counsel: International and National Trends* (Aug. 2009) (UNC Center on Poverty, Work and Opportunity Working Research Paper) *available at* https://www.law.unc.edu/documents/poverty/projects/accesstojustice_jallad.pdf. Jallad notes that there are six general trends in the fight to actualize the right to representation in civil disputes:

(1) There is no general right to state-funded counsel for civil litigants.
(2) The majority of situations where a right to counsel is established in civil proceedings arises out of either a statutory right or a judicial holding *encompassing a due process analysis.*
(3) The right is primarily afforded in circumstances involving various aspects of family law.
(4) Members pledging to fight for a civil right to counsel include law students, law faculty, academic scholars, private firm litigators, legal aid board members, bar association presidents, legislatures and current as well as retired members of the state and federal judiciary.
(5) Although support continues to grow, judicial decisions tend to show that most courts are reluctant to grant to counsel to indigent civil litigants. This is especially true in recent times, where opinions appear to greatly differ in their reasoning and essentially refuse to follow past U.S. Supreme Court decisions.
(6) Lassiter v. Dep't of Social Services of Durham County has set a shaky precedent, causing controversy and inconsistent rulings from state to state.

Section 11, that may specifically serve as a preliminary anchor in our own fundamental law to provide this right to representation. Our legislators and jurists do not have due process alone in Article III, Section 1 as a legal basis; Article III, Section 11 is also distinct provision entirely, and it may be the basis for future legislation and rule-making.

With that said, what then is the solution for us?

IV. STATUTORY MOORING AS THE PRIMARY RECOURSE

There is something that our legislators, legal academics, and practitioners can learn from other jurisdictions other than the ABA. As observed by the ABA, these jurisdictions have codified this right in statutes.

Earl Johnson, Jr., a retired Associate Justice of the California Court of Appeals,[59] noted in his article *The Right to Counsel in Civil Cases: An International Perspective*[60] that in many European jurisdictions, the right to counsel in civil cases was conceptualized and then codified in statute centuries ago. England, for example, had its earliest known form of the right since 1495 in the Statute of Henry VII, which, as translated, contained the following:

> And after the said writ or writs be returned, [...] the justices [...] shall assign to the same poor person or persons counsel learned by their discretions which shall give their counsels nothing taking for the same, and in likewise the same justices shall appoint an attorney and attorneys for the same poor person and persons [...] which shall do their duties without any rewards.[61]

Johnson noted that this right specifically applied to civil cases, not to criminal ones. Prior to the enactment of this statute, it was peculiar that even if English defendants had the resources, they had no right to counsel.[62] Now, English law requires compensation as well for those lawyers who represent indigent litigants in civil disputes.[63]

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[59] He served in the Second Appellate District from 1982 to 2007.

[60] Earl Johnson, *The Right to Counsel in Civil Cases: An International Perspective*, 19 LOY. L.A. L. REV. 341 (1985). Justice Johnson, Jr. extensively discusses here in detail the statutory mooring of the right to representation of indigents as found in most of the countries in Europe and all over the world, citing as examples each country's laws and procedures. Included therein as well is a discussion of Constitutions that, for Johnson Jr., have a similar equal protection and due process clauses such as Switzerland and Germany.

[61] *Id.* at 342 n.1.

[62] *Id.* at 342 n.3.

[63] *Id.* at 343.

In France, likewise, the French Legislature in 1851 passed the Law on Legal Aid,[64] which provided that lawyers should offer free legal service for indigents—however this did not provide any provision as to compensation.[65] Subsequently, 121 years after, in 1972, the French government authorized compensation for the lawyers providing free legal aid.[66]

Another instructive example would be Germany, which includes in its "fundamental charter [...] a law guaranteeing poor people the right to counsel in civil cases."[67] This was the Code of Civil Procedure of Germany (ZIVILPROZESSORDNUNG) that was enacted in 1877 and amended in 2005, which provides in Section 114(1) as translated:

> Section 114. Prerequisites
>
> (1) Any parties who, due to their personal and economic circumstances, are *unable to pay the costs of litigation, or are able to so pay them only in part or only as instalments*, will be granted assistance with the court costs upon filing a corresponding application, provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects of success and does not seem frivolous. Wherever the present title is silent, sections 1076 through 1078 shall apply to assistance with court costs in cross-border disputes within the European Union.[68]

To illustrate the procedure delineated in Section 114, Professor Rudolf Schlesinger in his lecture, *The German Alternative: A Legal Aid System of Equal Access to the Private Attorney*,[69] gave an anecdotal narration:

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[64] *Id* at 343, *citing* Legal Aid Act, C.4, Part I (1974) *reprinted in* M. CAPPELLETTI, J. GORDLEY & E. JOHNSON JR., TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES 13 (1975).

[65] *Id.* at 343 n.8.

[66] *Id.* at 343 n.10.

[67] *Id.* at 343 n.11. *See also* Article 103, Paragraph 1 of the Basic Law for the Federal Republic of Germany (*Grundgesetz*), which provides the following:

"Article 103 [Fair trial]

(1) In the courts every person shall be entitled to a hearing in accordance with law."

[68] CODE OF CIVIL PROCEDURE (ZIVILPROZESSORDNUNG), § 114(a) (2005) (Ger.); Johnson, *supra* note 58, at 343 n.11. Johnson provides the same provision in the German Code of Civil Procedure in its original wording in 1877, as translated: *"A party who is not in a position to pay the costs of litigation without endangering the necessary support for himself and his family is to have his application for legal assistance approved, provided that the intended legal action—either as plaintiff or defendant—shows a sufficient promise of success and does not appear to be unreasonable."* (Emphasis supplied.)

[69] Rudolf B. Schlesinger, *The German Alternative: A Legal Aid System of Equal Access to the Private Attorney,* 10 CORNELL INT'L L. J. 213 (1977).

> An indigent person who contemplates or faces litigation can go, in person, to the clerk of the court. As a practical matter, however, he will not go directly to the court, but will contact a lawyer. Either personally or through the lawyer, he will make an application to the court to be permitted to sue or to defend as a poor person. The court examines only two matters. First, the court determines whether the applicant is truly poor-this is done in a summary, very simple fashion. Second, the court will examine, sometimes after giving the opposing party an opportunity to be heard, whether there is some arguable merit in the indigent party's case. If the case of the applicant is not totally hopeless, and if he can show that he is indigent, then his application to sue or defend as a poor person will be granted. This means that he is at least provisionally relieved of the payment of any court costs, and that the court will appoint a lawyer for him. Theoretically, the court does not have to appoint the lawyer who made the application for the poor person; but in practice, that is what is done. In other words, the lawyer who has made the application will be officially appointed as his poor client's lawyer, to be compensated out of public funds[70]

The Federal Constitutional Court of Germany in its Decision of June 18, 1957 (No. 6),[71] affirmed the sound constitutional mooring of Section 114 and, more importantly, extended the necessity of representation in holding that "the 'fair hearing' clause found in their constitution *may provide for free counsel in civil proceedings when the statute did not.*"[72] This case was a *Verfassungsbeschwerde* (constitutional petition) brought to the Federal Constitutional Court of Germany by a minor, represented by his guardian. He claimed that he was denied his right to a fair hearing[73] because his request for legal aid was denied by the *Landgericht* (lower court). According to the *Landgericht*, the petition was not granted because it determined that the plaintiff, who was then the respondent in the original action, had no chance of successfully refuting the allegation of the State Attorney that he was

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[70] *Id.* at 213–14.

[71] 7 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS 54 (1958), *translated* in M. CAPPELLETTI, J. GORDLEY & E. JOHNSON JR., TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES 697–700 (1975).

[72] Tarik N. Jallad, *A Civil Right to Counsel: International and National Trends* at 8 n.31 (August 2009) (UNC Center on Poverty, Work and Opportunity Working Research Paper) *available at* https://www.law.unc.edu/documents/poverty/projects/ accesstojustice_jallad.pdf; Johnson, *supra* note 60, at 350 n.42. (Emphasis supplied.)

[73] This is enshrined in Article 103, paragraph 1 of the Basic Law for the Federal Republic of Germany (*Grundgesetz*), which provides the following:

Article 103 [Fair trial]

(1) In the courts every person shall be entitled to a hearing in accordance with law.

illegitimate. The plaintiff then appealed the denial of legal aid to the *Oberlandesgericht* (Court of Appeals), which denied the appeal, affirming the *Landgericht.*

Upon reaching the Federal Constitutional Court of Germany, it reversed the *Oberlandesgericht* and ruled that if in the interpretation of a statute the right to fair hearing is infringed, such interpretation cannot be countenanced:

> The petitioner attacks the decision of the *Oberlandesgericht* [...] because the challenged decision — the refusal of legal aid on the grounds of frivolity (*Mutwiligkeit*) of the request denies him the possibility of legal defense and thereby a fair hearing, in the legitimacy proceeding. This claim is well founded.[74]

It explained first that the issue was not the constitutionality of the statute—in itself, Section 114 of the ZIVILPROZESSORDNUNG (ZPO) was constitutional and non-violative of the fair hearing clause. This is so even if Section 114 requires as a precondition that the grant of legal aid is "dependent on the assertion [...] of a legal claim which offers a sufficient probability of success and is not frivolous."[75] Section 114, as applied, is hinged on that premise. It was the interpretation and subsequent application of Section 114 by the *Landgericht* as its ground for denying legal aid that was subject of scrutiny by the Constitutional Court. As a general rule, the constitutional court would not review the acts of a lower court if the issue is merely whether or not it "appl[ies] or interpret[s] the general laws correctly in their decisions."[76] However, as to the factual milieu of this case involving legitimacy proceedings, the constitutional court expounded that it fell under the exception:

> However, an exception to this rule must exist where a court, through the interpretation of an indefinite legal concept, uses reasoning which violates fundamental rights or their equivalent. In the present case the *Oberlandesgericht* in its interpretation of the indefinite legal concept of *Mutwiligkeit*[77]misunderstood the significance of the right to a fair hearing under art. 103, para. 1, of the Constitution and *thereby violated this right of the petitioner.*

* * *

[74] *Supra* note 71, at 698.

[75] *Id.*

[76] *Id.*

[77] *Mutwilligkeit* refers to the ground of frivolity in requesting legal aid.

> Art. 1[0]3 (sic), para 1 of the Constitution provides minimum fair hearing requirements applicable to all court proceedings; in particular that all parties have the opportunity to be heard on all matters pertinent to the decision before it is made.[78]

Applying these rules in the case before them, it clarified that in as much as the *Landgericht* is given investigatory powers in legitimacy proceedings, "it cannot be expected that the parties would leave the formulation of a just decision to the courts alone."[79] Thus, a lower court having investigatory powers is not a bar to having counsel, nor a justification for parties to not have counsel in legitimacy proceedings. The Court then enumerated three points which stressed that counsel is, on the contrary, necessary in the case at bar. The absence of counsel would be violative of the right to fair hearing of the parties:

1. The taking in of evidence by the *Landgericht* in an *ex oficio* capacity does not prohibit the parties from requesting additional evidence to be taken in as well; the provision in the ZPO only states that "the court 'can' order *ex oficio* the taking in of evidence."[80]
2. If the parties wish to request that additional evidence be taken in, a lawyer must be present. This is because "in proceedings before the *Landgericht,* only a lawyer can request the taking in of evidence as well as supporting material."[81]
3. The *Landgericht* can also take in additional evidence outside of those introduced by the parties, but this requires a civil proceeding–a hearing–before the said court. This hearing is "possible only if the parties are represented by counsel."[82]

The Constitutional Court concluded that even if a court has a duty to determine facts *ex officio,* this does not imply that legal aid is not necessary. The case was thus remanded to the *Oberlandesgericht,* with the appellate court instructed to consider that in legitimacy proceedings, there is "no possibility of avoiding litigation."[83] It is this inevitability of litigation which the *Landgericht* failed to consider, and as such it erred in denying legal aid by citing Section 114; in fact, it was not in a position to adjudge that the defense of the minor was frivolous as *legitimacy proceedings are by nature litigious.* Frivolity could not

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[78] *Supra* note 71, at 698–99.
[79] *Id.* at 699.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Supra* note 71, at 700.

have been determined at the onset because *whether or not his defense was frivolous would not have been clear without a chance to present his arguments and adduce evidence.* As demonstrated above, both acts require the presence of counsel before the *Landgericht.* Furthermore, the minor did not even initiate the proceeding challenging his legitimacy. It could have been different if the minor was an indigent litigant plaintiff, because the allegations can immediately be assessed as to their frivolity. However, as the minor is the respondent in this case, the defense cannot be immediately assessed as frivolous because he has not been given his day in Court—a day which could have been denied because he was an indigent. In contrast, if the minor could afford the lawyer in the first place, he need not have applied for legal aid, the *Landgericht* need not interpret what consisted of a "frivolous" defense, and the whole issue of denying legal aid would not have arisen. It is absurd, as explained by the Constitutional Court, that the frivolity of the defense only comes into question *if legal aid is requested because the plaintiff is poor.* It stressed the irony of the situation of plaintiff should legal aid be not granted:

> Since under the law applicable to this case the challenge to legitimacy cannot be brought otherwise than in a formal legal proceeding, legal aid cannot be denied a poor plaintiff on the basis of frivolity.
>
> * * *
>
> It appears constitutionally doubtful that the law, on the one hand, would assign the role of defendant involuntarily to a participant in a dispute over a question of status, and on the other — *if he is poor* — impede him in his participation as a party *on the basis that he does not have sufficient probability of success.*[84]

This Decision is greatly instructive as it demonstrates the protection afforded by a statutory or constitutional mooring of the right to representation. As illustrated above, even a statute that imposes requirements deemed constitutional, like the pre-conditions imposed by Section 114 of the ZPO, may still infringe the constitutional right to counsel of an indigent litigant once erroneously applied. For the German Constitutional Court, once such a conflict arises, upholding the constitutional right to a fair hearing *explicitly provided for in their Basic Law* still remains paramount.

Finally, international law applicable and binding within the European Union reflects this trend found among the domestic laws of its constituent

[84] *Id.* at 698–700. (Emphasis supplied.)

countries. For example, the European Convention on Human Rights[85] provides the following in Article 6-1:

Article 6
Right to a Fair Trial

> 1. In the determination of his *civil rights* and obligations or of any criminal charge against him, *everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.[86]

The European Union Court of Human Rights ("EUCHR") whose rulings are binding on the 27 member-states of the EU,[87] has applied this provision to the effect that "civil litigants could not have a fair hearing if they are unrepresented by counsel."[88] This was specifically done by the EUCHR in *Airey v. Ireland*,[89] decided in October 9, 1979, which set a standard for all 50 parties under the European Convention for the Protection of Human Right and Fundamental Freedoms.[90]

In this case, Mrs. Airey was subject to physical abuse inflicted by her husband. In effect, for 8 years prior to 1972, she had continually sought to obtain a judicial separation. She had been married to Mr. Airey from 1953, but by 1972, Mr. Airey, who was also allegedly an alcoholic, had already been convicted by the Cork City Court of assault, had left the family home, and had ceased to send support to Mrs. Airey and their four children. However, due to financial constraints, Mrs. Airey failed to obtain that judgment, mainly because she was not able to retain a solicitor,[91] and no solicitor was willing to act on her civil case for judicial separation. A case was then lodged against Ireland in the European Commission ("Commission") under the European

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[85] European Convention on Human Rights (1953).

[86] European Convention on Human Rights art. 6.1 (1953). (Emphasis supplied.)

[87] Almeida, *supra* note 36, at 15.

[88] *Id.*

[89] Airey v. Ireland, 32 Eur. Ct. H.R. (ser. A), 2 Eur. H.R. Rep. 305 (Oct. 9, 1979) *available at* https://www.escr-net.org/caselaw/2006/airey-v-ireland-32-eur-ct-hr-ser-1979-1979-2-ehrr-305.

[90] Jallad, *supra* note 72, at 11 n.47.

[91] "Solicitor" is a type of lawyer in Irish jurisdiction.

Convention, which was then referred to the EUCHR in 1973. The issue presented by the Commission to the EUCHR was "whether or not the facts of the case disclose a breach by the respondent State (in this case Ireland) of its obligations under Articles [...] 6-1, [A]rt. 8, [A]rt. 13, [and] [A]rt. 14." Specifically, these are as follows:

1. Article 6, paragraph 1 (Art. 6-1) of the Convention, by reason of the fact that *her right of access to a court was effectively denied;*
2. Article 8 (Art. 8), by reason of the failure of the State to ensure that there is an accessible legal procedure to determine rights and obligations which have been created by legislation regulating family matters;
3. Article 13 (Art. 13), in that she was deprived of an effective remedy before a national authority for the violations complained of;
4. Article 14 in conjunction with Article 6 para. 1 (art. 14+6-1), in that judicial separation is more easily available to those who can afford to pay than to those without financial resources.[92]

Of note in this case is the ruling of the EUCHR as to the first issue on representation. The EUCHR first characterized the nature of the domestic law then prevailing in Ireland, which mainly provided that separation may be obtained via judicial decree, but it may only be granted by the Irish High Court. After laying down the general procedure applicable to obtain the said judicial decree, the EUCHR presented the findings of the Commission pertinent to the availability of representation to Mrs. Airey:

> In its report of 9 March 1978, the Commission noted that the approximate range of the costs incurred by a legally represented petitioner was £500 - £700 in an uncontested action and £800 - £1,200 in a contested action, the exact amount depending on such factors as the number of witnesses and the complexity of the Issues involved. In the case of a successful petition by a wife, the general rule is that the husband will be ordered to pay all costs reasonably and properly incurred by her, the precise figure being fixed by a Taxing Master.
>
> *Legal aid is not at present available in Ireland for the purpose of seeking a judicial separation, nor indeed for any civil matters.* In 1974, a Committee on Civil Legal Aid and Advice was established under the chairmanship of Mr. Justice Pringle. It reported to the Government in December 1977, recommending the introduction of a

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[92] Airey v. Ireland, at 6, ¶ 13.

> comprehensive scheme of legal aid and advice in this area. At the hearings on 22 February 1979, counsel for the Government informed the Court that the Government had decided in principle to introduce legal aid in family-law matters and that it was hoped to have the necessary measures taken before the end of 1979.[93]

In resolving the case in favor of Mrs. Airey, the EUCHR held first that Article 6-1 guarantees that any litigant with a civil claim has a right to bring it to court:

> The applicant wishes to obtain a decree of judicial separation. There can be no doubt that the outcome of separation proceedings is "decisive for private rights and obligations" and hence, a fortiori, for "civil rights and obligations" within the meaning of Article 6 para. 1 (art. 6-1); this being so, Article 6 para. 1 (art. 6-1) is applicable in the present case [. . .]
>
> Article 6 para. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal" [. . .] Article 6 para. 1 (art. 6-1) accordingly comprises a right for Mrs. Airey to have access to the High Court in order to petition for judicial separation.[94]

The EUCHR also clarified that the proper enforcement of this right is not satisfied by simply being able to go to Court—it necessarily includes representation with counsel, as these rights are not merely "theoretical and illusory, but rights that are practical and effective":[95]

> The Government contend that the application does enjoy access to the High Court since she is free to go before that court without the assistance of a lawyer.
>
> The Court does not regard this possibility, of itself, as conclusive of the matter. *The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective* [. . .] This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial [. . .] must therefore be ascertained whether Mrs. Airey's appearance before the High Court without the assistance of a lawyer would be effective, in the sense of whether she would be able to present her case properly and satisfactorily.[96]

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[93] *Id.* at 5, ¶ 11. (Emphasis supplied.)
[94] *Id.* at 10, ¶¶ 21–22.
[95] *Id.* at ¶ 24.
[96] *Id.* at 10–11, ¶ 24. (Emphasis supplied.)

* * *

> The applicant was unable to find a solicitor willing to act on her behalf in judicial separation proceedings. *The Commission inferred that the reason why the solicitors she consulted were not prepared to act was that she would have been unable to meet the costs involved.* The Government question this opinion but the Court finds it plausible and has been presented with no evidence which could invalidate it.
>
> Having regard to all the circumstances of the case, *the Court finds that Mrs. Airey did not enjoy an effective right of access to the High Court for the purpose of petitioning for a decree of judicial separation.* There has accordingly been a breach of Article 6 para. 1.[97]

This ruling is currently binding on all the parties who have ratified the European Convention. This is an interpretation by an International Court of appropriate jurisdiction of a statute enforceable within the ratifying states of the entire European Union. More importantly, as demonstrated above, these jurisdictions in Europe have cemented the authority of this right in affording indigent litigants the representation they deserve by codification.

V. NECESSARY ASPECTS FOR POSSIBLE STATUTORY LEGISLATION OR RULE-MAKING IN THE PHILIPPINES

The solution to avoid a *Lassiter* in our jurisdiction is, as demonstrated by our European Union counterparts, is to codify the right in our statutes. This is what the ABA realized and continually pushes for, and one that our legislators, jurists, and even practitioners must advocate.

To be able to create that explicit law or rule that enshrines the right of an indigent to representation in civil cases, it will thus be necessary to identify who the indigent is, and analyze what are the already existing legislation and rules promulgated by the Supreme Court, to have a workable framework of what is already extant, and more importantly, what more needs to be provided.

A. Who is the Indigent?

Black's Law defines "indigent" as a poor person or alternatively, a person who is found to be financially unable to pay filing fees and court costs

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[97] *Id.* at 14, ¶¶ 27–28. (Emphasis supplied.)

and so is allowed to proceed in *forma pauperis*.[98] A statutory basis may also be found in Rep. Act No. 6033, where an indigent is defined as a person who has no visible means of income or whose income is insufficient for the subsistence of his family, to be determined by the fiscal or judge, taking into account the members of his family dependent upon him for subsistence.[99] Rep. Act No. 6034, which allows transportation and other allowances to indigent litigants, is also instructive as it provides a more lenient standard. Here, the status of being an indigent is a determination by the Court after an application:

> Section 1. [...] For the purpose of this Act, indigent litigants shall include anyone who has no visible means of income or whose income is insufficient for his family as determined by the Court under Section 2, hereof.
>
> Section 2. *If the court determines* that the petition for transportation allowance is meritorious, said court shall immediately issue an order directing the provincial, city or municipal treasurer to pay the indigent litigant the travel allowance out of any funds in his possession and proceed without delay to the trial of the case. The provincial, city or municipal treasurer shall hold any such payments as cash items until reimbursed by the national government.[100]

Eventually, the Supreme Court, in *Algura v. City of Naga*,[101] clarified the procedure identifying these indigents by harmonizing the provisions of Rule 3, Section 21 of the Rules of Court[102] on Indigent Parties and Rule 141, Section 19[103] on Indigent Litigants.

This case involved a complaint for damages amounting to PhP 7,000.00 filed by the spouses Antonio F. Algura and Lorencita S. J. Algura against the City of Naga, as they alleged that their house was illegally demolished. They also filed an *ex parte motion* to litigate as indigent litigants. This *ex parte motion* was initially granted by the Executive Judge of Naga Regional Trial Court (RTC). The City of Naga, however, opposed this motion by filing a Motion to Disqualify, alleging that the Alguras had enough income to disqualify them as indigent litigants. The Naga City RTC granted the

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[98] *Forma pauperis,* BLACK'S LAW DICTIONARY (Bryan Garner ed. 9th ed. 2009).

[99] Rep. Act No. 6033 (1969), § 2. It must be noted however that this definition is only confined for the purposes of Rep. Act No. 6033, which mandates that criminal cases be given preference when the litigant is an indigent.

[100] Rep. Act No. 6034 (1969), §§ 1–2. (Emphasis supplied.)

[101] Algura v. City of Naga [hereinafter "Algura"], G.R. No. 150135, 506 SCRA 81, (2006).

[102] RULES OF COURT, Rule 3, § 21.

[103] RULES OF COURT, Rule 141, § 19. As amended by A.M. No. 04-2-04-SC (2004).

Motion to Disqualify, reasoning that they "failed to substantiate their claim for exemption from payment of legal fees and to comply with the third paragraph of Rule 141, Section 18[104] of the Revised Rules of Court—directing them to pay the requisite filing fees." The Alguras filed a Motion for Reconsideration, to which the trial court responded to by allowing the Alguras to comply with the documentary requirements. The Court noted these statements:

> In her May 13, 2000 Affidavit, petitioner Lorencita Algura claimed that the demolition of their small dwelling deprived her of a monthly income amounting to PhP 7,000.00. She, her husband, and their six (6) minor children had to rely mainly on her husband's salary as a policeman which provided them a monthly amount of PhP 3,500.00, more or less. Also, they did not own any real property as certified by the assessor's office of Naga City. More so, according to her, the meager net income from her small sari-sari store and the rentals of some boarders, plus the salary of her husband, were not enough to pay the family's basic necessities.
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> To buttress their position as qualified indigent litigants, petitioners also submitted the affidavit of Erlinda Bangate, who attested under oath, that she personally knew spouses Antonio Algura and Lorencita Algura, who were her neighbors; that they derived substantial income from their boarders; that they lost said income from their boarders' rentals when the Local Government Unit of the City of Naga, through its officers, demolished part of their house because from that time, only a few boarders could be accommodated; that the income from the small store, the boarders, and the meager salary of Antonio Algura were insufficient for their

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[104] This is now Rule 141, § 19 of the Rules of Court, after the amendment by A.M. No. 04-2-04-SC, which provides the following:

"*Indigent-litigants exempts from payment of legal fees.* — Indigent litigants (a) whose gross income and that of their immediate family do not exceed four thousand (P4,000.00) pesos a month if residing in Metro Manila, and three thousand (P3,000.00) pesos a month if residing outside Metro Manila, and (b) who do not own real property with an assessed value of more than fifty thousand (P50,000.00) pesos shall be exempt from the payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorably to the indigent litigant, unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned, nor they own any real property with the assessed value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit.

Any falsity in the affidavit of a litigant or disinterested person shall be sufficient cause to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred. (16a)."

> basic necessities like food and clothing, considering that the Algura spouses had six (6) children; and that she knew that petitioners did not own any real property.[105]

Despite submission of these affidavits to substantiate their claim as indigent litigants, the trial court denied the Motion for Reconsideration. The issue thus before the Court was whether or not the Alguras were indigent litigants. In disposing of the case, the Court laid down the procedure for identifying indigent litigants:

> When an application to litigate as an indigent litigant is filed, the court shall scrutinize the affidavits and supporting documents submitted by the applicant to determine if the applicant complies with the *income and property standards prescribed in the present Section 19 of Rule 141 that is, the applicants gross income and that of the applicants immediate family do not exceed an amount double the monthly minimum wage of an employee; and the applicant does not own real property with a fair market value of more than Three Hundred Thousand Pesos (PhP 300,000.00)*. If the trial court finds that the applicant meets the income and property requirements, the authority to litigate as indigent litigant is automatically granted and the grant is a matter of right.[106]

The Court then synthesized both Rule 141, Section 19 (then Section 18 prior to Administrative Matter No. 04-2-04-SC) and Rule 3, Section 21,[107] which both provide indigent parties a remedy to exempt themselves from paying docket and other lawful fees. This was done in order to provide a clear general procedure considering both Rules 3 and 141 for the bench and bar in identifying indigent party-litigants:

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[105] *See Algura*, 503 SCRA 81, 89.

[106] *Id.* at 98. (Emphasis supplied.)

[107] RULES OF COURT, Rule 3, § 21. This provides: "Section 21. *Indigent party.* — A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.

Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue or the payment thereof, without prejudice to such other sanctions as the court may impose. (22a)"

> *However, if the trial court finds that one or both requirements have not been met, then it would set a hearing to enable the applicant to prove that the applicant has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.* In that hearing, the adverse party may adduce countervailing evidence to disprove the evidence presented by the applicant; after which the trial court will rule on the application depending on the evidence adduced. In addition, Section 21 of Rule 3 also provides that the adverse party may later still contest the grant of such authority at any time before judgment is rendered by the trial court, possibly based on newly discovered evidence not obtained at the time the application was heard. If the court determines after hearing, that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue or the payment of prescribed fees shall be made, without prejudice to such other sanctions as the court may impose.[108]
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> * * *
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> Recapitulating the rules on indigent litigants, therefore, if the applicant for exemption meets the salary and property requirements under Section 19 of Rule 141, then the grant of the application is mandatory. On the other hand, when the application does not satisfy one or both requirements, *then the application should not be denied outright*; instead, the court should apply the "indigency test" under Section 21 of Rule 3 and use its sound discretion in determining the merits of the prayer for exemption.[109]

The Court thus held that the Alguras should have been entitled to a hearing to ascertain if they were indeed qualified, instead of an outright dismissal. This ratiocination was then referred to and adopted by the Court in an administrative order, *Re: Request of the National Committee*[110] by providing a substantive standard in the form of a *Means and Merit Test* in identifying who deserves free legal aid, as follows:

> *Means test.* The means test aims at determining whether the applicant has no visible means of support or his income is otherwise insufficient to provide the financial resources necessary

[108] *See Algura*, Algura v. City of Naga, G.R. No. 150135, 506 SCRA 81, (2006). (Emphasis supplied.)

[109] *Id.* at 100. (Emphasis supplied.)

[110] Adm. Matter No. 08-11-7-SC (2009).

> to engage competent private counsel owing to the demands for subsistence of his family, considering the number of his dependents and the conditions prevailing in the locality.
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> * * *
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> SEC. 21. *Merit test.* The merit test seeks to ascertain whether or not the applicants cause of action or his defense is valid and chances of establishing the same appear reasonable.

The standards mentioned are clear as to identifying who the indigent litigant is. The specific procedure identified in *Algura* that synthesized Rule 141, Section 19 and Rule 3, Section 21 can be used by legislators for identifying indigents who wish to be exempt from filing fees and who also wish to be qualified for allowance. This is in accordance with Section 2 of Rep. Act. No. 6034 which leaves the identification procedure to the Court. Furthermore, along with the procedure in *Algura*, which can be adopted as a uniform procedural standard in identifying who the indigent is, a substantive standard can also be adopted using the *Means and Merit Test* as a guidepost in case of unforeseen contingencies.

B. Analysis of Current Government Actions Pursuant to Actualizing a Right of Representation

Our legislature has indirectly attempted to provide these indigents with remedies to aid them in their grievances through various Republic Acts. As repeatedly discussed above, there is Republic Act No. 6034, known as An Act Providing Transportation and Other Allowances for Indigent Litigants, which allows the Court to grant allowances to indigents for transportation and other allowances to allow them to attend their hearings.[111] Republic Act No. 6035 also allows the Court to provide stenographic notes to indigents for free.[112] Republic Act No. 9046 provided for the creation of the PAO, and concurrently granted their clients additional privileges such as exemption from fees and costs of the suit in Section 16-D of the said law.[113] Finally, Republic Act No. 9999, known as An Act Providing a Mechanism for Free Legal Assistance and Other Purposes,[114] provides incentives for lawyers who render free legal services by allowing a tax deduction.

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[111] Rep. Act No. 6034 (1969).

[112] Rep. Act No. 6035 (1969).

[113] Rep. Act No. 9406, § 5 (2001). Amending Section 16-D, Chapter 5, Title III, Book IV of Exec. Order No. 292 (1987) bk. IV, tit. III, ch. 5, §16-D. Administrative Code of 1987.

[114] Rep. Act No. 9999 (2010), § 5.

On the other hand, the Supreme Court, pursuant to its rule–making authority,[115] has provided in Rule 138 the duties of an attorney, echoing Canon 14. Section 20(h) of Rule 138 specifically prescribes that an attorney should not reject the cause of the defenseless or oppressed, for any consideration personal to himself. Rule 138 (Section 31),[116] Rule 116 (Section 7),[117] and Rule 124 (Section 2)[118] allow the Court to assign *counsel de officio* provided certain circumstances. It also prescribed certain people who would not be covered, cases provisionally accepted, and circumstances where the lawyer may be allowed to withdraw.[119] Rule 141, Section 19, as mentioned earlier, provides the procedure exempting indigent litigants from paying docket and other lawful fees.[120] Bar Matter 2012[121] mandated a 60 hour minimum *pro bono* legal service for all lawyers. Recently, the Court also issued Administrative Matter No. 17-03-09-SC, otherwise known as the Rules on Community Legal Aid Service ("CLAS"),[122] which requires covered lawyers[123] to provide *pro bono* legal aid to indigents[124] for 120 hours within the first year

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[115] CONST. art. VIII, § 5 (2).

[116] RULES OF COURT, Rule 138, § 31, provides: "Section 31. Attorneys for destitute litigants. — A court may assign an attorney to render professional aid free of charge to any party in a case, if upon investigation it appears that the party is destitute and unable to employ an attorney, and that the services of counsel are necessary to secure the ends of justice and to protect the rights of the party. It shall be the duty of the attorney so assigned to render the required service, unless he is excused therefrom by the court for sufficient cause shown."

[117] RULES OF COURT, Rule 116, § 7. This provides: "Section 7. Appointment of counsel de officio. – The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel de officio such members of the bar in good standing who, by reason of their experience and ability, can competently defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused."

[118] RULES OF COURT, Rule 124, § 2. This Rule also authorizes the appointment of a *counsel de officio* in cases pending in the Court of Appeals, as follows: "Section 2. *Appointment of counsel de officio for the accused.* — If it appears from the record of the case as transmitted that (a) the accused is confined in prison, (b) is without counsel *de parte* on appeal, or (c) has signed the notice of appeal himself, the clerk of court of the Court of Appeals shall designate a counsel *de officio.*"

[119] RULES OF COURT, Rule 124, § 2.

[120] RULES OF COURT, Rule 141, § 19.

[121] Bar Matter No. 2012 (2009), § 5.

[122] Adm. Matter No. 17-03-09-SC (2017).

[123] *Id.* at § 4(a). Section 4(a) provides the following: "'*Covered lawyers*' shall refer to those who have successfully passed the Annual Bar Examinations and have signed the Roll of Attorneys for that particular year; for purposes of this Rule, it shall include those who will pass the 2017 Bar Examination and are admitted to the Bar in 2018."

[124] The Rule covers both indigent parties under Rule 3, § 21 and indigent litigants under Rule 141, § 19, as distinguished in Section 4(c) and Section 4(d) of Adm. Matter No. 17-03-09-SC.

of admission to the Bar.[125] The IBP will then monitor the service rendered by covered lawyers via a time-log sheet[126] and issue a certificate upon compliance of the requirements[127] which, as a general rule, must be completed within a period 12 months, extendible via petition to the Office of the Bar Confidant.[128] Compliance will entitle a covered lawyer a full 36 hour MCLE credits.[129]

Also, as recent as June 28, 2019, Chief Justice Bersamin announced in a testimonial dinner that the coverage of Rule 138-A[130] would now be extended to third year law students.[131] Thus, third year law students, once the new rule is promulgated, may now represent clients, subject to supervision by lawyers. Chief Justice Bersamin assigned Justice Alexander Gesmundo to draft the new rule.[132] This resulted into Administrative Matter No. 19-03-24-SC, otherwise known as the Revised Law Student Practice Rule, which became effective on August 2, 2019.[133] Some of its most notable introductions are the following:

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[125] Adm. Matter No. 17-03-09-SC (2017), § 5. Section 5 provides the following: "*Requirements.*— (a) *Number of Hours* — Covered lawyers, as defined under Section 4 (a), are required to render one hundred twenty (120) hours of *pro bono* legal aid services to qualified parties enumerated in Section 4 (b),within the first year of the covered lawyers' admission to the Bar, counted from the time they signed the Roll of Attorneys. For this purpose, covered lawyers shall report to the chairperson of the IBP Chapter Legal Aid Committee of their choice or the chairperson, director, or supervising partner or lawyer from the Accredited Legal Aid Service Provider of their choice for their compliance with this Rule."

[126] *Id.* at § 5(f).

[127] *Id.* at § 5(g).

[128] *Id.* at § 6.

[129] *Id.* at § 10.

[130] RULES OF COURT, Rule 138–A, §§ 1–2. This Rule, entitled "A Law Student Practice Rule," currently provides the following:

"Section 1. *Conditions for student practice.* — A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

Section 2. *Appearance.* — The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic."

[131] Edu Punay, *SC allows law students to represent poor*, PHIL. STAR, July 2, 2019, *available at* https://www.philstar.com/headlines/2019/07/02/1931287/sc-allows-law-students-represent -poor#EecwEKHhQYX8b4Lu.99.

[132] *Id.*

[133] Adm. Matter No. 19-03-24-SC (2019).

1. The law student is now required to secure a certification from the Executive Judge of the RTC having jurisdiction over the territory where the law school is located before engaging in limited practice of law.[134] Level 1 certification is available for law students who have finished first year of law school, while Level 2 certification is available for students who are currently enrolled in their second semester of their third year.[135] Both certifications are required before being able to engage in the limited practice of law.[136] Failure to complete all the third-year law courses merits the revocation of the Level 2 certification.[137]
2. Law students who have finished their second year courses and are currently enrolled in the second semester in third year of law school may now engage in limited practice.
3. Law schools have the duty to create a clinical legal education program and to establish at least one law clinic in its school.[138]

Commendable and noble as these actions may be, there is a common thread in these acts of the legislature and judiciary. As already stressed in the earlier segment of this Note, none of them directly addresses the need for an explicit statutory mooring that provides a clear actionable right for indigents to have representation in civil disputes. For example, Rep. Act No. 9999 is not mandatory. If a lawyer does not do 60 hours of pro bono service, then all he or she loses is the opportunity for tax cuts. Likewise, the CLAS gives more emphasis to the need of new lawyers to comply with legal aid duties convertible to MCLE, more than it being compliance to the statutory right of indigents to representation. There is no need to dissect each issuance–in general, all the privileges that these laws and rules afford indigent litigants in civil cases, they afford as well to indigent litigants in criminal cases. These are

[134] *Id.* at § 5.

[135] *Id.* at § 3. Section 4 of the said Administrative Matter, entitled *Practice Area of Law Student Practitioners,* delineates what each certification authorizes a law student practitioner to do. A Level 1 Certification permits a law student to interview prospective clients, give legal advice, negotiate for and on behalf of the client, draft legal documents, represent eligible parties before quasi-judicial and administrative bodies, provide public legal orientation and assist in public interest advocacies. A Level 2 Certification permits a law student, in addition to Level 1 activities, to assist in taking of depositions, to take judicial affidavits of witnesses, to appear in behalf of a government agencies in the prosecution of criminal actions, and to prepare pleadings in appealed cases. These are all subject to the supervision and approval of a supervising lawyer.

[136] *Id.*

[137] *Id.*

[138] *Id.* at § 9.

merely stop-gap measures, short of an explicit expression in our statutes affording the right of representation to indigents in civil cases.

At the end of the day, the answer would still be a resounding "no," should there be an inquiry on the existence of a clear, unequivocal, and actionable right that an indigent may invoke regarding representation in civil cases. Such an actionable right is necessary as it is only from explicit legislation that more detailed procedures centered on a statutory right can be made. All those abovementioned do not address the obvious void; a Philippine *Lassiter,* instead of a Philippine *Civil Gideon,* may just be around the corner.[139] This is what we hope to avoid.

VI. CONCLUSION

The legislature and the Court should not shy away from ensuring that these rights are afforded to indigents—the burden should not be solely on lawyers, nor the government, but with every citizen to whom our Fundamental Law applies. At the moment, it is not a duty located in any legal instrument, but instead within the ethical standards that every lawyer must live by. This has not proven to be enough, as seen in the United States, where despite the existence of a Code of Ethics, the Supreme Court has managed to create a lexical priority for representation in criminal cases over representation in civil cases. The European example is more instructive, *wherein from explicit legislation either through domestic law or incorporated international laws, the right has been afforded through specific procedures.* If the Author may even hazard to suggest–a Constitutional amendment explicitly granting this right would level the playing field.

At the moment, the duty to ensure that indigent clients are guaranteed their right to representation in civil cases exists only as an ethical responsibility of lawyers. It is enshrined in the Code of Professional Responsibility, but it may be buttressed by additional legislation to cement every person's constitutional right to adequate legal services. This is necessary to fully actualize our due process clause, wherein life, liberty and property may be denied any person, provided that due process was first afforded to every man, in every case. Once the lawyer has accepted a case, it is his or her duty as an officer of the court to ensure that he is able to comply with all that is required in order that due process is afforded. He cannot refuse, nor can the law

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[139] *See supra* note 56. To emphasize a point already highlighted, Jallad points out that "Lassiter v. Dep't of Social Services of Durham County has set a shaky precedent, causing controversy and inconsistent rulings from state to state."

institutionalize its denial. We also must remember that our Fundamental Law gives us an additional tool in Article III, Section 11 as a general policy for this right. With that said, the introduction of Justice Presbitero Velasco for the Court in *Algura,* as an emphasis to Article III, Section 11, could not be more relevant as a reminder for our legislature and judiciary:

> The Constitution affords litigants—moneyed or poor—equal access to the courts; moreover, it specifically provides that poverty shall not bar any person from having access to the courts. *Accordingly, laws and rules must be formulated, interpreted, and implemented pursuant to the intent and spirit of this constitutional provision.*[140]

In this jurisdiction, a defeat in a civil or criminal proceeding may be extremely debilitating to any indigent Filipino. It is hoped by the Author that one day, once the indigent calls upon any officer of the court, he will not be refused his services, as a matter of right, if poverty is the only barrier. This must be a duty that is not merely found in a Code of Ethics, but in explicit statutes embodying crystal clear legislative and constitutional mandates. By then, the indigent litigant who finds oneself in a civil dispute will be more assured of the protection and compassion afforded by the law.

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[140] *Algura,* G.R. No. 150135, 506 SCRA 81, 100 (2006). (Emphasis supplied.)

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