



INFORMATION FOR CIVIL JUSTICE SYSTEMS ABOUT CIVIL RIGHT TO COUNSEL INITIATIVES

From the

National Coalition for a Civil Right to Counsel

by

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Introduction

By resolution dated August 7, 2006, the American Bar Association called on “federal, state and territorial governments” to “provide legal counsel as a matter of right at public expense” in categories of cases in which “basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction.”ⁱⁱ

In response, civil justice leaders across the country are considering the possibilities for civil right to counsel expansion and focusing on such questions as the following: What is the current scope of the civil right to counsel? What form do civil right to counsel initiatives take? How would an expanded civil right to counsel affect existing civil justice systems? Who would represent clients entitled to a new civil right to counsel?

In this memorandum, the National Coalition provides its best answers to these and other questions, with the goal of: i) sharing information about the civil right to counsel movement, ii) facilitating conversations about civil right to counsel initiatives in communities around the country, and iii) explaining the role of the National Coalition. Following the Questions and Answers, below, we also set forth our Conclusion.

Questions and Answers

1. *What is the National Coalition for a Civil Right to Counsel?*

Answer: The mission of the National Coalition is “to encourage, support and coordinate advocacy to expand recognition and implementation of a right to counsel in civil cases.” As further set forth in its mission statement, the National Coalition is “an association of individuals and organizations committed to ensuring meaningful access to the courts for all.”

More specifically, the National Coalition provides technical support to advocates who are pursuing or weighing the merit of pursuing civil right to counsel initiatives. This may include: supplying “model laws;” putting advocates in touch with experts; alerting advocates to publications, conferences, and other events of value; developing research strategies; evaluating financial implications of proposals; authoring amicus briefs; developing public education messages and approaches; and providing litigation support.

The National Coalition also helps to coordinate civil right to counsel initiatives. It can provide a national perspective on how to make proposed campaigns more successful, and on strategies to be avoided. For example, it can educate advocates about potential national effects of local efforts to develop caselaw nationally, and vice versa. In some instances, the National Coalition may be able to help identify stakeholders, and help to facilitate conversations among them. The National Coalition is coordinated by Debra Gardner of the Public Justice Center. A steering committee that is helping to guide the National Coalition is coordinated by Sharon Rubinstien, also of the Public Justice Center.

Currently, five organizations comprise a “Civil Right to Counsel Leadership and Support Initiative” that is helping to guide the work of the National Coalition. These organizations, which initially helped to establish the National Coalition, are:

- i) the American Bar Association’s Standing Committee on Legal Aid and Indigent Defense (SCLAID),
- ii) the Brennan Center for Justice;
- iii) the Committee for Indigent Representation and Civil Legal Equality (CIRCLE) (hosted by the Northwest Justice Project);
- iv) the Public Justice Center; and,
- v) the Sargent Shriver National Center on Poverty Law.

More generally, the civil right to counsel movement has benefited from the support of the National Legal Aid & Defender Association and the Center for Law and Social Policy.

Finally, additional guidance for civil right to counsel initiatives is provided from a variety of additional sources, including: state and local bar associations, state-based Access to Justice Commissions, Interest on Lawyers Trust Account (IOLTA) organizations, equal justice funders, and community based organizations.

2. ***Does the National Coalition stand for particular principles?***

Answer: Recognizing that local communities will guide development of the particular civil right to counsel they seek, the National Coalition believes the following principles are important when considering initiatives to expand the civil right to counsel:

- a) **The Justice Gap** – Many studies demonstrate that 80% or more of the legal needs of the poor go unmet each year. This is the so-called Justice Gap. The National Coalition strongly believes that this status quo is unacceptable, and that expanding the civil right to counsel is a valuable response to the problem of the Justice Gap.
- b) **Categorical by Design** – While every individual would welcome assistance from an attorney, the National Coalition sees greatest value in a “categorical” approach that accords the right to counsel based on: i) the characteristics of the litigants, themselves, such as age, disability, literacy; or, ii) the characteristics of their cases, such as eviction cases, custody cases, or cases of greater complexity). The categorical approach better responds to the problem of the Justice Gap.
- c) **Accompanied by Standards** – To ensure the delivery of high quality services, the National Coalition favors civil right to counsel initiatives that incorporate practice standards, and that provide adequately for training, supervision, and administrative support.
- d) **Sophisticated about *Gideon*** – Decades after *Gideon*, the right to counsel in criminal matters is still not fully effectuated. The National Coalition recognizes that securing any expanded civil right to counsel will require systemic advocacy like that currently conducted by advocates to better effectuate *Gideon*. The National Coalition aspires to develop civil rights to counsel in partnership with indigent defense systems, recognizing that for many individuals and families, civil and criminal rights are equivalent in their importance.
- e) **Integrated into Existing Delivery Systems** –The National Coalition favors development of civil right to counsel initiatives consistent with the American Bar Association Principles of a State System for the Delivery of Civil Legal Aid, the goal of which is to provide a full range of high quality, coordinated and uniformly available civil law-related services to a state’s low-income and other vulnerable populations that are unable to afford counsel in sufficient quantity to meet their civil legal needs. The civil right to counsel should complement, not undercut, other civil and criminal legal representation services for low income individuals, families and communities, and communities should continue to fund counsel in

the categories of cases in which it is needed. The fact that a civil right to counsel is established in one category of cases does not mean that counsel is less essential in other categories of cases in which it is not yet established.

- f) **Locally Driven** – Civil right to counsel initiatives are likely to succeed insofar as they are driven by the communities in which they would operate. Local dialogue is essential to determine what is appropriate in a local community and to assess whether new initiatives pose a risk of any sort to existing provider systems. No community need pursue any civil right to counsel initiative unless it chooses to do so.
- g) **Fiscally Responsible** – Although a society that determines to recognize fundamental rights will ultimately identify ways to finance those rights, the National Coalition recognizes that the current progress of civil right to counsel initiatives depends, at least in part, on leadership and support provided by the National Coalition to help identify the costs and savings associated with such initiatives. Significant, too, is that civil right to counsel is potentially a game-changing concept, in that one of its primary goals is to generate new financial support for civil legal representation wherever possible.

3. *What is the current scope of the civil right to counsel in the United States?*

Answer:

- a) Most states provide a civil right to counsel to individuals in the following categories of proceedings:
 - i) involuntary commitments,
 - ii) mandatory medical treatment proceedings,
 - iii) state-initiated terminations of parental rights,
 - iv) abuse or neglect proceedings, and
 - v) civil contempt proceedings.
- b) A very few states go further, providing a civil right counsel to parents in:
 - i) child custody disputes,
 - ii) domestic violence matters, or
 - iii) private party terminations of parental rights.ⁱⁱⁱ
- c) No state provides a civil right to counsel to persons in:
 - i) home mortgage foreclosure proceedings,
 - ii) home eviction proceedings,
 - iii) claims for government benefits,
 - iv) insurance disputes,
 - v) pension matters,

- vi) consumer debt and predatory lending,
- vii) employment discrimination claims,
- viii) wage claims, or
- ix) many other disputes.

4. ***What form do civil right to counsel initiatives take?***

Answer: As noted above, the ABA has urged government to recognize a civil right to counsel in categories of cases in which “basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction.” Neither the ABA, the National Coalition, nor any other community responding to the ABA’s resolution, has endorsed the idea of a right to counsel for all individuals in all civil cases.

Instead, the ABA’s resolution has inspired communities to evaluate their existing justice systems in order to identify areas of the law in which a right to counsel is needed to ensure that individuals secure fair results. Typically, new civil right to counsel initiatives, whether advanced in a legislature or pursued in a court, would accord the right only to precisely defined populations of individuals for whom the need for representation is most pressing. This incremental approach reflects the fact that community consensus is critical to recognizing a new civil right to counsel.

In light of the ABA mandate to provide counsel where “basic human needs are at stake,” communities (including their courts) will inevitably turn to the task of resolving a set of important subsidiary questions necessary to determine the scope of the right. These include:

- i) What categories of cases require appointment of counsel (e.g., evictions, foreclosures, custody disputes, other)?
- ii) Are there subcategories of cases in which counsel is necessary (e.g., contested, complex, or urgent matters)?
- iii) What levels of financial need trigger the right to counsel?
- iv) What categories of individuals are entitled to counsel (e.g., individuals with limitations of literacy, disability, age, other)?

Finally, the fact that a civil right to counsel is established in one category of cases does not mean that counsel is any less essential in cases in which it is not established. Communities will need to continue to fund a full range of legal services, financing the provision of civil counsel in areas of the law where it is needed even if a right to counsel has not yet been established in those areas.

Here are some examples of specific civil right to counsel initiatives (current in 2007-2008):

a) *Private party child custody disputes*

In Alaska, a trial court held on due process and equal protection grounds that a party in a child custody dispute who faces an opponent represented by counsel, and who is unable to afford counsel, is entitled to government-financed counsel.

In Washington, the state's high court recently declined to recognize a categorical civil right to counsel in child custody disputes between parents.

In New York State, where the civil right to counsel has long been provided by statute to parties in child custody disputes that arise in Family Court, the state legislature in 2007 extended the right to parties whose disputes arise in the trial courts of general jurisdiction, for example, in divorce proceedings.

b) *Private party terminations of parental rights*

In Louisiana, the state legislature enacted a law providing counsel to biological parents who face potential loss of custody of their children to proposed adoptive parents in adoption proceedings.

c) *Evictions and foreclosures*

In New York, a bill is pending before the New York City Council that would create a right to counsel for low-income seniors facing eviction from or foreclosure on their homes.

d) *Representation for children in dependency cases*

The Children's Rights Subcommittee of the ABA Section on Litigation is working on a project to ensure, on state due process grounds, and other grounds, that all states provide a right to counsel for children in dependency cases.

e) *Truancy cases*

In Washington, an intermediate appellate court has recently held that children have a right to counsel at all stages of truancy proceedings.

f) *Counsel as an accommodation for disability*

In Washington, a general court rule authorizes appointment of counsel as a "reasonable accommodation" for persons with disabilities.

g) *Civil contempt*

In South Carolina, the state's highest court is considering a claim that people

facing incarceration as the result of civil contempt charges possess a right to counsel.

5. *How will a civil right to counsel affect the funding infrastructure of the civil justice system?*

Answer: There is insufficient experience to make definitive predictions of how creation of a civil right to counsel will affect existing funding streams and structures. In some historic examples, recognition of new statutory rights to counsel has been followed by new and additional funding. However, anecdotal evidence also exists to suggest that in some instances, the expansion of rights had led to increased responsibility for existing providers without an accompanying expansion of resources.

Some advocates for a civil right to counsel system are hopeful that an extension of the right may offer a basis for securing additional funding for representation in certain critical categories of cases for people who genuinely need it. An unfortunate feature of the Justice Gap is that in many communities virtually no legal representation is available for most low-income people in civil matters involving basic human needs. This includes persons facing the loss of their homes in foreclosure proceedings or evictions, persons battered in domestic violence disputes, and persons facing the possible loss of their children in custody disputes. Lawyers routinely appear on only one side of these civil legal disputes, rights are routinely violated, and lives are routinely destroyed due to the failure to protect legal rights.^{iv} Large numbers of people are affected. Women and people of color are disproportionately harmed since they are the most likely to be poor. And persons with limited English proficiency, disabilities, age limitations, and other limitations and barriers, are also especially vulnerable.

To ensure that recognition of a civil right to counsel is accompanied by new resources, stakeholders in communities exploring opportunities for creating such a right (whether broad or narrow, and whether a product of litigation or legislation) will want to advocate vigorously to assure that new rights do not take the form of unfunded mandates.

6. *How will a civil right to counsel affect existing civil legal aid delivery systems?*

Answer: Some civil right to counsel systems co-exist alongside civil legal services delivery systems, sometimes overlapping with them. Thus, in some places, the civil right to counsel cases are undertaken by existing civil legal aid programs that contract with government on a voluntary basis to do this work.^v In other places, the civil right to counsel cases are done by the same lawyers or programs that handle the defense of low-income criminal defendants.

As part of the modern Access to Justice movement, a civil right to counsel can take its place alongside such other progressive approaches as: simplification of court procedures and substantive law, pro se help, unbundling, pro bono, civil legal aid, policy advocacy, and impact litigation. Civil right to counsel can thus serve as an additional key element within an effective civil justice system dedicated to providing a full range of

legal services initiatives, consistent with the goals of the ABA Principles of a State System for the Delivery of Civil Legal Aid.^{vi}

This discussion does not presume that competition for funding will never occur among civil right to counsel programs and other programs. But, ultimately, communities will need to conduct local conversations about the degree to which they consider it desirable to integrate new and expanded civil right to counsel systems into existing delivery systems.

7. *How will a civil right to counsel affect existing indigent defense systems?*

Answer: Civil right to counsel systems co-exist alongside indigent defense systems in all parts of the country. The potential relationship between new or expanded civil right to counsel systems and existing criminal right to counsel systems should be considered by communities that are evaluating such initiatives.

Recognizing that funding dynamics are fluid, and that competition for funding is a routine phenomenon even among existing similarly situated providers (whether the services at issue are civil or criminal), the National Coalition believes that planning, coordination and collaboration are the keys to enabling communities to secure the programs they determine they need.

More fundamentally, the civil right to counsel movement provides an opportunity to rethink the relationship between indigent defense services and the civil justice delivery system. As Jim Neuhard, Director of the State Appellate Defender Office in Michigan has noted, the separation between the two systems is a historical anomaly, and the civil right to counsel movement “offers the opportunity to look at common problems and combined solutions for the clients of both civil and defender programs.”^{vii}

Ultimately, communities will need to engage in local conversations about how best to develop expanded civil right to counsel systems in light of the Sixth Amendment right to counsel and existing indigent defense systems. These conversations will include discussion of whether any given initiative poses a threat to other systems. Where a significant risk is identified, communities may decline to pursue the initiative.

8. *How will a civil right to counsel affect existing systems that provide systemic advocacy?*

Answer: The ultimate question of whether a specific new or expanded civil right to counsel will, or will not, affect funding for systemic advocacy can only be answered by local actors based on their knowledge of local funding dynamics. The following principles may be useful to advocates in evaluating whether a reasonable concern exists in specific local settings.

First, in communities in which a civil right to counsel has already been recognized for major categories of cases – for example, the right to counsel accorded to parents when the government moves to terminate their parental rights – the existing civil

right to counsel has, as a general matter, neither displaced nor undercut systemic advocacy. In New York, where a state statute provides a civil right to counsel to parents in custody fights and to individuals in domestic violence cases, these categorical rights have similarly had no evident effect on funding for other categories of civil legal aid.

Second, steps can be taken to reduce any risk that a new civil right to counsel initiative might undercut systemic advocacy. Thus, civil right to counsel initiatives should be developed in consultation with stakeholders in the civil legal aid delivery system. In any given community, the advocates most involved in obtaining funding for systemic advocacy are likely to be the same individuals most knowledgeable about new civil right to counsel initiatives and about prospects for (and consequences of) financing such initiatives. Local advocates are best positioned to make judgments about whether a civil right to counsel initiative poses any risk. As noted above, planning, coordination and collaboration are the keys to ensuring that communities secure the services they need.

Third, the potential for civil right to counsel initiatives to attract new money into the civil justice system is an opportunity communities may choose to explore. Additionally, advocates are presently investigating best ways to demonstrate how a civil right to counsel can be cost effective by saving money in the long run.^{viii} Insofar as the civil right to counsel can be shown to save funds, pressure may be reduced to cut funding elsewhere to finance the right.

Most important, it is essential to recognize that the fact that a civil right to counsel has not yet been established for a given category of cases does not mean that zealous representation is less critical for individuals with those cases. Nor should a civil right to counsel initiative be allowed to undercut other forms of advocacy, such as policy advocacy in legislative and administrative settings, or systemic reform litigation on behalf of groups of individuals. Some categories of cases – for example, affirmative class action lawsuits in which it is important to pursue classwide discovery or to secure classwide relief – may not attract civil right to counsel protection, and yet it is essential to preserve funding for these cases. Similarly, policy advocacy for low income families and disenfranchised communities is not structurally compatible with the civil right to counsel framework, but capacity to conduct such advocacy should be preserved.

Recognizing that the creation of any new civil right to counsel will inevitably require substantial local community involvement, communities will be able to ensure that establishing a civil right to counsel in a designated category of cases does not capture revenue needed to finance other important categories of advocacy. Ultimately, as noted above, if community leaders determine that a civil right to counsel proposal poses a risk to other categories of advocacy, they may decline to pursue the initiative.

9. *Will a civil right to counsel distort civil justice systems by introducing a narrow and absolute mandate to handle only certain categories of cases?*

Answer: Experience in the states in which a civil right to counsel already exists, suggests that creation of a civil right to counsel is unlikely to force a shift of all resources

exclusively into categories of cases for which a civil right to counsel is recognized. Recognition of the Gideon right constitutes the classic example: provision of civil legal services continued alongside of and notwithstanding development of the right to counsel in criminal matters. Although advocates should be vigilant about protecting existing support for legal representation for the poor, there is little basis to conclude that expansion of a civil right to counsel into new contexts would eliminate the imperatives that have historically produced funding for civil legal services.

Second, it is unlikely that a new or expanded civil right to counsel based on state constitutions or developed in state legislative settings would undercut federally appropriated LSC funding.

Third, acceding to this set of concerns would trap communities in current triage circumstances, in which resources are inadequate to respond to the level of need. It would freeze, in place, the current Justice Gap. Interest in the civil right to counsel is prompted, in part, by the hope of expanding the pie in order to push beyond the limitations of the current model.

Last, as discussed above, dialogue in state and local settings will determine how communities in those settings ultimately choose to allocate state appropriations, IOLTA funds, local governmental allocations and other revenues.

10. *Who should be involved in helping to determine whether a civil right to counsel initiative makes sense in a given community?*

Answer: Although it is impossible to define, entirely, who should participate in essentially local conversations, the key is to ensure that civil justice system stakeholders are part of a local dialogue about proposed civil right to counsel initiatives. Some of the leaders likely to be stakeholders include:

- a) LSC-funded legal services programs,
- b) non-LSC funded legal services programs,
- c) indigent defense providers,
- d) publicly funded attorneys who handle existing civil right to counsel cases, such as in the juvenile court or civil commitment context,
- e) Interest on Lawyers Trust Account administrators,
- f) client groups,
- g) leaders of the organized bar,

- h) civil justice system funding advocates,
- i) civil access to justice commissions,
- j) state court executive administrators,
- k) chief judges within the state court system.

This list offers a place to start for purposes of initiating conversation among those with a stake in the civil justice system who are most likely to care about campaigns for civil rights to counsel.

11. ***Will a new civil right to counsel perform better than the rights to counsel that already exist in criminal and civil matters?***

Answer: Many existing right to counsel systems are flawed. Of the programs that provide indigent defense services, and that provide representation in family courts, civil commitment cases, and civil contempt cases, many are imperfect. As a consequence of underfunding and inattention to quality, it is common to learn that a) caseloads are too high, b) quality is too low, and c) training, supervision, and administrative support are absent.^x Additionally, existing rights to counsel may have significant holes: failing to ensure that counsel is appointed at critical times, setting low standards; and, putting intense pressure on litigants to waive the right to counsel.^x

But, despite these serious problems, few champions of, for example, indigent defense services, would willingly jettison *Gideon* in favor of the pre-*Gideon* system of according counsel on a case-by-case basis. Nor did any activists argue against extending the *Gideon* right to misdemeanor defendants in *Argersinger* on the ground that felony defendants were receiving inadequate legal assistance. Similarly, few people would favor constricting the existing right to counsel in parental rights, civil commitment or civil contempt cases. All of these existing rights provide an important foundation from which advocates can, and do, insist on better funding and better quality.

In two recent articles, authors discuss the struggle to enforce the *Gideon* right, and the implications for the civil right to counsel movement.^{xi} They advise civil right to counsel activists to be vigilant about the problems associated with an underfunded right to counsel. And, they say that public policy advocacy, on an ongoing basis, can inspire legislators and court system funders and administrators to provide better representation. In fact, an indigent defense reform movement in this country is fighting, state by state, to insist on higher quality defense services, and is having significant successes.

What this means for the civil right to counsel movement is that advocates need to set the basic contours of civil right to counsel systems by working diligently to insist on caseload caps, practice standards, administrative standards, and, fundamentally, sufficient financing. None of these elements of a successful civil right to counsel policy can be

negotiated away. At the same time, none is likely to be provided without strong advocacy.

12. *What role do standards play in ensuring that representation will be adequate?*

Answer: Standards play a critical role in ensuring adequate representation. They tell funders how to allocate money, administrators how to structure representation, lawyers how to provide representation, and judges how to determine if representation is adequate.^{xii}

Standards can be grouped into three types: a) “eligibility standards,” which set minimum training and experience requirements for lawyers, b) “performance standards,” which define the specific tasks an attorney must perform for a client, and c) “administrative standards,” which govern administration of institutional providers.^{xiii} In the civil right to counsel area, as with other segments of the justice system, it is common for a national entity to develop model standards, and then for local jurisdictions to adapt and incorporate them into their court rules and their right to counsel policies.

The ABA, NLADA and other national entities have developed standards for some types of civil cases in which a right to counsel already exists.^{xiv} However, there is room to develop these standards further, and to expand them to cover new categories of cases in which a civil right to counsel is recognized. For example, national standards do not currently govern legal practice in guardianship proceedings, mandatory medical treatment proceedings, eviction petitions, representation of parents in custody matters, or petitions for restraining orders in domestic violence cases. For right to counsel systems to successfully cover these cases, national and local standards should be developed.

To ensure the delivery of high quality services, the National Coalition favors civil right to counsel initiatives that incorporate practice standards, and that provide adequately for training, supervision, and administrative support.

13. ***Will cases arising under new right to counsel laws be undertaken by existing legal services programs?***

Answer: As noted above, in some communities, civil right to counsel cases are undertaken by existing civil legal aid or public defense programs that contract with government on a voluntary basis to do this work.^{xv}

In fact, civil legal aid programs are well positioned to do this work. Training, supervision, and administrative support are the critical factors that determine whether the services provided will be strong or weak. While there has been considerable debate about whether particular staffing models are likelier than others to provide high-quality service, recent studies have demonstrated that institutional providers have advantages over attorneys in private practice.^{xvi} Institutional providers benefit from economies of scale, and can provide their lawyers with supervision, training and the resources needed to support legal research and fact investigation.

Of course, local civil justice communities will need to evaluate particular community needs, staff, and financial resources, and to consider the structures, including a civil right to counsel, that best effectuate their local goals. Most communities are ultimately dedicated to developing comprehensive civil justice systems that are coherent from the perspective of clients, ensure the quality of services through resources like training and supervision, and provide uniform access across the community.

14. ***Is the right to counsel a federal issue or a state issue?***

Answer: In recent years, most litigation seeking expansion of a civil right to counsel has been pursued in the state courts, based on state constitutions, rather than in federal court. In large part this is a consequence of *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981) in which the Supreme Court recognized that the U.S. Constitution requires the appointment of counsel in categories of legal proceedings that will result in the loss of an individual's personal liberty, but held that the Constitution does not impose such a categorical requirement for parents opposing the government's proposed termination of their parental rights. However, the Court acknowledged that a trial court may determine that the appointment of counsel is constitutionally necessary in an individual case involving the proposed termination of parental rights. With the Supreme Court currently unlikely to recognize a broader civil right to counsel than that defined in *Lassiter*, the National Coalition has discouraged advocates from pursuing federal constitutional claims for a civil right to counsel.^{xvii}

The legislative context is different. Although most legislative advocacy for a civil right to counsel is currently proceeding in the states, there is no reason to limit legislative advocacy to the states, and there may, in fact, be opportunities to inspire the Congress to expand the civil right to counsel. Indeed, federal laws already recognize a civil right to counsel in some settings. Thus, Congress requires states receiving federal funding for child abuse prevention and treatment to appoint counsel (or guardians ad litem) to

represent children in abuse and neglect proceedings. Congress also requires the states to appoint counsel to represent the parent of an Indian child in abuse, neglect, or termination of parental rights proceedings.^{xviii} Finally, in the Servicemembers Civil Relief Act, Congress requires the appointment of counsel to represent active servicemen and women if the individual is stationed or deployed in a location that prevents him or her from appearing in court and if the action is not stayed by the court.^{xix}

15. *Is this the right time for civil right to counsel?*

Answer. In 2009, as this document goes to press, a national and international fiscal crisis has destroyed individuals' savings, drained wealth from communities, and sharply worsened the life circumstances of millions of Americans. Evictions and foreclosures have increased, domestic violence has been exacerbated, the challenges of caring for children are greater than ever, and families across the country have turned to food banks and government benefits to survive. Paradoxically, cuts in funding – from federal, state, local, IOLTA and private sources -- have impeded the delivery of civil legal services at a time when it has never been more urgently needed.

Thus, communities have an opportunity to engage in dialogue about how best to respond to the current need, and among the important potential policy responses is the civil right to counsel. Moreover, there is evidence that spending on civil legal services for basic human needs cases can have a significant economic stimulus effect.^{xx} Some communities may conclude that now is the time to expand the right to counsel, while others may reach an opposite conclusion. In at least some communities, leaders are exploring the viability of “pilot programs” that would recognize a right to counsel for a designated population of individuals, spending small sums of money to test this potentially transformative idea. Ultimately, as with many of the issues raised in this memorandum, the decision about whether and how to pursue a civil right to counsel will be a local judgment.

16. *How may I obtain additional information?*

Answer. For additional information, see www.civilrighttocounsel.org. Please also reach out to Debra Gardner of the Public Justice Center, in Maryland, coordinator of the National Coalition (telephone 410-625-9409 x228; gardnerd@publicjustice.org). Please also feel free to reach out to the authors of this memo.

Conclusion

The civil right to counsel movement offers an opportunity to advance our nation's dream of “justice for all” by offering the promise of a critically important protection to vulnerable members of our society who otherwise are unable to vindicate their legal rights and prevent harm to themselves and their families. In this memo, we have provided practical answers to questions prompted by the civil right to counsel model, and we urge civil justice communities across the country to be in touch with the National Coalition with follow-up questions. We are looking

forward to working with individuals and communities that are interested in pursuing civil right to counsel initiatives as a means of strengthening civil justice systems in the years ahead.

ⁱ This memorandum was prepared in partnership with members of the Civil Right to Counsel Leadership and Support Initiative, and with members of the Committee on Implementation of the National Coalition for a Civil Right to Counsel. *See infra*, at 3 (describing initiative). It has been reviewed by members of the Steering Committee of the National Coalition for a Civil Right to Counsel, and by members of the National Coalition for a Civil Right to Counsel. The authors are also grateful for thoughtful suggestions made by additional individuals, including Alex Gulotta and Steve Scudder.

ⁱⁱ American Bar Association Task Force on Access to Civil Justice, ABA Resolution on Right to Counsel, 15 Temp. Pol. & Civ. Rts. L. Rev. 507, 518 (2006), available at <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf>

ⁱⁱⁱ *See* Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, Clearinghouse Review (July-Aug. 2006), at 245.

^{iv} *See generally* Legal Services Corporation, *Documenting the Justice Gap in America* (2005), available at <http://www.lsc.gov/justicegap.pdf>.

^v For example, the Legal Aid Bureau in Maryland and Legal Aid Services of Hawaii represent children in dependency cases. Legal Services for New York City recently signed a contract to represent parents in such cases.

^{vi} *See* Alan Houseman, *The Future of Civil Legal Aid: A National Perspective*, 10 Univ. of D.C. L. Rev. 35, 60-66 (2007) (discussing the importance of using a variety of techniques to create “a comprehensive, integrated system for the delivery of civil legal aid”).

^{vii} James Neuhard, *Gideon Redux: A Defender’s View*, 28 Cornerstone 5, 31 (Fall 2006).

^{viii} For example, advocates seeking reform in the indigent defense system in Mississippi have demonstrated that counties and the state would save tens of thousands of dollars each year if competent counsel were appointed in a timely manner, because defendants would spend less time in jail awaiting trial. *See* Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons From Gideon v. Wainwright*, 15 Temple Political & Civil Rights L. Rev. 527, 553 (2006). Studies have also quantified the cost to government of failing to provide counsel for tenants in eviction proceedings. *Id.* at 554.

^{ix} *See* American Bar Association Standing Committee on Legal Aid & Indigent Defendants, *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice* 38-39 (2004) (cataloging many of the fundamental flaws in the indigent defense delivery system); Laura K. Abel, *State Statutes Providing for a Right to Counsel in Civil Cases*, Clearinghouse Review (July-Aug. 2006), at 248-51 (cataloging many of the fundamental flaws in the civil right to counsel delivery system).

^x *See* James Neuhard, *Gideon Redux: A Defender’s View*, 28 Cornerstone 5, 31 (Fall 2006).

^{xi} *See* Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons From Gideon v. Wainwright*, 15 Temple Political & Civil Rights L. Rev. 527 (2006); James Neuhard, *Gideon Redux: A Defender’s View*, 28 Cornerstone 5 (Fall 2006).

^{xii} *See* Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons From Gideon v. Wainwright*, 15 Temple Political & Civil Rights L. Rev. 527, 546-49 (2006).

^{xiii} *Id.* at 547 (citing Adele Bernhard, *Take Courage: What the Courts Can Do to Improve the Delivery of Criminal Defense Services*, 63 U. Pitt. L. Rev. 293, 303, 335 (2002)).

^{xiv} *See, e.g.*, ABA, Standards for Practice for Attorneys Representing Parents in Abuse and Neglect Cases (2006); ABA Section of Family Law, Standards of Practice for Lawyers Representing Children in Custody Cases (2003); ABA Section of Family Law, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996); National Center for State Courts, Guidelines for Involuntary Civil Commitment (1986).

^{xv} *See infra*, n vi.

^{xvi} *See* Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons From Gideon v. Wainwright*, 15 Temple Political & Civil Rights L. Rev. 527, 544 (2006).

^{xvii} *See* Debra Gardner, *Pursuing a Right to Counsel in Civil Cases: Introduction and Overview*, Clearinghouse Rev. (July-Aug. 2006), at 167, 168.

^{xviii} Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(A)(xiii); India Child Welfare Act, 25 U.S.C. § 1912.

^{xix} 50 App. U.S.C.A. § 521(d)(2)

^{xx} *See* The Perryman Group, *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential*. (February 2009), available at <http://www.texasatj.org/FINAL%20Econ%20Impact%20Study%2002-12-09.pdf> (April 1, 2009)(on file with authors)