



Civil Right to Counsel Update

October 2009
No. 5

In This Issue

[CA Pilot Program](#)

[AK Supreme Court](#)

[UC Irvine Orientation](#)

[NLADA Panels](#)

[US Sup. Ct. Cert. Petition](#)

Quick Links...

[Our Website](#)

[Litigation](#)

[Legislation](#)

Subscribe to
This Newsletter

Civil right to counsel advocacy received a boost earlier this month when Calif. Governor Arnold Schwarzenegger signed the Sargent Shriver Civil Counsel Act (see first item below). Please forward this newsletter to anyone who might be interested, and remember that you can find previous issues [here](#), on the NCCRC [website](#). For more information, contact [Marcia Henry](#).



CA Pilot Program to Expand Counsel in Areas of Critical Need

On Oct. 11, 2009, Governor Arnold Schwarzenegger signed into law AB 590, the Sargent Shriver Civil Counsel Act, which provides funding for a six-year pilot program to test the effectiveness of significantly expanding access to counsel in certain types of civil cases. The pilot program, which will begin in July 2011, is funded by a \$10 surcharge on certain post-judgment fees and is expected to raise some \$10 million per year.

Pilot projects are to be partnerships between a court, a lead legal services agency, and other community legal services providers, with the use of pro bono resources specifically encouraged. A competitive grant process will select the participating counties, courts, and legal services agencies. The law funds representation in housing, domestic violence, conservatorship, guardianship, and elder abuse cases, as well as actions by parents seeking sole custody of children. Litigants with income under 200 percent of the federal poverty level (in 2009, \$36,620 for a family of 3) are eligible, although representation is not guaranteed. A report evaluating the program is required by January 2016, and must cover (among other things), the allocation by case type of pilot funding, the impact of counsel on equal access to court, and data on the impact of the pilot program on families and children.

This development is getting significant attention around the country; for links to some of the media coverage see the [recent developments](#) page of www.civilrighttocounsel.org.

Alaska Supreme Court Declines to Rule on Right to Counsel

In August the Alaska Supreme Court dismissed *Office of Public Advocacy v. Alaska Court System*, an appeal that had arisen out of a custody case (*Gordanier v. Jonnson*) involving an unrepresented mother's request for appointment of counsel when her opponent was represented by a private agency. An indigent party in Alaska has a statutory right to counsel when the opponent is represented by a public agency. Originally the Alaska Court System was directed to appoint counsel to represent the mother, with the court citing the due process and equal protection clauses of Alaska's Constitution. The trial court later changed its ruling to appoint the Alaska Office of Public Advocacy to represent the mother, citing statutory and equal protection grounds. The Office of Public Advocacy appealed.

Oral argument was heard in May, and subsequently the Supreme Court asked for briefing on mootness, expressing concern that the due process issue had not been cross appealed by the court system and that the state had not actively litigated the case. Despite briefing from OPA and amici disputing mootness, the Supreme Court dismissed the case. The positive trial court ruling therefore stands, although it lacks precedential value. For more see the [June 2009](#) issue of Civil Right to Counsel Update.

Alaska advocates, frustrated but not disheartened, have regrouped and are seeking another matter to bring before the high court. Given the exposure that this case received, the next case likely will both place the due process issue squarely before the Court, and involve the state's active participation. In *Gordanier*, the state had been invited to participate at the trial court level, but declined. Although the State of Alaska represented the Office of Public Advocacy on appeal, the Supreme Court appears to be seeking the state's independent involvement. Stay tuned...

Orientation at New Law School Emphasizes Right to Counsel

The first new public California law school in over 40 years--at the University of California at Irvine--opened this fall. The university enticed noted constitutional scholar Erwin Chemerinsky to serve as founding dean, and the student orientation--reflecting Chemerinsky's conviction that the students should consider questions of access to justice--was built around the right to counsel in civil cases.



Before arriving, students were to have read the U.S. Supreme Court opinions in *Gideon v. Wainwright* and *Lassiter v. Dept. of Social Services*. Following a lecture on briefing a case, they broke into small groups and discussed the cases' rationale. Students then briefed both sides of a case involving whether alleged gang members should, at a hearing to consider a gang injunction they might later be punished for violating, have a constitutional right to a lawyer. At a luncheon presentation, retired Court of Appeal Justice (and active NCCRC participant) Earl Johnson introduced the students to the broader international perspective on the right to counsel issue, as well as the ABA resolution and the activities of NCCRC. Later the students viewed the film *Gideon's Trumpet*, made brief arguments on the gang injunction issue, and watched veteran appellate lawyers argue the same hypothetical case before Ninth Circuit Court of Appeal Judge Richard Paez, a former Director of Litigation at the Legal Aid Foundation of Los Angeles. The orientation concluded with an address by California Supreme Court Justice Carlos Moreno on access to justice. The students reported they found the orientation based on the right to counsel issue "engaging, relevant, and well-conceived."

NCCRC to Conduct Two Panels at Nov. NLADA Conference

If you'll be attending the National Legal Aid and Defender Association annual conference in November, be sure to check out one or both of the sessions NCCRC will offer. The first, "Rowing Upstream: Passing Laws and Finding Resources for the Right to Counsel Despite Tough Economic Times," will explore how some states have managed to enact laws in the last decade that either expanded the right to counsel in civil cases or improved the quality of appointed counsel, even during severe economic strain. Presenters will include two NCCRC members: Laura Abel of the Brennan Center, who will also moderate, and Mimi Laver of the ABA Center on Children and the Law. The second session, "The Power of Pilots: Expanding the Right to Counsel By Example," will examine Massachusetts' and California's pilot programs: why they were pursued, what goals the designers had, and how the legislature (for Calif.) and private funders (for Mass.) were convinced to fund the pilots. Presenters for the "Pilots" session will be NCCRC members Earl Johnson, former California Court of Appeal Justice now affiliated with the Western Center on Law and Poverty, and Jayne Tyrrell of the Massachusetts IOLTA Committee; John Pollock, ABA Section on Litigation Civil Right to Counsel Fellow, will moderate. Thanks go to Sharon Rubenstein, who helped develop the two proposals. And a heads-up: civil right to counsel sessions at past NLADA conferences have been standing room only, so get there early!

Cert. Petition Filed in Texas Case

A [petition for certiorari](#) is before the U.S. Supreme Court in *Rhine v. Deaton*, a civil right to counsel case from Texas. In *Rhine*, the state sought to terminate the parental rights of Ms. Rhine, whose child was already in foster care. On the same day the state dropped its suit due to a rapidly approaching deadline, the foster parents filed a petition to terminate Ms. Rhine's parental rights. Because the Texas statute governing termination of parental rights only provides appointed counsel for indigent parents in suits brought by a "governmental entity," not a private party, Ms. Rhine was denied appointed counsel.

On appeal, the Texas Court of Appeals remanded for a ruling on whether the lower court should exercise discretion to appoint counsel for Ms. Rhine; the trial court found appointment was not necessary. In her petition for review to the Texas Supreme Court, Ms. Rhine argued that the Texas statutory scheme violates the Equal Protection Clause by providing appointed counsel only where the state is the party seeking termination, and also that the trial court on remand had failed to specifically undergo a *Lassiter* analysis to see whether Ms. Rhine was entitled to appointed counsel as a matter of due process. The Texas Supreme Court denied review, and the U.S. Supreme Court recently invited the Texas Solicitor General to file a response brief.