

Homeowners with lawyers are more likely to keep their homes and their credit.

Consider the national mortgage foreclosure crisis. Millions of homeowners are facing the bitter consequences of foreclosure, including eviction, homelessness, and the loss of community and educational disruptions if forced to move elsewhere. And the damage to one's credit caused by a foreclosure can make it difficult to secure a new home or even a rental apartment. How would having a lawyer make a difference? Attorneys have prevented countless foreclosures by proving the foreclosures to be unauthorized or fraudulent or by obtaining loan modifications, allowing families to stay in their homes. But current legal aid programs are overburdened, and the number of cases greatly outstrips the pro bono resources available. The right to counsel would help many people save their homes from wrongful or avoidable loss.

If she had been represented by a lawyer, would she still have her children?

When Brenda King and her husband separated, he retained counsel, filed for divorce, and sought custody, even though he had long insisted that Ms. King be the full-time parent. Unable to afford a lawyer, Ms. King turned for help to the local legal aid program, but it was too overwhelmed to take her case. Without any legal training, and with only a ninth grade education, she struggled alone through a five-day trial. In the end, the judge gave custody of the three children to her husband. Now, after ten years as a stay-at-home mom, Ms. King no longer has custody and can only see her children every other weekend.

Building a movement.

Since 2003, the PJC has led the National Coalition for a Civil Right to Counsel (NCCRC), whose mission is to encourage, engage, support and coordinate advocacy to expand recognition and implementation of a right to counsel in civil cases. The NCCRC leadership team is a collaboration of five national organizations: The Brennan Center for Justice at New York University School of Law (New York City), the Committee for Indigent Representation and Civil Legal Equality at the Northwest Justice Project (Seattle), the Public Justice Center (Baltimore), the Sargent Shriver National Center on Poverty Law (Chicago) and the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association (Chicago). These partners are at the forefront of the right to counsel efforts over time and across the country, providing leadership and support to the larger national coalition, which itself is comprised of over 220 participants from 35 states.

Thank you to the many donors and partners who have supported this work over the years. In particular, a special thank you to the American Bar Association Section of Litigation, the Ford Foundation, the National Legal Aid and Defenders Association, the Open Society Institute and the Southern Poverty Law Center.

ACCESS

Given that the right to counsel movement focuses exclusively on basic human needs cases such as shelter, sustenance, and health—needs that are undeniably caused or exacerbated by poverty—it seems clear to us that providing counsel for people who face legal harm in these arenas will itself help to counter the causes and effects of poverty.

—excerpted from “Civil Right to Counsel’s Relationship to Antipoverty Advocacy—Further Reflections”, by Debra Gardner and John Pollock, *Clearinghouse Review*, July-August 2011

We have a serious justice gap in this country.

We all know the risk of representing oneself in the complex, technical, and threatening world of the law. People who can afford private counsel will therefore hire a lawyer when something critically important to them is at issue and there are serious legal questions. They have a choice. But too many others do not. Private counsel is unaffordable. And civil legal services (or other “free”) counsel meets only 20% of the need. The “justice gap” especially hurts families of color, families headed by women, children and the elderly.

This justice gap goes unaddressed in our current law. In what is probably a surprise to many (even some lawyers), the right to a lawyer in most civil cases does not currently exist in the United States, even when the litigants are indigent and their most basic human needs are at stake. This means that while a criminal defendant threatened with even one day in jail has a right to a free lawyer, litigants in civil cases are at risk of permanently losing their children, their homes, their life-sustaining health care without having access to a lawyer. Not only do they struggle to represent themselves, but they face an opponent (the state, a landlord, a bank, a school, etc.) that usually has a lawyer.

Because of this, while those with means can hire someone to protect themselves, poor people who face serious legal problems and a deprivation of their most basic needs do not have that protection...not yet anyway.

(continued on the back cover)

One Man Behind the Movement

John Pollock, ABA Section of Litigation
Civil Right to Counsel Fellow



Successful movements often rely on strong leadership and that is precisely what John Pollock brings to the NCCRC. John provides an invaluable service to advocates on the ground across the country by providing advice, information, testimony and other support. He also facilitates monthly conference calls, authors papers and articles, speaks at conferences, leads workshops and facilitates panel discussions. He manages a vast amount of information through a newly created wiki and bibliography.

John says that staffing this project has expanded his view of success. “Clearly, this is a long-haul project that could take decades to complete. We are taking a careful, plank-by-plank approach. But we know full well that the movement to establish the right to counsel in criminal cases was also a long-haul; the case for the right in criminal cases had been building up for a long time before the landmark decision in *Gideon v. Wainwright*. In just the eight years of this coalition’s existence, we have made real progress.”

An Idea With Merit

In 2006, the American Bar Association House of Delegates unanimously adopted a resolution that “urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody as determined by each jurisdiction.” The resolution has been co-sponsored or adopted by eleven state/territory and seven county/city bar associations, as well as the access to justice commissions in five states. Each year, more state bars and access to justice commissions endorse the resolution or the principles that it contains, signifying their desire to join the burgeoning civil right to counsel movement. Across the nation, advocates are moving the idea of a right to counsel forward with support from the National Coalition for a Civil Right to Counsel (NCCRC). Some examples include:

Hawaii

The Civil Right to Counsel Committee of the Access to Justice Commission in Hawaii is weighing endorsement of the ABA resolution. NCCRC supports their efforts with shared materials, research and news from other states.

Alaska

Lawyers in Alaska hope to establish a right to counsel through favorable court decisions. The NCCRC is helping with strategy for litigation and sharing notes on efforts in Maryland, where a similar effort is underway.

Washington State

Lawyers in Washington have sought to establish certain rights to counsel through several important court cases. In January 2009, the Court of Appeals found the right to counsel for children in truancy cases, but the Washington Supreme Court reversed the decision. A second issue before the Washington Supreme Court has been the right to counsel for children in termination of parental rights proceedings. Although the Washington Supreme Court threw out one case as moot after hearing oral argument, it has granted review in a second case and oral arguments will occur in the fall 2011. The NCCRC has been very active in these cases, supporting litigation strategies, participating in moot courts and providing brief-writing support. Hats off to our partner: the Committee for Indigent Representation and Civil Legal Equality at the Northwest Justice Project (Seattle.)

California

The former Chief Justice of California supported the legislation that established the Sargent Shriver Civil Counsel Act to create pilot projects that will to study the impact of counsel in civil cases. NCCRC staff is helping to support these projects, which will be operated for roughly \$10 million/year.

Texas

NCCRC staff helped Texas lawyers develop the evaluation criteria for right to counsel pilot projects there, one involving evictions and the other foreclosures, and set up information-sharing sessions between the Texas pilot sites and pilots in California and Boston. NCCRC staff also organized and facilitated a popular panel discussion about the right to counsel at the Texas Bar Poverty Law Conference in April 2011, and presented again at the Texas Bar Bill of Rights Conference in May 2011.

Montana

Leaders from Montana connected with NCCRC at an Equal Justice Conference. Since then, they have worked closely with NCCRC to review test cases and strategies that will further the right to counsel in their state including a case currently pending before the Montana Supreme Court regarding the right to counsel in guardianship proceedings.

Wisconsin

A group of Wisconsin advocates led by John Ebbott from Legal Action Wisconsin filed a petition requesting the Wisconsin Supreme Court make rules that give trial judges wider discretion to appoint counsel in any civil case. NCCRC supported this effort with background research and written comments and testified at the October 2011 Supreme Court hearing about efforts in other states. The Wisconsin Access to Justice Commission endorsed the principles held in the ABA resolution and the state bar is now considering adoption of that resolution.

Georgia

Advocates have filed a class action lawsuit seeking a right to counsel for parents being held in civil contempt for failure to pay child support. NCCRC is helping the Georgia advocates figure out exactly how to proceed in light of the U.S. Supreme Court's decision that found no right to counsel in many such cases under the federal constitution.

Arkansas

With advice and support from the NCCRC, the Arkansas Access to Justice Commission endorsed the ABA resolution and issued a memo describing, among other things, their desire to work with NCCRC to further develop their plan of attack. Support is broad, with a task force comprised of members of the Commission, state bar and legal services working together

Illinois

The Shriver Center, one of the lead partners in the NCCRC, publishes a newsletter three times a year and hosts the NCCRC website www.civilrighttocounsel.org.

Indiana

Advocates sought to reverse a Court of Appeals Indiana decision that said the right to counsel for parents in termination proceedings did not extend to appeals. NCCRC assisted with research, strategic planning, and brief editing. In September 2010, the Indiana Supreme Court reversed the court of appeals and found that the statutory right to counsel at a termination of parental rights trial extends to the appeal.

Ohio

In 2010, NCCRC staff gave a presentation to one of the Ohio chapters of the American Constitution Society. Presentations like this create conversation and often spark a movement in a given state. After the presentation, attendees from legal services indicated their desire to re-energize their state's civil right to counsel task force.

New Hampshire

In light of the state legislature's decision to strip parents of their right to counsel in abuse/neglect proceedings, advocates have filed a suit to establish a constitutional right to counsel in such proceedings. The New Hampshire Supreme Court has accepted review of the matter. NCCRC is working to coordinate the efforts of advocates in the state and to provide research and strategic support to the litigation efforts.

Massachusetts

In 2009, Massachusetts created a statutory right to counsel in guardianship/conservator proceedings. In 2010, the state expanded the statutory right to counsel for children aged 18-22 who continue to receive services from the Department of Children and Families. The Boston Bar Association Task Force on Expanding the Civil Right to Counsel, made up of a broad spectrum of stakeholders across the state, proposed a number of approaches to right to counsel, including pilot projects. The Task Force began its first set of pilots in 2009 that focus on evictions in both district and housing court, and is exploring starting a second set of pilots that would look at custody cases

New York

NCCRC partner the Brennan Center for Justice and NCCRC staff are creating a national media campaign to highlight the need for counsel in foreclosure proceedings. The project will feature homeowners, attorneys, judges, and others. The campaign will be launched in fall 2011. The Chief Justice of the New York courts has stated his desire to provide attorneys for homeowners in all New York foreclosure cases.

Maryland

The Public Justice Center operates a hotline for people without a lawyer in custody cases, such that PJC might identify a suitable test case to litigate the right to counsel in private custody cases. The Maryland Access to Justice Commission issued a report detailing a framework for implementation of the civil right to counsel in the state and estimated the costs of such a program. PJC's Deb Gardner sits on the Commission's right to counsel subcommittee.

Washington DC

Plans are underway for a day-long civil right to counsel conference in December 2011 in Washington, DC. The conference will bring together coalition participants and others interested in establishing a right to counsel.

North Carolina

The Access to Justice Commission has adopted the ABA resolution and has introduced legislation that would provide authorization and funding for judges to appoint counsel in some civil cases. NCCRC also provided research and technical assistance to legal services advocates who successfully advocated against a repeal of the right to counsel for parents in dependency or termination of parental rights proceedings.

Sharing resources to get to the finish line

Successful movements require shared resources and the NCCRC team works hard to insure that advocates around the country benefit from each others' work. Currently, NCCRC staff is working closely with the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association (SCLAID) to create a valuable resource for judges. This online judges' manual will identify clearly established rights to counsel and areas of law that provide judges authority to appoint counsel. The principal source of information for this project is another large NCCRC project completed this year: substantive law memos that outline existing and prospective civil rights to counsel in all 50 states. We expect the judges' manual to be published in summer 2012.

Another valuable resource created and maintained by NCCRC staff is the coalition's wiki. Special thanks to PBWorks for their generous support of this project. This site maintains a bank of relevant documents that have been produced by the coalition and its members. A 75-page bibliography organized by subject provides links to relevant articles, publications and other helpful sources of information. The wiki and bibliography took hundreds of hours to create and now serve as invaluable resources for all who seek to establish a right to counsel in civil cases.

A very special thanks to those firms who supported our efforts to create the 50-state memos, especially:

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