IN THE SUPREME COURT OF THE STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY,

Appellant,

v.

ALASKA COURT SYSTEM, RANDALL GUY GORDANIER, AND SIV BETTI JONSSON,

Appellees.

Superior Court Case No. 3AN -06-8887 CI

Supreme Court No. S-12999

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE MARK RINDNER, JUDGE

BRIEF OF APPELLEE SIV BETTI JONSSON

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PROVISIONS PRINCIPALLY RELIED UPON

Alaska Statute 44.21.410. Powers and duties.

(a) The office of public advocacy shall

(1) perform the duties of the public guardian under AS 13.26.360-13.26.410;

(2) provide visitors and experts in guardianship proceedings under AS 13.26.131;

(3) provide guardian ad litem services to children in child protection actions under AS 47.17.030 (e) and to wards and respondents in guardianship proceedings who will suffer financial hardship or become dependent upon a government agency or a private person or agency if the services are not provided at state expense under AS 13.26.025;

(4) provide legal representation in cases involving judicial bypass procedures for minors seeking abortions under AS 18.16.030, in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for the termination of parental rights on grounds set out in AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for protective orders on behalf of a minor; and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests;

(6) develop and coordinate a program to recruit, select, train, assign, and supervise volunteer guardians ad litem from local communities to aid in delivering services in cases in which the office of public advocacy is appointed as guardian ad litem;

(7) provide guardian ad litem services in proceedings under AS 12.45.046 or AS 18.15.355-18.15.395;

(8) establish a fee schedule and collect fees for services provided by the office, except as provided in AS 18.85.120 or when imposition or collection of a fee is not in the public interest as defined under regulations adopted by the commissioner of administration;

(9) provide visitors and guardians ad litem in proceedings under AS 47.30.839;

(10) provide legal representation to an indigent parent of a child with a disability; in this paragraph, "child with a disability" has the meaning given in AS 14.30.350;

(11) investigate complaints and bring civil actions under AS 44.21.415(a) involving fraud committed against residents of the state who are 60 years of age or older; in this paragraph, "fraud" has the meaning given in AS 44.21.415.

(b) The commissioner of administration may

(1) adopt regulations that the commissioner considers necessary to implement AS 44.21.400-44.21.470;

(2) report on the operation of the office of public advocacy when requested by the governor or legislature or when required by law;

(3) solicit and accept grants of funds from governments and from persons, and allocate or restrict the use of those funds as required by the grantor.

(c) *[Repealed, Sec. 28 ch 90 SLA 1991].*

Administrative Rule 12. Procedure for Counsel and Guardian Ad Litem Appointments at Public Expense.

(e) Other Appointments at Public Expense.

(1) *Constitutionally Required Appointments.*

If the court determines that counsel, or a guardian ad litem, or other representative should be appointed for an indigent person, and further determines that the appointment is not authorized by AS 18.85.100(a) or AS 44.21.410, but in the opinion of the court is required by law or rule, the court shall appoint an attorney who is a member of the Alaska Bar Association to provide the required services. Other persons may be appointed to provide required services to the extent permissible by law.

(A) Appointments may be made in the following types of cases without prior approval of the administrative director, but only in cases in which the required services would not otherwise be provided by a public agency:

(i) Attorneys for biological parents in adoption cases to the extent required by the Indian Child Welfare Act (25 USC 1901 et seq.),

(ii) Attorneys for minor children and indigent parents or custodians of minor children in minor guardianship cases brought pursuant to AS 13.26.060(d),

(iii) Attorneys for respondents in protective proceedings brought pursuant to AS 13.26 in which appointment of the office of public advocacy is not mandated by statute,

(iv) Attorneys for minor children or incompetents who are heirs or devisees of estates in cases in which the attorneys' fees cannot be paid as a cost of administration from the proceeds of the estate,

(v) Attorneys for indigent putative fathers in actions to establish paternity in which the state of Alaska provides representation for mothers,

(vi) Attorneys to represent indigent respondents in involuntary alcohol commitments brought pursuant to AS 47.37,

(vii) Attorneys for indigent parents who are defending against a claim that their consent to adoption is not required under AS 25.23.050(a).

(B) In all other cases, the court shall inform the administrative director of the specific reasons why an appointment is required prior to making the appointment.

I. ISSUES PRESENTED

An Alaska statute requires the Office of Public Advocacy ("OPA") to provide legal representation to "indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency." However, no statute or court rule requires the appointment of counsel for an indigent parent involved in a custody case where the opposing party is represented by a *private attorney.* The issues presented are:

(1) Whether the trial court was correct in ruling that treating indigent parents in child custody cases differently, depending on whether their opponent is represented by public or private counsel, violates the Equal Protection Clause of the Alaska Constitution?

(2) Whether the trial court was correct in ruling the OPA statute required appointment of counsel to Ms. Jonsson because the appointment of a Guardian ad Litem representing the child's best interests satisfied the statutory requirement of an "opposing party . . . represented by counsel provided by a public agency?"

(3) The trial court also ruled that an appointed attorney was required as a matter of due process. The Office of Public Advocacy has not appealed on this point, and the Alaska Court System has not filed any cross-appeal. Ms. Jonsson's position is that this issue is not properly before the Court. Assuming, however, that this Court concludes that the issue is properly before the Court, the issue is whether the Due Process Clause of the Alaska Constitution requires the appointment of counsel for an indigent parent involved in a custody case where the opposing party is represented by a private attorney.

II. STATEMENT OF THE CASE

Ms. Jonsson generally agrees with the Office of Public Advocacy's statement of the case. However, she would like to bring a few additional facts to the Court's attention. First, Mr. Gordanier sought to limit Ms. Jonsson's involvement in her ten-year old daughter's life to supervised visits on the weekends based on allegations that Ms. Jonsson suffered from mental health issues. Exc. 139. Second, mental health issues of the daughter further complicated the case. On July 28, 2006, she was admitted to North Star Behavioral and Treatment Center. Exc. 22. Mr. Gordanier removed her from the facility contrary to Ms. Jonsson's wishes. *Id.* Finally, one of the reasons that the court appointed a Guardian ad Litem to represent the daughter's best interests was its concern that it was hearing a one-sided account from the perspective of Mr. Gordanier. *Id.*

The Office of Public Advocacy appeals the court's findings regarding the unconstitutionality of its enabling act and the applicability of the act to Ms. Jonsson's situation. It does not appeal the court's conclusion that Ms. Jonsson had a due process right to appointment of counsel. OPA's Brief at 3. Although it did not cross appeal the court's due process finding, the Court System attacks this portion of the court's ruling should the court rule in favor of OPA with regard to which agency has financial responsibility for appointment of counsel.

Ms. Jonsson's participation in this appeal is limited to addressing whether she had a right to court-appointed counsel. She takes no position on which agency is financially responsible for payment of the attorney's fees.

III. STANDARD OF REVIEW

Appellant OPA asserts that the independent judgment standard of review applies to the questions it presents to the court (OPA brief at 15, 25). The Alaska Court System does not specify any particular standard of review for the separate due process question, not raised by OPA, which the Court System asks the Court to address.

Appellee Jonsson's position is that appointed counsel was required by equal protection and due process as a matter of law. The standard of review of constitutional questions is de novo. *Bodkin v. Cook Inlet Region, Inc.*, 182 P.3d 1072 (Alaska 2008); *Hartman v. State, Dept. of Admin., Div. of Motor,* 152 P.3d 1118 (Alaska 2007); *Simpson v. State, Commercial Fisheries Entry Com'n*, 101 P.3d 605, 609 (Alaska 2004) ("We review questions of law and issues of constitutional interpretation de novo under the substitution of judgment standard.").

However, Appellee Jonsson would bring to the Court's attention that in *Midgett v. Cook Inlet Pre-Trial Facility*, 53 P.3d 1105, 1109 (Alaska 2002), this Court said that "[t]he decision to appoint counsel for a civil litigant is a procedural decision, which we review for abuse of discretion." This Court has approached parallel procedural issues by reviewing the trial court decision under both the abuse of discretion standard and the independent judgment standard as to whether a constitutional violation has

occurred. *Richard B. v. State*, 71 P.3d 811, 817 (Alaska 2003) ("We review decisions regarding the telephonic appearance of a party for abuse of discretion. However, we will review *de novo* whether the decision to require an imprisoned parent to testify telephonically rather than transporting him to a termination trial violates his right to due process. On that question, we will adopt the rule most persuasive in light of precedent, reason, and policy.").

Since Ms. Jonsson's position is that equal protection and due process required the trial court to appoint an attorney, this brief is written from the perspective that this Court will apply its independent judgment to those questions. If the Court agrees that equal protection or due process does so require, then it follows that the trial court's ruling would also be upheld under the more deferential abuse of discretion standard. However, if the Court were to disagree that the Constitution requires counsel as a matter of law, it would need to separately address the question of whether the trial court abused its discretion.

IV. ARGUMENT

A. The Equal Protection Clause of the Alaska Constitution Required the Court to Appoint an Attorney for Ms. Jonsson.

OPA does not challenge the lower court's conclusion that the Due Process Clause of the Alaska Constitution required the appointment of counsel for Ms. Jonsson. Rather, OPA argues that AS 44.21.410, which requires that the agency provide legal representation to "indigent parties in cases involving child custody in which the

opposing party is represented by counsel provided by a public agency," does not violate the Equal Protection Clause. OPA concedes that the statute treats indigent parents whose opponents are represented by a public agency differently from indigent parents whose opponents are represented by private counsel. But OPA argues that because there are "other sources" for the appointment of counsel for an indigent parent in Ms. Jonsson's situation, such as the Court System, there is no equal protection violation.

OPA's argument overlooks the fact that the OPA statute is mandatory, *requiring* a trial court to appoint counsel for indigent parents in child custody cases where the opponent is represented by a public agency. In contrast, Administrative Rule 12(e)(1) is discretionary. That rule authorizes a trial court to appoint counsel if "in the opinion of the court [appointment] is required by law or rule . . . ." In other words, when an indigent parent is faced by an opponent who is represented by a public agency, appointment of an OPA attorney is mandatory. But when the OPA statute does not apply, as here, the trial judge's decision to appoint counsel is discretionary. In the absence of a bright line rule that the court is required to appoint counsel for an indigent parent involved in a custody dispute, some judges will decide to appoint counsel and others may not, depending on the facts and circumstances of the particular case. Yet, when an indigent parent's opponent is represented by a public agency in a custody dispute, the OPA statute mandates the appointment of counsel, regardless of any other facts or circumstances. Accordingly, it is not merely the OPA statute that treats

similarly-situated indigent parents differently – the State's entire mechanism for appointment of counsel for indigent parents treats them differently. Some are entitled to counsel as a matter of right and others, like Ms. Jonsson, are not. That is not equal treatment.

As the Court System's brief correctly notes, if the statute treats similarly-situated people differently, it violates equal protection regardless of whether there may be other sources for the appointment of counsel. Court System Brief at 4-5. The cure for this problem is severance of the offending clause of the statute. *Id.* at 5-10.

The Court System's support of the trial court's equal protection ruling is limited, however, to the proposition that the OPA statute only violates equal protection "[i]f the trial court was right in ruling that Ms. Jonsson has a due process right to counsel . . . ." *Id.* at 4. In other words, if the decision in *Flores v. Flores*, 598 P.2d 893 (Alaska 1979), requires the appointment of counsel for indigent parents whose opponents are represented by a private attorney, as well as those whose opponents are represented by a public attorney, both groups are similarly situated, and therefore a statute that provides an attorney for one group but not the other violates equal protection. However, the Court System later argues that the trial court erred in ruling that due process requires appointment of counsel for indigent parents like Ms. Jonsson, whose opponent was represented by private counsel. *Id.* at 15-31.

The Court System's view of equal protection is too narrow. The OPA statute violates equal protection regardless of whether *Flores* requires the appointment of

counsel for Ms. Jonsson. An indigent parent in Ms. Jonsson's situation is similarly situated to an indigent parent whose opponent is represented by a public agency. There is simply no meaningful distinction between an indigent parent whose opponent is represented by publicly-funded versus privately-funded counsel. In either case, the parent is indigent and faces the possible loss of custody of his or her child in a court proceeding where the opposing party is represented by an attorney. Whether the opposing party's attorney is provided by public funds or private funds should make no difference in the analysis. Thus, Ms. Jonsson has established the initial showing required in an equal protection challenge – different treatment of two similarly-situated classes of people. *See Matanuska Susitna Borough School District v. State of Alaska,* 931 P.2d 391 (Alaska 1997) , 397, n.7 (*quoting Cosro, Inc. v. Liquor Control Bd.,* 733 P.2d 539, 543 (Wash. 1987) ("To show a violation of the equal protection clause, a party must first establish that the challenged act treats unequally two similarly situated classes of people.")).

The crucial question should be whether the reason for the disparate treatment between these two similarly-situated classes of people is constitutionally justified. The trial court correctly analyzed the equal protection issue applying the now familiar sliding scale of review ranging from relaxed scrutiny at the lowest level to strict scrutiny at the highest. Alaska's equal protection test is summarized in a much quoted passage from *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264 (Alaska 1984) (citations omitted):

> First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of the interest is the most important variable in fixing the appropriate level of review. Thus, the initial inquiry under Article I, section 1 of Alaska's constitution goes to the level of scrutiny .... Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.
>
> Second, an examination must be undertaken of the purposes served by the challenged statute. Depending on the level of review determined, the state may be required to show only that its objections were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.
>
> Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of the analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.

Id. at 269-70.

Under both the Alaska and the federal equal protection tests, the infringement of a fundamental right or a classification based on suspect class is subject to heightened scrutiny. This Court consistently has recognized the constitutional importance of a parent's interest in directing the upbringing of his or her child. In *Reynolds v. Kimmons*, 569 P.2d 799, 804 (Alaska 1977), this Court described the parent-child relationship as "one of society's most important relationships." In *Flores v. Flores*, 598

P.2d 893, 895 (Alaska 1979), the Court described the right to direct the upbringing of one's child as "one of the most basic of all civil liberties." And in *Matter of K.L.J.*, 813 P.2d 276, 279 (Alaska 1991), this Court, *quoting Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), stated, "the right to have children [is] 'a basic civil right of man,'" and, quoting *May v. Anderson*, 345 U.S. 528, 533 (1953), "'a right far more precious . . . than property rights.'" "The right to the care, custody, companionship, and control of one's children 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" *Matter of K.L.J.*, 813 P.2d at 279, *quoting Stanley v. Illinois,* 405 U.S. 645, 651 (1972).

Neither OPA nor the Court System challenges the constitutional importance of a parent's interest in the care and custody of his or her child. In light of the fundamental importance of the parent-child relationship, the State therefore must demonstrate a compelling interest to justify the OPA statute's different treatment of an indigent litigant such as Ms. Jonsson as compared to an indigent litigant whose opponent is represented by a public agency.

Neither OPA nor the Court System has advanced a constitutional justification for the disparate treatment of Ms. Jonsson. Instead, OPA argues that focusing on the terms of the statute is not the correct approach for determining whether similarly-situated persons are treated differently because there are sources other than the OPA statute for the appointment of counsel, specifically Court System Administrative Rule 12(e). On the other hand, the Court System focuses on the statute and candidly

acknowledges that "[t]he only reason that AS 44.21.410 makes the distinction it does is because providing appointed counsel to parents whose opponents are represented by a public agency was required after *Flores*, whereas providing appointed counsel to parents in Ms. Jonsson's position was not." Court System's Brief at 4-5. The Court System's explanation is correct, but it is not a justification for the statute's disparate treatment that qualifies as a compelling state interest. Instead, the explanation merely shows that the Legislature did not even consider whether an indigent parent in Ms. Jonsson's situation should be provided with a lawyer.

In sum, there is no compelling state interest in treating Ms. Jonsson differently from indigent parents whose opponents are represented by an attorney provided by a public agency. In the absence of such a justification, there is no need to address the third component of the equal protection analysis, the means to ends fit. Thus, the trial court was correct in concluding that AS 44.21.410, by not affording the right to appointed counsel to Ms. Jonsson, violates the Equal Protection Clause of the Alaska Constitution.

B. Ms. Jonsson Had a Due Process Right to Appointed Counsel.

1. The Issue of Whether the Due Process Clause Required the Appointment of Counsel to Ms. Jonsson is Not Properly Before the Court.

As noted previously, the appealing party, OPA, does not challenge the trial court's ruling that due process required the appointment of counsel to Ms. Jonsson. The Court System did not cross appeal. Yet, the Court System argues that if the trial

court's decision to require OPA to pay for the cost of the court appointed attorney is not affirmed, this Court should reverse the ruling that due process required the appointment of counsel to Ms. Jonsson.

An appellee may not advance arguments attacking the judgment below unless it has filed a cross appeal. *Karrie B. v. Catherine J.*, 181 P.3d 177, 183-84 (Alaska 2008); *Anderson v. Edwards*, 625 P.2d 282, 285 (Alaska 1981). Here, the Court System did not appeal the judgment below. Only OPA appealed, and it did not challenge the trial court's ruling that the Due Process Clause required the appointment of counsel to Ms. Jonsson. Nor does the Court System's argument attacking the due process ruling fall within the limited exception that a lower court's judgment can be defended on any basis established in the record. *See Snyder v. Am. Legion Spenard Post No. 28*, 119 P.3d 996, 1001 (Alaska 2005); *Sea Lion Corp. v. Air Logistics of Alaska*, 787 P.2d 109, 116 (Alaska 1990). Here, the Court System's due process argument is not an attempt to defend the judgment below, but rather is a collateral attack on one of the trial court's fundamental rulings.

2. The Due Process Clause Requires the Appointment of Counsel to an Indigent Parent Faced with the Possible Loss of Child Custody When Her Opponent is Represented By Private Counsel.

If the Court does address the Court System's due process argument, it should affirm the trial court's decision that Ms. Jonsson had a due process right to appointed counsel. This Court previously has held that an indigent parent faced with the possible loss of custody of her child in a private custody dispute is entitled to appointed counsel

when the other parent is represented by "a public agency." *Flores v. Flores*, 598 P.2d 893 (Alaska 1979). However, the fact that the opposing parent in *Flores* was represented by a public agency (Alaska Legal Services) was not the crucial factor in the Court's decision. Instead, the two principal rationales for the decision were (1) the importance of the interest at stake – the right to the upbringing of one's child, which the Court described as "one of the most basic of civil liberties," *Id.* at 895, and (2) the fact that "[c]hild custody determinations are among the most difficult in the law," requiring the court to make the "crucial determination of what is best for the child." *Id.* at 896, *quoting Horton v. Horton*, 519 P.2d 1131,1132 (Alaska 1974). This Court explained that "[t]he due process clause of the Alaska Constitution is 'flexible, and the concept should be applied in a manner which is appropriate in terms of the nature of the proceeding.'" *Matter of K.L.J.* at 278. In addition to the right to be heard, due process includes "the right to adequately represent one's interests." *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 192 (Alaska 1980) (internal citations omitted).

Alaska's constitutional right to counsel has been interpreted to afford broader protections than the federal Constitution. Unlike under the federal Constitution, there is no "presumption" in Alaska that counsel should only be appointed in cases where loss of physical liberty is at stake. *Matter of K.L.J.*, 813 P.2d at 285. As explicitly stated in the *Matter of K.L.J.*:

> In general, courts when confronted with the issue have generally held that in the absence of statute, an indigent parent is entitled as a matter of procedural due process to

> appointed counsel when faced with loss of child custody or permanent termination of parental rights.

Id., *citing* Annotation, Right of Indigent Parent to Appointed Counsel in Proceeding for Involuntary Termination of Parental Rights, 80 A.L.R.3d 1141, 1144-45 (footnotes omitted).

Three factors are relevant in determining what process is constitutionally required:

> (1) the private interest that will be affected by the official action;
>
> (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
>
> (3) the [G]overnment's interest.

Matter of K.L.J., 813 P.2d at 279 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

a. The Private Interest at Stake – the Parent-Child Relationship is a Highly Protected Constitutional Interest.

As noted above, this Court consistently has recognized the constitutional importance of a parent's interest in directing the upbringing of his or her child. *Flores v. Flores*, 598 P.2d 893, 895 (Alaska 1979); *V.F. v. State*, 666 P.2d 42, 45 (Alaska 1983) (quoting *Flores* at 895). Other courts have consistently concluded that the loss of legal or physical custody of a child, even temporarily, amounts to a substantial deprivation that warrants due process protection. *See Eidson v. State of Tennessee,*

Dep't of Children's Servs., 510 F.3d 631, 635 (6th Cir. 2007) ("[e]ven a temporary deprivation of physical custody" triggers the Due Process Clause and thus "requires a hearing within a reasonable time"); *see also In re Adoption of A.F.M.*, 15 P.3d 258, 266 (Alaska 2001) (loss of custody is "punishment more severe than many criminal sanctions" (quoting *Matter of K.L.J.* at 283). "Parents should not be deprived of the fundamental rights and duties inherent in the parent-child relationship except for grave and weighty reasons," and even then, only pursuant to proceedings that comport with due process of law. *S.J. v. L.T.*, 727 P.2d 789, 796 (Alaska 1986) (internal quotation marks and citation omitted). The U.S. Supreme Court acknowledged in *Lassiter* that "[a] parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" *Lassiter v. Dept. of Social Services of Durham Co., N.C.*, 452 U.S. 18, 28 (1981), *rehearing denied by* 453 U.S. 927 (1981) (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)); *cf. Quilloin v. Walcott*, 434 U.S. 246, 255 (1978), *rehearing denied by* 435 U.S. 918 (1978) ("We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objection of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." (internal quotation marks and citation omitted)).

Consistent with the conclusion that "the right to direct the upbringing of one's child" is a fundamental civil liberty protected by both the state and the federal constitutions, this Court in *Flores* emphasized that due process requires the appointment of counsel "'whenever an indigent parent, unable to present his or her case properly, faces a substantial possibility of the loss of custody or of prolonged separation from a child,'" even in the context of a private divorce proceeding. 598 P.2d at 895 (quoting *Cleaver v. Wilcox*, 499 F.2d 940, 945 (9th Cir. 1974)); *see also Reynolds v. Kimmons*, 569 P.2d 799, 801 (Alaska 1977) ("'[T]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard [through] counsel.'" (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)). It was thus clearly consistent with prior precedent and universally accepted due process principles for the trial court in this case to afford great weight to the need to preserve Ms. Jonsson's parental rights when it considered whether counsel should be appointed to represent her in defending against the contention that she should no longer maintain custody of her daughter.[1]

The trial court found that Ms. Jonsson faced "a significant infringement on her fundamental parent-child relationship." Exc. 69. It pointed out that her time with her daughter stood to be "significantly reduced" by the action brought by Mr. Gordanier.

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[1] Notably, the Board of Governors of the Alaska Bar Association just recently adopted a resolution urging the State to "provide legal representation as a matter of right to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving . . . child custody . . . ." *See* Exhibit 1 attached hereto.

Id. In fact, Mr. Gordanier initially argued for Ms. Jonsson to have only supervised visitation with her daughter on the weekends, even though she had been the child's primary caretaker for the past ten years. Exc. 234, note 2. Such an extreme reduction in time spent with her daughter implicated Ms. Jonsson's constitutionally-protected interest in the relationship with her child.

The Court System argues that because Ms. Jonsson's parental rights were not at risk of being permanently terminated, her interest did not rise to the level of triggering a due process right to appointed counsel. This argument ignores the fact that *Flores*, as here, involved only a private custody dispute between parents – not a proceeding involving termination of parental rights – and yet this Court ruled that the private interest at stake was "one of the most basic of all civil liberties, the right to direct the upbringing of one's child." 598 P.2d at 895. Moreover, this Court has several times cited with approval the following passage from a Ninth Circuit case:

> Parents are entitled to a judicial decision on the right to counsel in each case. The determination should be made with the understanding that due process requires the state to appoint counsel whenever an indigent parent, unable to present his or her case properly, faces a substantial possibility of the loss of custody or of prolonged separation from a child.

Cleaver v. Wilcox, 499 F.2d 940, 945 (9th Cir. 1974) (emphasis added); *see K.L.J.*, 813 P.2d at 284; *Flores*, 598 P.2d at 895; *V.F. v. State*, 666 P.2d at 45 (Alaska 1983); and *Reynolds v. Kimmons*, 569 P.2d 799, 802 (Alaska 1977) (all four Alaska cases citing to above-quoted language from *Cleaver* with approval).

The Court System cites to a number of cases outside Alaska in which courts have concluded that proceedings involving custody disputes do not trigger a due process right to counsel. Court System's Opening Brief at 17-19. In addition to being inconsistent with *Flores*, these cases have no relevance in Alaska because they were decided by courts in jurisdictions recognizing the *Lassiter* presumption against appointment of counsel except in limited circumstances. *See, e.g., In the Matter of the Marriage of King*, 174 P.3d 659 at n.13 (Wash. 2007); *Mead v. Batchlor*, 460 N.W.2d 493, 505 (Mich. 1990); *Carroll v. Moore*, 423 N.W.2d 757, 762-766 (Neb. 1988); *State v. Cook,* 481 A.2d 823, 828-29 (N.H. 1984) (all recognizing and applying the *Lassiter* presumption). Unlike Washington, Michigan, Nebraska, and New Hampshire, Alaska has explicitly rejected this presumption. *See Matter of K.L.J.*, 813 P.2d at 285 (explaining that courts in Alaska "do not weigh the factors in a due process analysis against a 'presumption' that appointed counsel is required only if a person's physical liberty is at stake."). Therefore, Alaska recognizes a broader right to appointed counsel under its Due Process Clause than do the states where the cases cited by the Court System were decided. The state court decisions cited by the Court System are of little precedential value in Alaska.

b. Ms. Jonsson's Interest Was Affected by State Action.

The Court System argues that Ms. Jonsson's interest in the custody of her child in this proceeding was not affected by state action because this was merely a dispute between private parties. The Court System argues that in order for appointment of

counsel to be justified under the Due Process Clause, the State itself must be involved in the case as an advocate. In support of this argument, the Court System cites various cases in which the State was seeking to either terminate parental rights, establish paternity, or provided representation for the opposing party. In those cases, the integral involvement of the State leaves no question about the state action requirement.

However, the direct involvement of the State is not the only factor that this Court has considered in determining whether there is state action. In the *Flores* decision, the Court found official action based on three factors: (1) the opposing party was represented by a public agency, Alaska Legal Services;[2] (2) "marriages and divorces are wholly creations of the state"; and (3) court orders regarding child custody are enforceable by the State. 598 P.2d at 895-96. The Court cited with approval the reasoning in *Boddie v. Connecticut*, 401 U.S. 371 (1971), that in a divorce proceeding, the resort to the judicial process by the defendant is not voluntary. *Id.* at n.9. Likewise, Ms. Jonsson's resort to the judicial process was not voluntary. She was forced to defend her interest in the care and custody of her child in a judicial setting. Thus, even though Mr. Gordanier was not the State nor represented by a public agency as in *Flores*, there is little doubt that Ms. Jonsson's private interest was affected by the other aspects of "state action" recognized in *Flores*.

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[2] The *Flores* court relied, in part, on the fact that one of the parties was represented by Alaska Legal Services, which the court described as a public agency, presumably because it receives public funds. But Alaska Legal Services is neither a state agency nor an arm of the state.

Moreover, as the Court System candidly acknowledges, the trial court's appointment of a guardian ad litem may provide an independent basis justifying appointment of counsel because a guardian ad litem provided by a public agency represents an "opposing party" for purposes of AS 44.21.410(a)(4). Court System's Brief at 13-15 and 19-20. As argued below in Section IV.C, that is correct. But regardless of whether appointment of a GAL brings the case within the scope of AS 44.21.410(a)(4), the mere fact that a GAL is participating in the case means that state action is being brought to bear on Ms. Jonsson's private interest in the custody of her child. When this fact is coupled with the facts that Ms. Jonsson was forced involuntarily into a court proceeding, and that court orders regarding child custody are enforceable by the State, there should remain no doubt about the presence of "state action" in this case.

Any lingering doubt about the presence of state action here is resolved by this Court's most recent treatment of the issue in *Matter of K.L.J.*, decided twelve years after the *Flores* decision. There, the Court examined whether a biological father contesting termination of his parental rights as part of an adoption proceeding had a due process right to appointed counsel. 813 P.2d 276, 277. The father's opponent was his child's mother, who was represented by private counsel. Despite the fact that the state had no involvement in the matter other than providing a venue and means for resolution of the dispute, the court held that "sufficient state involvement exists here to require court appointed counsel." *Id.* at 283. The court also pointed out that resort to

the judicial process was the only way the parties could accomplish their respective objectives. *Id.* Thus, the *Matter of K.L.J.* decision shows that the state action requirement is clearly present here.

The Court System's reliance on *Belluomini v. Fred Meyer of Alaska, Inc.*, 993 P.2d 1009, 1015 (Alaska 1999), to show the absence of state action is not well-founded. Belluomini sued Fred Meyer for damages based, *inter alia*, on the company's having given Belluomini a trespass notice forbidding his entry into any Fred Meyer store. The court noted that a constitutional tort claim could not proceed because Belluomini was complaining of a purely private action. State action was lacking in that case because Belluomini was a plaintiff seeking damages for a constitutional tort based on events that had already occurred before any court action had been filed. Had he been the defendant in a case brought by Fred Meyer against him, for entry of a money judgment or an injunctive stay-away order, there can be no doubt that due process would have applied to protect Belluomini's rights as a defendant in that suit.

c. Without Court-Appointed Counsel Ms. Jonsson Faced a Significant Risk of Error.

The Court must next examine the risk of Ms. Jonsson being erroneously deprived of her right to the care, custody, companionship and control of her child if counsel was not provided. As explained by this Court in *Flores*, "child custody determinations are among the most difficult in the law," and, therefore, "a parent who is without the aid of counsel in marshalling and presenting the arguments in his favor will be at a decided and frequently decisive disadvantage which becomes even more

apparent when one considers the emotional nature of child custody disputes, and the fact that all of the principals are likely to be distraught." 598 P.2d 893, 896.

In discussing the risk of error absent appointment of counsel in the *Matter of K.L.J.*, the Court recognized that the indigent party's physical disability hindered his ability to communicate with the Court. 813 P.2d 276, 282. Based in part on this personal disadvantage, the Court concluded that due process required appointment of counsel. *Id.*

Ms. Jonsson similarly faced a significant risk of erroneous infringement of her parent-child interest absent appointment of counsel. The trial court pointed out that "the proceedings may require a complex digestion and presentation of medical and psychiatric witnesses and records, evidentiary rules, and child custody statutes." Exc. 69. Alleged mental health problems of the daughter, as well as Ms. Jonsson herself, added to the complexity of the proceedings. Exc. 234, note 2. Neither OPA nor the Court System has challenged these findings.

Psychological reports and expert witnesses increase the difficulty of any case. To the extent Ms. Jonsson did have any mental health problems, the emotional nature of the case could only have exacerbated her problems, making it difficult for Ms. Jonsson to adequately represent herself and communicate effectively with the court.[3]

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[3] Such a personal disadvantage is analogous to the physical disability faced by the unrepresented father in *Matter of K.L.J.* Both physical and mental disabilities can hinder a party's ability to communicate with the court and be an effective advocate for one's interests.

In addition, the custody motion initially brought by Mr. Gordanier was heard on an expedited basis, limiting the amount of time Ms. Jonsson had to address his arguments. Exc. 21 and 25. The court's expression of concern on August 31, 2006, about whether he was hearing a "balanced" presentation of the facts shows that Ms. Jonsson was at a decided disadvantage from this early stage in the case. Exc. 22. The court's appointment of the GAL, as well as a custody investigator, further complicated the case and increased the risk of error. Exc. 144-45. GALs and custody investigators are often conduits of evidence, especially when an unrepresented party does not know how to properly raise evidentiary objections. For these reasons, the court properly concluded that the risk of error absent appointment of counsel was great. Exc. 234, note 2.

The Court's decision should not turn on the specific facts of this case, however. The type of individualized factors present in Ms. Jonsson's situation, which could arise in virtually any custody case, are often not apparent at the beginning of the proceeding when appointment of counsel is requested. Therefore, the Court should adopt a bright line rule that counsel should be appointed for indigent parents in custody disputes where their opponent is represented by counsel, regardless of whether the opposing counsel is publicly or privately funded. This Court has specifically rejected the case-by-case approach to appointment of counsel as set out in *Lassiter v. Dept. of Social Services* in favor of a bright line right to counsel. *Matter of K.L.J.*, 813 P.2d at 282 n.6. As explained in *Matter of K.L.J.*, a bright line rule is favored where "the private interest [is] weighty, the procedure devised by the state fraught with risks of error, and

the countervailing governmental interest insubstantial." *Id.*, *quoting Lassiter*, 452 U.S. 18, 48-49 (Blackmun dissenting). Moreover, "procedural norms" are preferred and "the case-by-case approach does not lend itself to judicial review. *Id.* This Court quoted with approval from an article discussing the reasons for a bright-line rule:

> First, as Justice Blackmun illustrated, the case-by-case approach adopted by the majority does not lend itself practically to judicial review. The transcript of a termination proceeding alone will not be dispositive of whether an unrepresented indigent was disadvantaged. The transcript will not show whether the indigent litigant had adequate discovery or access to legal resources necessary for constructing a defense. Consequently, the reviewing court must expand its analysis into a "cumbersome and costly," time-consuming investigation of the entire proceeding. Since the case-by-case approach involves a constitutional inquiry, "it necessarily will result in increased federal interference in state proceedings."
>
> . . . A case-by-case approach is also time consuming and burdensome on the trial court. Not only must it determine in advance the need for counsel, it must develop pretrial procedures and standards in order to determine properly the need for counsel. There is no guarantee that these standards will produce equitable decisions in every case. Additionally, it will not always be possible for the trial court to predict accurately, in advance of the proceedings, what facts will be disputed, the character of cross-examination, or the testimony of various witnesses. These factors increase the possibility that appointment of counsel will be denied erroneously by the trial court. Because of the procedural delays encountered in litigation of appeals, the parent's rights could be terminated erroneously for an extended period of time. The parent also would be denied the custody of his or her children during this period. An absolute right to counsel would avoid any erroneous denial of appointment of counsel and would eliminate the need for cumbersome and time-consuming standards, while preserving the right to family integrity.

Id., *quoting* Note, *Lassiter v. Department of Social Services: A New Interest Balancing Test for Indigent Civil Litigants*, 23 Cath.U.L.Rev. 261, 282-833 (1982) (footnotes omitted).

This Court's recent decision in *Capolicchio v. Levy*, 194 P.3d 373 (Alaska 2008), also demonstrates the need for counsel in child custody cases. There, the Court reinforced its rule that, if a *pro se* litigant files a defective opposition to a motion for summary judgment, the trial judge has a duty to notify the litigant of the defect and the means to cure it, but if a *pro se* litigant files no opposition at all, there is no duty on the part of the trial judge to give any warning before granting the motion. The ruling underscores the difficulties facing both trial and appellate court judges, and the arbitrariness of the lines that have to be drawn, when those courts are forced to try to do justice to *pro se* litigants. As the Court explained, quoting from the *Bauman* ruling:

> It strikes us as common knowledge that initiating and pursuing a civil lawsuit can be a difficult and complex procedure. The Alaska Rules of Civil Procedure have been promulgated for the specific purpose of giving fair and reasonable notice to all parties of the appropriate procedural standards that should be uniformly applied when any party, including a *pro se* litigant, seeks relief in the pending action. A *pro se* litigant who wants to initiate such an action should familiarize himself or herself with the rules of procedure . . . . *To require a judge to instruct a pro se litigant as to each step in litigating a claim would compromise the court's impartiality in deciding the case by forcing the judge to act as an advocate for one side.*

Id. at 378-79, *quoting Bauman v. State, Div. of Family & Youth Servs.*, 768 P.2d 1097, 1097-98 (Alaska 1989) (emphasis added).

Defending a civil lawsuit can be no less difficult and complex than initiating one. Indeed, a *pro se* plaintiff may have the luxury of familiarizing himself with the rules before initiating a lawsuit, but a *pro se* defendant, such as Ms. Jonsson, has considerably less opportunity to do so.

Moreover, expecting the judge to assist a *pro se* litigant involved in a custody dispute is likely to compromise the judge's impartiality, thus increasing the risk of error in cases that this Court has described as "among the most difficult in the law." *Flores*, 598 P.2d at 896, *quoting Horton v. Horton*, 519 P.2d 1131,1132 (Alaska 1974).

d. The State's Primary Interest was Actually Aligned with Ms. Jonsson's.

Finally, the State's interest must be weighed in the balance. In the context of cases involving parental rights, the State's interest has been described as "[f]irst and foremost . . . in the children." *Matter of K.L.J.*, 813 P.2d at 280. To that end, the State shares the parents' interest in an accurate and just decision. *Id.* Because accurate and just results are more likely to be achieved through an "equal contest of opposed interests," the State shares the indigent parent's interest in appointment of counsel. *Id.*; *see also Lassiter v. Dept. of Social Services*, 452 U.S. 18, 28 (1981) (describing the State's interests in the context of dependency hearings involving indigent parents).

The State has secondary concerns in avoiding (1) the cost of appointed counsel; and (2) lengthening and drawing out judicial procedures. *Id.* However, the U.S. Supreme Court has cautioned that "though the State's pecuniary interest is legitimate, it is hardly significant enough to overcome private interests as important as those [involving custody rights]." *Lassiter*, 452 U.S. at 28. With regard to the length of judicial procedures, appointment of counsel makes settlement of the dispute more likely, thus avoiding what could otherwise be a lengthy trial. Indeed, this case was settled after the appointment of counsel, thus significantly reducing the amount of time that otherwise would have been required for the trial court to hear the dispute. Exc. 231. Even if a case goes to trial, appointed counsel will likely improve the efficiency of the proceeding, which is often lengthened when a *pro se* party unfamiliar with court procedures attempts to represent him or herself.

In summary, Ms. Jonsson's case satisfies the *Mathews v. Eldridge* balancing test. She has a significant, constitutionally-protected interest in her parent-child relationship. The dispute was complicated, and Ms. Jonsson was not equipped to represent herself. Finally, the State's primary interest, namely a correct, efficient, and fair outcome, coincides with Ms. Jonsson's. To the extent that the State has a pecuniary interest, this interest is "hardly sufficient" to overcome Ms. Jonsson's interest.

C. The Court's Appointment of a Guardian ad Litem Triggered Ms. Jonsson's Right to Appointed Counsel under *Flores* and AS 44.21.410(a)(4).

Ms. Jonsson agrees with the Court System's argument that the trial court's appointment of a GAL brings this situation within the scope of cases in which a right to counsel is triggered under the *Flores* decision and AS 44.21.410(a)(4). The *Flores* court established that an indigent party to a child custody case has a right to appointed counsel when his or her opponent is represented by counsel provided by a "public agency." 598 P.2d at 896 n.12. This holding has since been codified at AS 44.21.410(a)(4), which requires OPA to provide legal representation "to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency. . . ." Because the GAL acts as an advocate for the child, whose interests very often diverge from an indigent parent's, and the GAL was provided by OPA, a "public agency," the court's appointment of a GAL in this case triggered Ms. Jonsson's right to counsel under *Flores* and AS 44.21.410(a)(4).

Alaska courts have established that the GAL's role in a custody case is to act on behalf of the child as an advocate. This court has equated the GAL's role to that of an attorney for the child: "We have concluded that a guardian ad litem . . . is in every sense the child's attorney, with not only the power but the responsibility to represent his client zealously and to the best of his ability." *Veazy v. Veazy*, 560 P.2d 382, 387 (Alaska 1977), *superseded by statute on other grounds*, ch. 63, § 30, SLA 1977, as recognized in *Deivert v. Oseira*, 628 P.2d. 575, 579 (Alaska 1981). Further, a child's

role in a custody case is, realistically, as an opponent of one or both of the parents. As explained by the *Veazy* court:

> The terms of custody, visitation, and support may vary greatly. None of those issues is of an 'either-or' nature, and they are all of interest to the child. Shared or joint custody is sometimes awarded . . . . A guardian ad litem might advance such a proposal while counsel for each claimant advocates that sole custody be given to his client. The guardian ad litem might feel that none of the claimants before the court ought to have custody, and recommend some other disposition.

Veazy, 560 P.2d at 388-89. Therefore, the GAL is likely to disagree with at least one of the parents, and will frequently oppose both with regard to certain aspects of their respective positions. In this regard, the child who is represented by a GAL in a custody dispute functions in the case as an "opposing party."

In sum, the court's appointment of a GAL provides an additional basis for appointment of counsel in this case. In Alaska, a GAL functions as an advocate for the child, and this role has been equated to that of an attorney. A child's interests often diverge from at least some aspects of the parents', making the child an "opposing party" in the case. Therefore, when a GAL is provided by a public agency, as was the case here, the language of *Flores* and AS 44.21.410(a)(4) triggers an indigent parent's right to court-appointed counsel.

CONCLUSION

The trial court correctly ruled that the Alaska Constitution's promise of equal protection and due process required the appointment of counsel to an indigent parent involved in a child custody dispute, when the opposing parent was represented by a private attorney. The judgment below should be affirmed.

DATED: November 19, 2008.

PERKINS COIE LLP
Attorneys for Appellee
Siv Betti Jonsson

By: _____
Thomas M. Daniel, Alaska Bar No. 8601003

By: _____
Amy MacKenzie, Alaska Bar No. 0505026

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

OFFICE OF PUBLIC ADVOCACY, Appellant, v. ALASKA COURT SYSTEM, RANDALL GUY GORDANIER, AND SIV BETTI JONSSON, Appellees.	Case No Superior Court Case No. 3AN -06-8887 CI Supreme Court No. S-12999

AFFIDAVIT OF DEBORAH O'REGAN

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

Deborah O'Regan, being first duly sworn, states as follows:

1. I am the executive director of the Alaska Bar Association. Unless indicated otherwise, this affidavit is based upon personal knowledge or the review of the documents identified below.

2. Exhibit A to this affidavit is a true and correct copy of the "Minutes of the Board of Governors of the Alaska Bar Association September 11 & 12, 2008." The meetings of the Board of Governors of the Alaska Bar Association are recorded using an audio recording device. The recordings are later summarized in writing as meeting minutes. I attended the September 11 & 12, 2008 meeting of the Board of Governors of the Alaska Bar Association. I have reviewed the minutes of this meeting attached to this affidavit as Exhibit A. They accurately summarize the events that took place at the meeting in question.

3. Exhibit B to this affidavit is a true and correct copy of the "Civil

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Gideon resolution" adopted by the Board of Governors, Alaska Bar Association, on September 11, 2008. See Paragraph 11B of Exhibit A (discussing and adopting same). This resolution is also available online at:

http://civilrighttocounsel.org/pdfs/alaska_bar_resolution_9_2_2008.pdf

FURTHER AFFIANT SAYETH NAUGHT.

DATED at Anchorage, Alaska, this 18TH day of November, 2008.

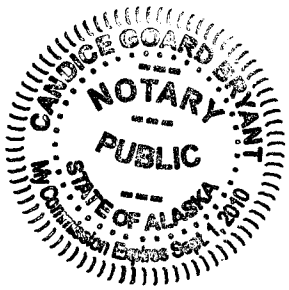
Deborah O'Regan

Deborah O'Regan

SUBSCRIBED AND SWORN to before me on November 18TH, 2008.

Candice Goard Bryant

Notary Public for Alaska
My Commission expires: 9-1-2010



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Minutes of the Board of Governors
of the Alaska Bar Association
September 11 & 12, 2008

The meeting of the Board of Governors was called to order on September 11, 2008 at 9:00 a.m. at the office of the Alaska Bar Association in Anchorage. The following Board members were present:

Sid Billingslea, President-elect
Don McLean, Vice President
Jason Weiner, Treasurer
Carl Ekstrom
Don McClintock
Allison Mendel
Hanna Sebold
Krista Stearns
John Tiemessen

Also present was New Lawyer Liaison Nevhiz Calik. President Mitch Seaver, Chris Cooke and Bill Granger had excused absences. Also present were Executive Director Deborah O'Regan, Bar Counsel Steve Van Goor, Assistant Bar Counsel Mark Woelber and Louise Driscoll, CLE Director Barbara Armstrong, CLE Coordinator Amanda Clark, Controller Karen Schmidlkofer, Pro Bono Director Krista Scully and Staff Auditor Joanna Booth from the Division of Legislative Budget and Audit. Dr. Theresa Obermeyer was also present.

1. Approval of minutes. A motion was made by Tiemessen, seconded by Mendel, and unanimously adopted,

> To approve the minutes of the April 28 & 29, 2008 Board of Governors meeting.

2. Legislative Audit; Bar Sunset. The Board went into executive session to get the background and discuss these matters.

3A. Reciprocity applicants. A motion was made by Weiner, seconded by Mendel, and unanimously adopted,

> To certify to the Alaska Supreme Court, the admission to the practice of law in Alaska and membership in the Alaska Bar Association the eight applicants found to be of good moral character, who met the requirements for Admission on Motion without Bar Examination, and who in all other respects met the necessary certification requirements.

3B. Rule 43 waivers. A motion was made by McClintock, seconded by Stearns, and unanimously adopted,

> To approve the Rule 43 (ALSC) waivers for Christopher Skipp and Dorothy Heim.

3C. Bar exam logistics. The Board went into executive session to discuss exam logistics.

3D. Cost of special Board meetings. The Board discussed whether Bar members or applicants should be charged if a special conference call meeting is convened on their behalf. The general consensus was that the Board should just decide whether they want to grant the meeting and not charge the person.

5. Financial issues. The Controller reported that the Bar now had a $184,000 loss, which was expected as a result of lowered bar dues. The Bar broke even on the 2008 convention.

5B. Internal control procedures. The Controller reported that the Bar's financial auditors recommend that a section on reporting employee fraud be added to the personnel policies. Billingslea suggested that when the Bar gets the management letter from the financial auditors, that Mendel and Stearns meet with the Executive Director and the Controller to review the personnel policies.

6. Staff matters. The Board went into executive session to hear a report from the Executive Director on staff transitions. CLE Director Barbara Armstrong will be taking a one year leave of absence starting after October 10. Will Stevens, former Assistant CLE Director for ALI-ABA in Philadelphia, will be Acting CLE Director for that year. The Executive Director also reported that the Bar has contracted with Tex R Us to redo the Bar's website.

4A. Lawyer Referral Service Fees. Bar members Ken Covell and John Connors were on the phone. Both members had written to the Bar asking that the initial consultation fee of $50 for the first half hour be increased. This fee has been the same for more than 12 years. Other costs have increased in that time. Various amounts were suggested, from $75 to $150. A motion was made by Weiner, seconded by Ekstrom and unanimously adopted,

> To raise the consultation fee that lawyers on the Lawyer Referral Service may charge clients referred by LRS to $125 for the first half hour, effective immediately.

4B. ADR Section. ADR Section members Linda O'Bannon and Tom Owens were before the Board to present a Section request that ADR be added as a new LRS category. They wanted it to be free for lawyers to sign up for the panel and to receive referrals. They didn't expect there would be a lot of referrals, but viewed this as a public service for people who asked for mediation. A motion was made by Mendel, seconded by McClintock and unanimously adopted,

> To add ADR to LRS as a no fee category for Bar members to join the panel or to receive referrals.

7A. Special Bar Counsel conflict policy. Bar Counsel presented a draft policy which would provide guidelines on when a grievance should be assigned to a lawyer outside of the office. The Bar has asked Bar members who are on the Discipline Area Hearing Committee to serve as Special Bar Counsel. Mendel expressed concern that the policy not be broader than necessary because grievances by SBC don't get the same high level of expertise as Bar Counsel. Weiner suggested that government agencies should be excluded from the law firm conflicts. Weiner offered to draft some modifications and bring this back to the Board on Friday.

7B. LRE grants. Staff asked if $10,000 for law related education grants should be included in the 2009 proposed budget. A motion was made by Mendel, seconded by Stearns, and unanimously adopted,

> To include a line item of $10,000 for LRE grants in the 2009 proposed budget.

The Board went into executive session to discuss discipline procedures.

Sid Billingslea left the meeting at 11:45 for medical reasons, and did not return to the meeting. Vice President Don McLean presided.

Public comment. Dr. Theresa Obermeyer made remarks to the Board.

John Tiemessen left the meeting at 12:45 for the day.

8. In the Disciplinary Matter Involving Attorney Y, ABA File Nos. 2006D031, et.al.

Respondent attorney waived her right to be present. Assistant Bar Counsel Driscoll presented the stipulation for discipline. Following deliberations the Board reported that they had voted to accept the stipulation as follows: the stipulation provided for a three year suspension; conditions for reinstatement included CLE requirements, paying outstanding Fee Arbitration judgments, reimbursing expenses for retaining Trustee Counsel, and paying the Bar Association $1,000 in costs and attorney fees.

10A. Status of Proposed Rules. Bar Counsel reported that the Ethics 2000 proposed rules had been republished on the Bar website and the Bar received about a dozen comments. The court is likely to sign off on the rules later this fall with an effective date of April, 2009.

9. Ethics Opinion

Keith Sanders, a member of the Ethics Committee, was present to explain the opinion and answer questions. A motion was made by Stearns, seconded by Ekstrom and unanimously adopted,

> To adopt the ethics opinion entitled: "Is an Attorney/Client Relationship Implicating Alaska Rule of Professional Conduct 4.2 Created Between Insured's Counsel and Insurer When Insured's Counsel Pursues the Insurer's Subrogated Claim under Ruggles v. Grow, 984 P.2d 509 (Alaska 1999)?"

10B. ARPC 1.5(b) & Bar Rule 35(b). The proposed amendments would increase the threshold for written fee agreements from $500 to $1,000. A motion was made by Weiner, seconded by Stearns, and unanimously adopted,

> To send the proposed amendments to ARPC 1.5(b) & Bar Rule 35(b) to the Supreme Court.

10C. Bylaws, Article III, Section 1(a). This bylaw amendment would waive the Bar membership fee for any member admitted for 60 or more years. A motion was made by Ekstrom, seconded by Mendel, and adopted on the following roll call vote,

To adopt the bylaws amendments which would waive the Bar membership fee for any member admitted for 60 years or more.

Yes: Ekstrom, McClintock, Mendel, Sebold, Stearns

No: Weiner

10D. Bylaws, Article VII, Section 1(a)(13). This bylaw amendment would create a standing committee on diversity. A motion was made by Mendel, seconded by Ekstrom, and unanimously adopted,

To create a standing committee on diversity.

10E. Bar Rule 2, section 3(b). A motion was made by Mendel, seconded by Sebold, and unanimously adopted,

To publish an amendment to Bar Rule 2, section 3(b), correcting a drafting error in the clerkship program reference.

10F. Bar Rule 9(e). The proposed amendment would require member disclosure of e-mail addresses for Bar Association and client purposes, or advise that the member does not have an email address. Some Board members said they do not want their clients to have their email address. They also said they have blockers or people get sloppy with their e-mails. Ekstrom said it'd be interesting to hear from Bar members. A motion was made by Ekstrom, seconded by Sebold and adopted on the following roll call vote,

To publish the proposed amendment to Bar Rule 9(e) regarding e-mail disclosure.

Yes: Ekstrom, McLean, Sebold, Weiner

No: McClintock, Mendel, Stearns

13. Discipline & Fee Arbitration report. There were 114 open discipline cases and 37 open Fee Arbitration cases.

13B. – E. Assistant Bar Counsel answered questions about summaries and in executive session, Bar Counsel reported on the status of litigation.

11A. Pro Bono. Bar members Blair Christensen and Bill Saupe were present. Christensen reported on the Senior Legal Guide which was published last spring. This was a project by the Anchorage Bar Young Lawyer Section and the Alaska Bar Association, with a $7,500 grant from the ABA. The guide has been distributed around the state and posted on the Bar website, where it had 600+ downloads.

Krista Stearns left the meeting at 3:15.

11B. Civil Gideon. Christine Pate was present by phone and spoke on behalf of the Pro Bono Services Committee. The committee adopted a resolution calling for the civil right to counsel and asked the Board of Governors to adopt the resolution. The next phase would be a feasibility analysis and to come up with parameters. Weiner expressed concern that if a person doesn't have to pay to go to trial, they'll do it every time. Sebold said that having attorneys involved, as opposed to unrepresented parties, makes the system work more efficiently. Ekstrom said that there should be more analysis and data before the resolution is adopted. A motion was made by Mendel, seconded by Sebold, and adopted on the following roll call vote,

> To adopt the Civil Gideon resolution as presented by the Pro Bono Services Committee.
>
> Yes: McClintock, Mendel, Sebold, Weiner
>
> No: Ekstrom

The Board recessed for the day around 4:00.

The meeting of the Board of Governors was reconvened on September 12, 2008 at 9:00 a.m. at the office of the Alaska Bar Association in Anchorage. The following Board members were present:

> Don McLean, Vice President
> Jason Weiner, Treasurer
> Carl Ekstrom
> Don McClintock
> Allison Mendel
> Hanna Sebold
> Krista Stearns
> John Tiemessen

Also present was New Lawyer Liaison Nevhiz Calik and Executive Director Deborah O'Regan, Bar Counsel Steve Van Goor, Assistant Bar Counsel Mark Woelber and Louise Driscoll and Staff Auditor Joanna Booth from the Division of Legislative Budget and Audit.

McLean presided.

12. In the Disciplinary Matter Involving Attorney X, ABA File Nos. 2007D120, et.al.

Respondent attorney and her attorney Terry Aglietti were present. Assistant Bar Counsel Woelber represented the Bar. There had been a motion to disqualify Board member Allison Mendel from the proceedings due to prior litigation. Mendel said that her prior involvement was insignificant, but recused herself from the proceedings. Following stipulations, the Board announced that they would accept the stipulation as modified. After consultation, Bar Counsel and Respondent's counsel agreed to accept the stipulation:

> To adopt a stipulation for a private reprimand with conditions for CLE, mentorship, trust account training and audit, and recording time on client matters.

14. Language Interpreter Center

Brenda Aiken from the Alaska Court System and Robin Bronen from the Alaska Immigration Justice Project were present. Dr. Obermeyer was also present. They reported that the LIC is in the capacity building stage, and that they expect to be self-sufficient in a few years with fees. They have trained 35 interpreters so far. Their annual budget is $200,000. Only the Rasmusen Foundation did multi-year funding. A motion was made by Tiemessen, seconded by Mendel, and unanimously adopted,

> To put $5,000 as a line item in the 2009 proposed budget.

Tiemessen left the meeting at 11:30.

Add-on. Reciprocity applicant. The Board went into executive session to consider the application of a lawyer for admission on reciprocity. Following

questions and deliberations, the Board reported that they unanimously approved the application.

16. CLE Report

CLE Director Barbara Armstrong presented the report. Also present were CLE Coordinator Amanda Clark and Section Coordinator JoAnne Baker. The 2008 convention in Anchorage is in the black in the amount of about $250.

Barbara Armstrong reminded the Board that she will be taking a year leave of absence from the Bar, so that she can work at the UAA Justice Center and vest in Tier 1. Her last day in the office is October 10, 2008.

McLean left the meeting at 12:07 and Stearns presided.

15. Lawyers' Fund for Client Protection

Bar Counsel presented the LFCP report in ABA File No. 2008L001. The committee recommended that there be no reimbursement in this matter, with a dissent by one committee member. A motion was made by Mendel, seconded by Weiner and unanimously adopted,

To adopt the Hearing Committee recommendation for no reimbursement.

7A. Conflict policy (cont.)

The Board reviewed the conflict policy as redrafted by Weiner. Bar Counsel reported that there have been 15 special bar counsel appointments in the last two years. A motion was made by Mendel, seconded by McClintock, and unanimously adopted,

To table the conflict policy until the October meeting.

The Board adjourned at 12:30 p.m.

Minutes respectfully submitted by staff.

Christopher R. Cooke
Secretary

ALASKA BAR ASSOCIATION PRO BONO COMMITTEE

RESOLUTION IN SUPPORT OF RECOGNIZING A RIGHT TO COUNSEL FOR INDIGENT INDIVIDUALS IN CERTAIN CIVIL CASES

WHEREAS, the Alaska Bar Association (AkBA) has made the commitment to access to justice for underserved populations a key priority, as set forth in its bylaws, which define one of its purposes as facilitating "the administration of justice," and as exemplified by the Alaska Bar Association Board of Governor's endorsement of Alaska Rule of Professional Conduct 6.1 which encourages each member of the Bar to commit to 50 hours of pro bono service each year and its endorsement of the creation of a full-time staff person to coordinate pro bono services;

WHEREAS, the Alaska Supreme Court's 1999 Civil Access to Justice Task Force Report concluded that approximately 50% of Alaska's poor citizens were likely to face a legal need in any given year, as of the date of its publication[1];

WHEREAS, the Alaska Supreme Court's 2000 Civil Access to Justice Task Force Report used a poverty population of 66,000 because the 2000 census figures had not come out, but the number of Alaskans living below Alaska's poverty level[2] as released by the Census Bureau in 2002, was actually 80,405 and today it is even greater;

WHEREAS, the Alaska's legal services providers estimate that at least 50% of the poor people across the State who make it to a legal services office are turned away because of the limited resources, both public and pro bono, available to serve the neediest among us and that this number is particularly high amongst clients seeking help with family law cases, which are amongst the hardest to place with volunteer attorneys;

WHEREAS, nationally, the extent of the unmet need for legal services is staggering. In a recent report, the Legal Services Corporation found "a very serious shortage of civil legal assistance - an urgent justice gap - in the United States," and the report concludes that at least 80% of those who require legal assistance do not receive the help they need[3];

WHEREAS, most European and Commonwealth countries have had a right counsel in civil cases for decades or even centuries, entitling poor people to legal assistance when needed,[4] and 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[5];

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[1] Civil Justice Report, 11.

[2] Alaska's poverty ceiling is set at 125% of the federal poverty ceiling due to cost of living factors.

[3] *See* Legal Services Corporation, Documenting the Justice Gap in America, at 18-19 (Sept. 2005) http://www.lsc.gov.JusticeGap.pdf (last visited 12/21/06).

[4] ABA Task Force on Access to Civil Justice, 2006 Report to the House of Delegates at 3-4 (Available at http://abanet.org/legalservices/sclaid/downloads/06A112A.pdf) (last visited 12/19/06); *see also* R. Lidman, Civil Gideon: A Human Right Elsewhere in the World, Clearinghouse Review, Vol. 40, No. 3-4 at 290 (July-August 2006).

[5] *Id.* at 7.

WHEREAS, the Alaska Bar Association recognizes that the overwhelming unmet legal needs of low income persons often result in a lack of access to justice where the most basic human needs are at stake, such as legal matters involving shelter, sustenance, safety, health or child custody and that the loss of this access results in Alaskans losing basic needs such as shelter, food, safety, and the right to the care and control of their family;

WHEREAS, the Alaska Bar Association recognizes that the unmet legal needs of Alaskans is a basic issue of fairness and access to the court since children, women, African Americans, Latinos and other minorities disproportionately bear the burden of poverty[6]; and

WHEREAS, the Alaska Bar Association recognizes that the overwhelming unmet legal needs of low income persons and the lack of resources to meet those needs ultimately leads to a loss of confidence by the public in the legal system which the Alaska Bar Association's members are bound to uphold;

NOW, THEREFORE, the Alaska Bar Association Pro Bono Committee proposes that the Alaska Bar Association endorse the following:

> RESOLVED, That the Alaska Bar Association urges the State of Alaska to provide legal counsel as a matter of right 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.

I. The Alaska Bar Association is Committed to Improving Access to Justice for the Poor

The Alaska Bar Association has a long history of promoting the access to justice for the neediest among us. In 2003, the Board of Governors took a strong stand on the need for volunteer work by the legal community by approving Alaska Rule of Professional Conduct 6.1, which urges each member of the Bar to committee to at least 50 hours of pro bono work each year. In 2004, the Board of Governors again took a leadership role in furthering volunteer legal services by creating a position at the Bar Association dedicated specifically to pro bono services. The creation of this position was strongly advocated by members of the legal services and pro bono community, the bar, and the judiciary including the Alaska Supreme Court. This past year, under the stewardship of Board President Claman, the Board of Governors has continued to press for expanded ways to provide legal services to the poor by approving the emeritus rule which would facilitate the ability of inactive and retired attorneys to volunteer their time for pro bono work.

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[6] W. Henderson and Jonathon M. Smith, The Right to Counsel and Civil Rights: An Opportunity to Broaden the Debate, Vol. 40 Nos. 3-4 at 211 (July-August 2006).

II. Proposed Resolution Echoes American Bar Association (ABA) Resolution

The ABA Resolution echoes an earlier resolution of the ABA. The American Bar Association, in recognition of the overwhelming unmet legal needs of low income persons and the resulting lack of access to justice where the most basic human needs are at stake, has already passed the following resolution:

> RESOLVED, That the American Bar Association 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.

III. Discussion

This resolution allows the leadership of the ABA to advocate for an expansion of the types of cases in which legal representation, as a matter of right, is provided to indigent individuals in civil cases. The means of implementing this resolution will be studied further by the Alaska Bar Association Pro Bono Committee, who will then make recommendations to the Alaska Board of Governors.

Notably, the Alaska Supreme Court has been at the forefront of this movement, finding a right to counsel for indigent persons in civil contempt proceedings for nonsupport,[7] certain custody proceedings,[8] termination of parental rights proceedings[9] (including private termination proceedings),[10] and paternity proceedings.[11] Counsel is also provided by statute to minors in domestic violence cases,[12] respondents in involuntary commitment proceedings[13] and to minors in judicial bypass of abortion cases.[14] There are many other categories in which this concept could be expanded.

This resolution does not define which cases would be included. It also does not address many other questions of implementation, such as how the right would be established, who would provide the representation and how it would be funded. The Pro Bono Committee recognizes that these are vitally important questions that will need resolution. It anticipates that the right to counsel would not be granted immediately in all cases in which basic human needs are at stake, as this would raise extensive obstacles in funding and administration. The Pro Bono Committee expects that the right to counsel would be expanded in an incremental fashion, prioritizing the most basic human needs where the need is greatest. Alaska residents already benefit from an existing system of legal services and voluntary pro bono programs that delivers legal services to the indigent. Expansions of the right to counsel would incorporate this foundation and build upon it. The resolution expresses an endorsement of the concept in principle, with the details to be developed following further study and reporting by the Committee.

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[7] *Otten v. Zaborac*, 525 P.2d 537 (Alaska 1974).
[8] *Flores v. Flores*, 598 P.2d 893 (Alaska 1979).
[9] *V.F. v. State*, 666 P.2d 42 (Alaska 1983).
[10] *In Re K.L.J.*, 813 P.2d 276 (Alaska 1991).
[11] *Reynolds v. Kimmons*, 569 P.2d 799 (Alaska 1977).
[12] AS 18.66.100.
[13] AS 18.85.100.
[14] AS 18.16.030(d).

A. Other States' Efforts

The effort to expand a right to counsel on the state level is not unique to Alaska. Alaska would be joining a growing group of states that is endorsing such a right in a true model of federalism. The following information lists the states and the most common substantive areas where some level of a right to counsel has been identified by statute:

Custody (AK, AZ, CA, LA, MD, MA, MI, NY, OR, TX, VT, WA, WV, DC); neglect and abuse (IN, IA, KS, KY, MD, MS, NE, NV, NM, OK, PA, SC, SD, UT, VA, WV, WY);
Domestic Violence (AK,CA, NY);
Adoption (IL, KS, MD, MA, MO, NY, PA, SC);
Dependency and Termination of Parental Rights (AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KN, KY, LA, ME, MD, MA, MI, MN, MO, MS, MT, NC, NE, NV, NH, NM, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, WA, WV, WI, WY);
Visitation (AZ, CA, LA, MD, and MA);
Divorce (DE, OR, VT, and DC);
Involuntary Commitment for Mental Illness, Drug, or Alcohol Abuse (AL, AK, AZ, AR, CO, CT, DE, HI, IL, IA, KS, LA, MD, MA, MS, MO, MT, NV, NC, ND, OH, OR, PA, RI, SC, SD, VT, and WI);
Involuntary Quarantine (CT, DE, MD, NC, SC, and WV);
Involuntary Protective Services (AL, CO, DE, IN, MA, SC, and TN);
Involuntary Sterilization(CO, VT, and WV);
Judicial Bypass of Abortion (AK,DE, FL, IN, MS, MO, NC, SC, and WI);
Civil Arrest or Imprisonment (NC and ND);
Individuals under Disability to Sue (MD);
Petition for Special Immigrant Juvenile Status (FL);
Release of Mental Health Records(IN);
Military Personnel (CO, WV, and by Federal Statute);
Civil Rights Claims(IL);
Housing Discrimination(AZ, AR, CO, DE, and by Federal Statute); and
School Attendance (CO).

A report from the Brennan Center on Civil Gideon supports this background section.

B. Status of "Civil Gideon" Activities in Selected States (as reported by the Brennan Center)

1) **California:** In fall 2006, the California Conference of Delegates of California Bar Associations (a separate entity from the California State Bar Association) passed a civil right to counsel resolution, which reads: All people shall have a right to the assistance of counsel in cases before forums in which lawyers are permitted. Those who cannot afford such representation shall be provided counsel when needed to protect their rights to basic human needs, including sustenance, shelter, safety, health, child custody, and other categories the Legislature may identify in subsequent legislation. California Chief Justice Ronald George has endorsed the resolution.

Also, the California Access to Justice Commission has developed several pieces of model civil right to counsel legislation, and it recommended that the state develop pilot civil right to counsel projects in three counties. Chief Justice George and Governor Schwarzenegger supported the pilot project concept, but I believe it has not been funded.

The Los Angeles County Bar Association co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006.

2) **Colorado:** The Colorado Bar Association co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006.

3) **Connecticut:** The Connecticut Bar Association co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006.

4) **District of Columbia:** The Bar Association of the District of Columbia co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006.

5) **Georgia:** As part of this year's State Bar Convention, there will be a moot court on the civil right to counsel which will be argued before the Georgia Supreme Court by law professors.

6) **Hawaii:** The Hawaii Justice Foundation and State Bar are engaged in an extensive civil justice needs study which will be released in October 2007. My understanding is that establishing a right to counsel in civil cases will be one of the recommendations.

7) **Illinois:** The Chicago Bar Association and Chicago Bar Foundation supported the ABA resolution, with the following caveats:

(1) The principal way to fulfill the goals of this resolution is to build on the existing comprehensive and multi-tiered pro bono/legal aid delivery system in our State; and (2) while an appointed counsel element should be a part of this system, there needs to be a mechanism to screen cases for merit before extended representation is provided.

8) **Maine:** The Maine State Bar Association co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006. On July 5, 2007, the Justice Action Group – the legal services state planning entity for Maine –issued a draft state legal services planning report, which recommends that the Justice Action Group create a commission to study the adoption "of a civil right to counsel in adversarial proceedings in which basic human needs are at stake." Among the issues the commission would address would be "costs and evaluation of funding mechanisms; the scope of the right and when it attaches; eligibility criteria; types of representation and/or the scope of services; the types of providers; screening/process; right to counsel on appeal; phasing in of implementation; monitoring and evaluation of a pilot project." The draft report is available online at http://www.mbf.org/JAGPLANNINGRPT-7-5-07.pdf. The final report will be issued in October, 2007. The membership of the Justice Action Group includes individuals from the state and federal judiciary, the Maine Legislature, the Executive Branch, the Maine State Bar Association, the Maine Bar Foundation, the Maine Civil Legal Services Fund Commission, and the boards of legal service providers.

9) **Maryland:** The IOLTA program submitted a brief in *Frase v. Barnhart*, a case in which the state supreme court was considering whether the right to counsel should exist in custody cases. The court did not decide the issue.

10) **Massachusetts:** On May 23, 2007, the Massachusetts Bar Association unanimously passed a resolution endorsing the principles behind the ABA civil right to counsel resolution. It states:

> RESOLVED, That the Massachusetts Bar Association urges the Commonwealth of Massachusetts to provide legal counsel as a matter of right at public expense to low income persons in those categories of judicial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as defined in Resolution 112A of the American Bar Association.

The Boston Bar Association, under the leadership of bar president-elect Anthony Doniger (who will become president September 1, 2007), is in the process of forming a task force on the civil right to counsel, to be chaired by Mary Ryan. The Boston Bar also co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006.

11) **Minnesota:** A committee of the Minnesota State Bar Association will be creating a civil right to counsel task force to begin work in 2008. The Minnesota State Bar Association also co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006.

12) **New Hampshire:** There is an Access to Justice Commission that has been in operation for a few months and is examining the civil right to counsel issue. In the past, the New Hampshire Bar Foundation provided the funding for a Citizens Commission on Access to Justice which produced research and a final report containing a recommendation for a civil right to counsel.

13) **New York:** The NY State Bar Association (NYSBA), the Association of the Bar of the City of New York (ABCNY), and the NY County Lawyers Association (NYCLA) all co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006. NYSBA, under the leadership of bar President Kate Madigan, has established a subcommittee on the civil right to counsel. NYCLA has passed a resolution supporting the right to counsel for tenants in eviction cases in New York City. NYSBA, ABCNY and NYCLA were all active in supporting the civil right to counsel in state court litigation in the 1980's.

14) **Pennsylvania:** The Philadelphia Bar Association co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006. On November 30, 2007, the Pennsylvania House of Delegates approved a resolution submitted by the Legal Services to the Public Committee, providing that Pennsylvania Bar Association urge the Commonwealth of Pennsylvania to provide legal counsel as a matter of right 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.

15) **Washington State:** The Washington State Bar Association and the King County Bar Association co-sponsored the ABA civil right to counsel resolution at the ABA House of Delegates in August 2006. The Access to Justice Board created the Committee for Indigent Representation and Civil Legal Equality (CIRCLE) in 2003 which is actively seeking out legislative and litigation strategies to expand Washington's right to counsel.

Respectfully submitted,

The Alaska Bar Association Pro Bono Service Committee, September 2008

CERTIFICATE OF TYPEFACE

The undersigned hereby certifies that pursuant to Appellate Rule 513.5, the attached Brief of Appellee Siv Betti Jonsson is proportionally spaced and is Times New Roman 13 point.

By: _____
Thomas M. Daniel

CERTIFICATE OF SERVICE

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