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More than forty years ago, the Supreme Court recognized a right to counsel, provided and paid for by the state, for indigent persons facing criminal charges that could lead to imprisonment. The time has come to ask why this right to counsel has not been extended to lower-income people facing equally serious civil legal problems. This special issue of Clearinghouse Review covers the growing momentum toward establishing a civil right to counsel.

About This Issue

By Michael S. Greco, President, American Bar Association

State Statutes Providing for a Right to Counsel in Civil Cases

States have passed hundreds of laws and court rules guaranteeing the right to counsel in a miscellany of civil cases, including family law, involuntary commitment, and medical treatment. Right-to-counsel laws and rules vary widely in the extent to which they ensure that the appointed counsel is competent. Advocates should be aware of the full range of right-to-counsel laws and the elements that make them effective.

By Laura K. Abel and Max Rettig

A Right to Counsel in Civil Cases: Lessons from Gideon v. Wainwright

In Gideon v. Wainwright the U.S. Supreme Court reversed its earlier decision refusing to recognize a categorical right to counsel in criminal cases. Despite various implementation difficulties that it saw, the Court later continued to expand the scope of the right to counsel in criminal cases. Adequately funded institutional providers of counsel, no tolerance of inadequate representation by the judiciary, and minimum and clear standards for counsel have proven to be key to a successful publicly funded system. To generate support for the right to counsel, advocates must publicize the harmful effects of lack to counsel, litigate, and engage in legislative efforts. Advocates seeking to establish this right in civil cases have much to learn from the indigent defense reform movement.

By Laura K. Abel

To Gideon via Griffin: The Experience in Wisconsin

Advocates in Wisconsin believe that a provision in their state constitution confers the right to counsel in civil cases. After an unsuccessful petition for the state supreme court to take original jurisdiction of this claim advocates prepared a packet of documents that pro se litigants can use to request appointment of counsel and have filed appeals on behalf of several indigent clients. In

pursuing these appeals, advocates rely on Griffin v. Illinois, 351 U.S. 12 (1956), in addition to the Wisconsin Constitution.

By John F. Ebbott

Toward a Context-Based Civil Right to Counsel Through "Access to Justice" Initiatives

With the flood of unrepresented litigants in the courts, unmet legal needs, and the expansion of "access to justice" commissions in the background, a three-prong strategy for a context-based civil right to counsel arises: (1) judges, court-connected mediators, and clerks should assist unrepresented litigants to ensure that the litigants do not forfeit rights due the absence of counsel; (2) programs assisting "short of representation by a lawyer in court" unrepresented litigants should supplement the expanded roles of the court system's key players; and (3) a civil right to counsel should attach where the expanded roles of the key players and assistance programs cannot stem the forfeiture of rights in unrepresented litigants.

By Russell Engler

Pursuing a Right to Counsel in Civil Cases: Introduction and Overview

This issue of Clearinghouse Review addresses various aspects of the quest for a right to counsel in civil cases. For the last several years, advocates across the country have been developing strategies to pursue "primarily in state court" legal claims to that right. The advocacy is gathering momentum.

By Debra Gardner

The Right to Counsel and Civil Rights: An Opportunity to Broaden the Debate

A right to counsel in civil cases becomes both a legal aid and a civil rights issue where women and minorities are disproportionately represented in the poverty population. A civil right to counsel can meet all the problems of negative economic and social effects resulting from a lack of representation, institutional racism existing in legal processes, and a lack of attorneys to do impact litigation. This is why civil rights and legal aid advocates should work together toward a civil Gideon.

By Wade Henderson and Jonathan M. Smith

Judges' Views of Pro Se Litigants' Effect on Courts

Eleven state court judges in Wisconsin filed an amicus brief in Kelly v. Warpinski, a case in which the petitioners asked the Wisconsin Supreme Court to take original jurisdiction and rule on their argument that the state constitution conferred a right to appointed counsel in civil cases. In their brief, the amici explained how pro se litigants burdened the courts; the amici argued that original jurisdiction in the supreme court was warranted under state law.

Civil Gideon: A Human Right Elsewhere in the World

The right to free counsel in civil cases is widely accepted around the world but not in the United States. In England the right originated over five hundred years ago. Twelve European countries provided the poor with free lawyers even before 1979, when the Council of Europe required its members to do so as a matter of international human rights law. The standards for eligibility and scope of legal services vary, and means and merit tests are common.

By Raven Lidman

Thinking About a Civil Right to Counsel Since 1923

The notion of a right to counsel in civil cases is sometimes regarded as novel, or a curiosity. However, scholars have long promoted the idea in various forms "at least since 1923 and the publication of a Harvard Law Review article on the topic. Poverty lawyers who advocate a civil right to counsel have a wealth of analysis for framing their arguments.

By Paul Marvy

"To Promote Jurisprudential Understanding of the Law": The Civil Right to Counsel in Washington State

The Committee for Indigent Representation and Civil Legal Equality (Circle), formed out of the Washington State Access to Justice Board, seeks to establish a civil right to counsel for indigent persons in the state. Circle asserts that in civil cases in Washington courts indigent litigants have the right to a competent attorney's legal representation at public expense.

By Paul Marvy

Maryland's Strategy for Securing a Right to Counsel in Civil Cases: Frase v. Barnhart and Beyond

The 2003 Frase v. Barnhart case is an important first step in Maryland's ongoing campaign to establish a right to counsel in civil cases. In Frase Maryland's highest appellate court narrowly avoided ruling on the right-to-counsel issue, but three judges stated in the concurring opinion that the court should have recognized a constitutional right to counsel in certain cases. To inform and inspire others, Maryland attorneys share some of the strategic decisions and tactical considerations that have shaped Maryland's continuing effort to establish a right to counsel.

By John Nethercut

How to Start Advocating a Right to Counsel in Civil Cases in Your State: A Look at Ohio

If the history of the right to counsel in criminal cases is any indication, advocates must lead on the state level to establish a right to counsel in civil cases. Advocating such a right is only fundamentally fair. And advocates may even find that joining a civil-right-to-counsel movement can invigorate their work.

By Marcia Palof

The California Model Statute Task Force

California's Access to Justice Commission recently drafted a model statute providing for a right to counsel in civil cases. The commission confronted numerous and complex questions concerning the basis and scope of the right, what kinds of clients and cases would be eligible and how eligibility would be determined, and how the right would be administered and delivered. In resolving these questions, the commission has made a big step forward in establishing a comprehensive civil right to counsel.

By Clare Pastore

Life After Lassiter: An Overview of State-Court Right-to-Counsel Decisions

The 1981 U.S. Supreme Court decision in Lassiter v. Department of Social Services frames the view of most courts regarding when to appoint counsel. From that decision state courts have drawn multiple and widely varied conclusions about the circumstances under which a constitutional right to counsel in civil cases attaches. An analysis of the scope of these conclusions suggests potential ways to articulate claims for a civil right to counsel post-Lassiter.

By Clare Pastore

Access to Justice in Canada: Canadian Bar Association Strategies to Make It Happen

The Canadian Bar Association works to achieve meaningful access to justice for its citizens. While the constitutional challenge raised in a pending test case should bring about desired results, the association continues to press government to make legal aid a priority and to provide civil legal aid services where fundamental interests are at stake.

By Gaylene Shellenberg

Sidestepping Lassiter on the Path to Civil Gideon: Civil Douglas

One of the challenges facing the movement to establish a right to counsel in civil cases is the presumption against such a right in *Lassiter v. Department of Social Services*. However, by following the doctrinal path set forth in *Douglas v. California* and its procedurally based right to counsel on appeal, advocates may overcome the *Lassiter* presumption and clear the way to a civil right to counsel.

By Steven D. Schwinn
