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Litigation Update

The litigation front continues to see a good deal of advocacy for a civil right to counsel.

• In **Washington State**, the Supreme Court heard oral argument in January in *Bellevue v. E.S.* regarding the right to counsel for children in truancy proceedings. While a ruling in this case is still pending, the court accepted review in a second children's right to counsel case, *In re D.R./A.R.* This case involves the right to counsel for children in termination of parental rights proceedings (although the petition also presented a question about the right to counsel in dependency, the order granting review limited the case to just TPR). The Coalition has been providing strategic and research assistance for both *E.S.* and *D.R./A.R.*



• In **Indiana** the Supreme Court accepted *In re I.B.* for review in mid-May. *I.B.* concerns whether parents in termination of parental rights cases have a right to counsel on appeal (parents have a statutory right to counsel at trial, but the statute is ambiguous as to whether that right extends to appeals). The Coalition has been assisting the petitioner's attorney as he works through his approach to both the right to counsel on appeal as well as complex issues relating to waiver that have arisen in the case. Oral argument was held on June 17, 2010 and can be seen [here](#).

• In **Ohio**, in *Leone v. Owen*, the Court of Appeals held that juvenile defendants in civil protection order cases have a right to counsel. The court noted that civil protection cases were the only ones where juveniles were not provided counsel under Ohio law, and that proceedings in Ohio can require a right to counsel notwithstanding their civil nature.

More information about these three cases (including, for *Bellevue v. E.S.*, links to links to the oral argument, lower court opinion, and briefs) is available on the Coalition's [website](#).

In addition, ***Wilson v. Johnson*** is currently on **petition for certiorari** before the U.S. Supreme Court. *Wilson* concerns whether federal court litigants who are refused counsel under 28 U.S.C. § 1915 (a discretionary appointment statute) can collaterally appeal the denial or whether they must wait until after the trial to appeal. Although the respondents (Virginia Corrections Department) declined to file a response to the petition, the Court called for them to file a brief and granted an extension of the filing deadline. The Alliance for Justice has filed an amicus brief in support of the petitioners.



Texas Launches Two Civil Right to Counsel Pilots

Civil Right to Counsel Update previously reported on right to counsel pilots in [Massachusetts](#) (privately funded eviction pilots) and [California](#) (via AB 590). This year, the Texas Access to Justice Foundation funded two 20-month pilots to explore the civil right to counsel in certain housing cases

(and funded two self-representation pilots as well). Both pilots serve clients up to 125 percent of the poverty level, operate in multiple counties, and began earlier this year.

The first pilot is run by Texas RioGrande Legal Aid, which received \$347,000 to do foreclosure prevention. Although Texas is a nonjudicial foreclosure state, some types of foreclosures (such as home equity loans and reverse mortgages) still require court approval. Lone Star Legal Aid received \$310,000 for the second pilot to work on tenant defense in appeals of evictions from justice of the peace courts to county courts. NCCRC has worked to put those at the helm of the Texas pilots in touch with those running the civil right to counsel pilots in Massachusetts and California.

NY Chief Judge Names Task Force to Expand Access to Civil Legal Services

New York Chief Judge Jonathan Lippmann has [named 28 people](#) to serve on a task force to find permanent funding mechanisms that will enable courts to achieve their "constitutional mission" of ensuring "justice for all." Helaine Barnett, former president of the Legal Services Corporation, will head the task force, whose members include many leaders of civil legal aid programs as well as judges and private attorneys.

Judge Lippmann announced formation of the task force in a May 4 law day [speech](#). He previously testified about the crisis in civil legal services at a Jan. 2010 legislative [hearing](#), noting that "the spirit of Gideon applies to the civil side."

Judge Lippman is the fourth state chief justice to speak out in favor of closing the justice gap, joining California Chief Justice Ronald George and New Hampshire Chief Justice John Broderick (who together authored a [New York Times op-ed](#) piece earlier this year) as well as Texas Chief Justice Wallace Jefferson (who co-wrote a piece in the [Houston Chronicle](#) with the Chair of the Texas Access to Justice Commission).

ABA House of Delegates Will Consider Model Access Act and Basic Principles

The ABA's House of Delegates, at its annual meeting in early August, will vote on the "ABA Model Access Act" and "ABA Basic Principles of a Right to Counsel in Civil Legal Proceedings." The Model Act is a statute that implementing jurisdictions can use to establish and administer a civil right to counsel, while the Basic Principles seek to clarify the fundamental requirements for providing effective representation in certain high-priority civil proceedings to persons unable to afford an attorney, in order to guide policymakers and others working to implement the right.

The ABA Working Group on Civil Right to Counsel developed the proposed resolutions in response to ABA President Carolyn Lamm's request for assistance in advancing ABA policy that urges federal, state, and territorial governments to create a right to publicly funded counsel for low-income individuals in adversary proceedings involving basic human needs. Convened in September 2009, the Working Group includes representatives from the Standing Committee on Legal Aid and Indigent Defendants (SCLAID); the Sections of Litigation, Business Law, Tort Trial and Insurance Practice; Judicial Division; Coalition for Justice; and Commissions on Immigration and Domestic Violence.

The Working Group pursued a careful and lengthy process in developing the Model Act and Basic Principles, circulating drafts widely and considering comments received from the civil legal aid community and ABA members. In addition, the resolutions have been provided to various state and local bar associations, as well as ABA entities, for co-sponsorship consideration. You can find the resolutions and a list of co-sponsors at <http://www.abanet.org/legalservices/sclaid/>.

Recent and Upcoming Events

Philadelphia Bar Assn., Chancellor's Forum on Civil Gideon, July 7

Coalition participant Russell Engler, who is the Director of Clinical Programs at New England School of Law and a recognized authority on civil right to counsel, will be the keynote speaker at this event, which will also feature a panel discussion by members of the bar association's Civil Gideon Task Force. Click [here](#) for more info.

Hawai'i Access to Justice Commission, June 25

The University of Hawai'i Mānoa's William S. Richardson School of Law will host the commission's second summit conference, with a theme of "Access to Justice: Is This A Promise We Can Keep?" The Hawai'i Justice Foundation and the Hawai'i State Bar Association are co-sponsors, along with the law school. Civil right to counsel will be the focus of a roundtable discussion. The keynote speaker will be

First Circuit Court Judge Michael Town. More information is available at www.law.hawaii.edu.

Milwaukee Civil Right to Counsel Symposium, May 5

The Milwaukee chapter of the American Constitution Society, the Marquette U. Law School Student Chapter, the Dane County Bar Assn, the Right to Counsel Task Force of Legal Action of Wisconsin, and the U. of Wisconsin Law School sponsored "A Symposium on the Right to Counsel in Civil Cases." Presenters were Thomas G. Cannon, Executive Director, Legal Aid Society of Milwaukee; Clare Pastore, Professor, U. of So. Calif. Gould School of Law, and Steven Schwinn, Associate Professor, The John Marshall Law School in Chicago.

William Mitchell College of Law, April 21

Professor Peter B. Knapp made a presentation at William Mitchell on "the movement to establish the right of indigent persons to free legal services."

The National Coalition for a Civil Right to Counsel is an association of individuals and organizations committed to ensuring meaningful access to the courts for all. Our mission is to encourage, support and coordinate advocacy to expand recognition and implementation of a right to counsel in civil cases. For more information visit <http://civilrighttocounsel.org/>.

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