

**Table of Contents**

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*Litigation Update*

*CA Shriver Civil  
Counsel Program*

*Coalition Education  
Efforts*

*ABA Adopts Model  
Access Act and Basic  
Principles*

*Laurence Tribe's Office  
& Access to Justice*

*Right to Counsel  
Petition in WI Supreme  
Court*

*NY Hearings on Need  
for Civil Counsel*

***Litigation Update***

Litigation on the right to counsel in civil cases continues, even at the highest level:

On Sept. 21 **the Indiana Supreme Court** issued a [ruling](#) in *In re I.B.* (noted in the [June 2010 Update](#)) that parents in termination of parental rights cases have a right to counsel on appeal as a matter of statutory construction. In so holding, the supreme court reversed the decision of the Court of Appeals. The Coalition helped the petitioner with research, strategy, and preparation for argument.

In the **U.S. Supreme Court**, two cert petitions relating to 28 U.S.C § 1915 (the federal discretionary appointment statute) were denied. The first was *Wilson v. Johnson* (noted in the [June 2010 Update](#)), which involved the immediate collateral appealability of denials under § 1915. The second was *Fields v. Wilbur*, which concerned whether some federal appellate courts have improperly handcuffed the district courts' statutory discretion to appoint counsel by requiring "exceptional circumstances." One civil right to counsel cert petition remains--*Price v. Turner*, which concerns whether there is a right in South Carolina to counsel in civil contempt proceedings (the state supreme court found no such right). The Brennan Center, a Coalition participant, is one of the organizations that filed an amicus brief in support of the petitioners in *Price*.

*In re J.B.B.* is before the **Ohio Fourth District Court of Appeals** on whether Ohio's failure to provide counsel for parents in appeals of termination of parental rights cases violates due process or equal protection.

*Franco-Gonzalez v. Napolitano*, filed in **federal district court in California**, argues that the failure to provide counsel for mentally

impaired detainees in immigration proceedings violates the Immigration and Naturalization Act, the Rehabilitation Act, and Fifth Amendment due process.

*In re D.R./A.R* is pending in the **Washington Supreme Court** and involves the right to counsel for children in termination of parental rights proceedings (for more see the [litigation page](#) of the Coalition's website). The petitioners (who represent the children) have filed their merits brief, and the Coalition continues to provide strategic and research assistance.

### ***California Shriver Civil Counsel Program Gets under Way***

On Sept. 10 California Chief Justice Ron George appointed the committee that will oversee implementation of the Sargent Shriver Civil Counsel program, which will fund pilot projects to test how best to provide counsel as a matter of right when needed to provide effective access to justice. The 16-member committee, chaired by retired Court of Appeal Justice Earl Johnson, Jr., includes judges and lawyers who have been involved with the California Commission on Access to Justice for many years. Among the committee members are former legal services lawyers and members of the National Coalition for a Civil Right to Counsel.

Several committee members may be familiar to readers of this newsletter: Professor Clare Pastore, who chairs the National Coalition's Amicus Committee; Justice Laurie Zelon, who chaired the ABA Standing Committee on Legal Aid and Indigent Defendants during the mid-1990s; Bruce Iwasaki, former executive director of the Legal Aid Foundation of Los Angeles, NLADA leader, and SCLAID member, now in private practice; Tom Smegal, who served on the Legal Services Corporation board during three decades, and Kevin Baker, the legislative aide who was principal drafter of the Act and co-authored an [article](#) about the road to its passage for the March-April 2010 issue of [CLEARINGHOUSE REVIEW](#).

The committee held its first meeting on Sept. 21 to refine the [package](#) for soliciting "letters of interest" from legal aid agencies and local courts who desire to partner and apply to be pilot projects. The approved package was issued on Sept. 23, with responses due Nov. 5th.

### ***Coalition's Education Efforts Continue***

The National Coalition's proposal to present a panel at the 2010 National Legal Aid and Defender Association conference in November was accepted by conference organizers. Entitled "Different Tools, Different Jobs: Exploring Civil Right to Counsel's Place Among Various

Services for the Unrepresented,” the panel will feature two Coalition participants (Laura Abel of the Brennan Center and independent consultant Gerry Singen), plus Bonnie Hough of the California Administrative Office of the Courts, Toby Rothschild of the Legal Aid Foundation of Los Angeles, and Steve Scudder of the ABA’s Standing Committee on Pro Bono and Public Service. The panel will explore different solutions to the “justice gap” problem (self-help assistance, court process simplification, unbundled/limited representation services, expanded pro bono, or allowing non-attorneys to provide some legal services, as well as a right to counsel) and probe each in light of case hypotheticals. Ultimately, the goal is to determine the particular situations in which a right to counsel is the only viable approach to ensuring access to justice. John Pollock, the ABA Section on Litigation Civil Right to Counsel Fellow, will moderate.

In October, John will participate on a panel hosted by the Northeast Ohio chapter of the American Constitution Society. That panel will survey the national landscape on civil right to counsel efforts (litigation, legislation, and education) and examine Ohio’s efforts on the right to counsel front.

### ***ABA Adopts Model Access Act and Basic Principles***

At the ABA’s 2010 Annual Meeting, the House of Delegates formally endorsed the [ABA Model Access Act \(104\)](#) and the [ABA Basic Principles of a Right to Counsel in Civil Legal Proceedings \(105\)](#). Passage of these documents was the result of hard work by the ABA’s Working Group, which included Coalition participants and ABA civil right to counsel leaders Terry Brooks, Shubi Deoras, Earl Johnson of SCLAID, and Bob Rothman of the Section of Litigation, as well as civil right to counsel champion and former ABA President, Mike Greco.

The August Meeting also passed Resolution 109a (urging state/local governments to provide counsel to children at all stages of status offense hearings) and Resolution 100C (urging state/local governments to provide funding for criminal defense programs to advise immigrant defendants about the immigration consequences of criminal proceedings).

### ***Laurence Tribe’s Office Tackles Access to Justice Issues***

Earlier this year President Obama selected Harvard University Law Professor Laurence Tribe to act as a senior counselor for an Access to Justice initiative within the Department of Justice. Since then Tribe has been busy meeting with organizations and formulating the path the office will take. At a speech to Community Legal Services in

Philadelphia in May, Tribe noted the office's charge, among other duties, to enhance civil legal representation for low-, middle-income, and vulnerable litigants, and to develop evidence-based solutions to problems in the delivery of legal services.

At the Annual Conference of Chief Justices in July, Tribe pointed out that 95 percent of legal proceedings in the U.S. occur in state courts. He acknowledged the tremendous budget issues that state courts face, combined with huge pro se backlogs, but urged judges to distinguish between neutrality and passivity in dealing with pro se litigants. He suggested that the chief justices establish task forces to rate states' efforts under *Gideon*, ensure that juveniles have attorneys before deciding to waive counsel, explore support for limited/unbundled pro bono representation, and investigate creating Access to Justice Commissions in states that do not have them.

And early on, Tribe announced that his office would partner with the National Institute for Justice to fund access-to-justice-related research. In an August meeting with high-level staff in Tribe's office, the National Coalition urged consideration of research that could help to determine two things: 1) the types of legal proceedings in which full representation, as opposed to various forms of limited assistance, is most critical; and 2) public expenditure savings that representation in critical cases can achieve.

### ***Wisconsin Advocates File Civil Right to Counsel Petition with State Supreme Court***

Several groups, among them Legal Action of Wisconsin, a state legal services provider led by Executive Director and NCCRC participant John Ebbott, filed a petition with the Wisconsin Supreme Court urging it to adopt a rule requiring appointed counsel in certain civil cases. More than 1,200 people, including over 275 lawyers and judges, signed the petition, which received coverage in the [ABA Journal](#) as well as in the [Milwaukee-Wisconsin Journal Sentinel](#) and the [Wisconsin Law Journal](#). The petition calls for the appointment of counsel in basic human needs cases for those under 200 percent of the federal poverty level.

### ***NY Chief Judge Begins Hearings on Need for Civil Legal Aid***

New York State Chief Judge Jonathan Lippman has held four hearings on the provision of legal services in civil cases. [The hearings](#), which have been covered by the [New York Times](#), the [New York Law Journal](#), and the [Democrat & Chronicle](#), featured indigent litigants whose cases were affected by the presence or absence of counsel, as well as judges grappling with the problem of pro se litigants and legal service providers struggling with inadequate funding. The Chief Judge hopes to use the hearings to make the case to the legislature for more reliable civil legal

services funding, rather than the current “patchwork,” in order to address the 2 million pro se litigants the New York courts see every year.

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/>.