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Litigation Update

Lots has happened in the last six months on the civil right to counsel litigation front. One high-profile case referenced in the Oct. 2009 *Civil Right to Counsel Update* was *Rhine v. Deaton*, which involved the right to counsel in Texas termination of parental rights (TPR) cases. The petition to the U.S. Supreme Court argued that the Texas statutory scheme violated equal protection by providing a right to counsel only where the TPR petition is filed by the state and not by a private party. At the Supreme Court's invitation the Texas Solicitor General filed a brief; he urged the Court to deny the cert petition, which it did on Jan. 25.

In another case, *Bellevue v. E.S.*, the Washington State Court of Appeals found a right to counsel in truancy cases based on the combination of education, liberty, and privacy interests, and the Washington Supreme Court has granted review to determine whether the U.S. and/or Washington Constitutions provide a due process right to counsel. [Links](#) to the opinion, amicus briefs, and video of the Jan. 19 oral argument are on the NCCRC website. NCCRC provided litigation support to counsel for E.S. as well as to various amici in the case.

Finally, *In re DR/AR* concerned the right to counsel for children in Washington dependency cases. While the state has conceded that the trial court abused its discretion by failing to appoint counsel for these particular children pursuant to a state discretionary statute, counsel for the children argue in their petition to the Washington Supreme Court that due process requires a right to counsel for all children in dependency cases. NCCRC provided some research

Debate

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support to petitioners in the case.

CA's Sargent Shriver Civil Counsel Act: How It Happened



In the March-April issue of CLEARINGHOUSE REVIEW you'll find the behind-the-scenes story of how A.B. 590, the Sargent Shriver Civil Counsel Act (aka the state's "pilot project" bill), came into being. Written by Kevin Baker, Deputy Chief Counsel to the Assembly Judiciary Committee, and Julia Wilson, Executive Director of the Legal Aid Association of California, the article recounts the bill's origins in California's model statute task force, the 2006 ABA resolution in support of a civil right to counsel, and the July-August 2006 special issue of CLEARINGHOUSE REVIEW on civil right to counsel that was timed to coincide with that resolution. The article also explains the critical leadership provided by the chief justice and by legislators who are former legal aid lawyers.

Baker and Wilson encourage advocates for a civil right to counsel in other states to consider legislative as well as litigation strategies and to take heart from the success of A.B. 590 amid the state's financial meltdown. The authors stress the importance of input from the legal aid community throughout the process and describe the framework A.B. 590 sets for shaping the pilot projects. Planning is underway and the pilot projects will begin offering representation to clients next year. The article, entitled "[Stepping Across the Threshold: Assembly Bill 590 Boosts Legislative Strategies for Expanding Access to Civil Counsel](#)," is posted on the coalition's website.

Seattle Access to Justice Symposium

Washington State again showed leadership in the civil right to counsel movement when, on February 19, nearly 200 persons attended a major symposium co-sponsored by the Seattle University School of Law's Korematsu Center for Law and Equality, University of Washington School of Law, and Gonzaga University School of Law. Under the theme of *Civil Legal Representation and Access to Justice: Breaking Point or Opportunity for Change*, the

gathering featured several national experts, including members of the National Coalition for a Civil Right to Counsel, and local experts.

Washington state Chief Justice Barbara Madsen's keynote speech recalled, with regret and disappointment, the travesty of justice that was the focus of her dissenting opinion from the Washington Supreme Court's decision in *Marriage of King*, holding that the liberty interests at stake in private custody proceedings are not sufficiently weighty to give rise to a right to counsel under the federal or state constitutions. Panels addressed laying the foundation for a right to counsel, addressing the unmet need, representing special populations, and learning from both indigent defense systems and legal aid systems in other countries. A retired Washington state legislator offered a frank reality check, research demonstrating the beneficial outcomes of representation was presented, and the president of the state bar moderated a lively discussion on overcoming barriers. A half-day work session followed, with invited equal justice leaders focused on how the effort to achieve a civil right to counsel in Washington can move forward most effectively. [Materials](#) from the conference are available.

Right to Counsel in the Foreclosure Context



Might homeowners facing foreclosure have a right to appointed counsel? How would such a right be claimed under the framework of *Lassiter v. Department of Social Services*? John Pollock, ABA Section on Litigation Civil Right to Counsel Fellow at the Public Justice Center analyzes these questions in companion articles in the Jan.-Feb. issue of CLEARINGHOUSE REVIEW: [Lassiter Notwithstanding: The Right to Counsel in Foreclosure Actions](#) and, on the challenges of arguing for the right in nonjudicial foreclosure states, [Going Public: The State Action Requirement of Due Process in Foreclosure Litigation](#). Both articles are available on the NCCRC website at www.civilrighttocounsel.org/resources/articles/.

Missouri Bar Journal Explores Civil Right to Counsel Debate

The Winter 2010 issue of *Precedent*, the Missouri State Bar magazine, features the right to counsel in civil cases. In one article, "A Civil Right to Counsel: Inevitable or Unrealistic?", *Precedent* editor Gary Toohey explores the arguments made by right to counsel proponents and opponents. Toohey discusses the original intent of the drafters of the Constitution, explores the history of the right to counsel in the U.S. and other countries, and delves into the new California pilot project. He also cites comments by Missouri legal services providers that sufficient funding must accompany expansions of the right to counsel, while former Missouri Bar President Thomas Burke urges Missouri advocates to continue their work on civil Gideon, notwithstanding current financial difficulties. A second article, "A Civil Gideon? Let the Debate Begin," authored by Burke, leads off by quoting Barack Obama, John F. Kennedy, and Abraham Lincoln in support of taking on difficult tasks despite the challenges involved. Despite the bar's best efforts (e.g., mandatory pro bono projects and volunteer lawyer programs), only a small fraction of people needing assistance actually receive such assistance, and Burke concludes that it is never too early to begin the conversation about the right to counsel and how it might actually be achieved.



NCCRC Hosts Panels at 2009 NLADA Conference

NCCRC was present in force at the 2009 National Legal Aid and Defender Association annual conference last November in Denver, hosting two different panels addressing the right to counsel in civil cases. "The Power of Pilots: Expanding the Right to Counsel By Example" examined the design and implementation of pilots in Massachusetts and California. It featured two NCCRC participants: former California Court of Appeal Justice Earl Johnson (Ret.), who spoke about the California pilots that will begin in 2011, and Gerry Singen, who discussed the Massachusetts housing pilots already in progress. The panelists explained the pilots' genesis, basic parameters, design and evaluation process, and funding. They also discussed the alliances, including some that were unlikely, that facilitated the pilots' success.

The second panel was "Rowing Upstream: Passing Laws and Finding Resources for the Right to Counsel Despite Tough Economic Times"; it explored how some states have recently managed to enact laws that either expanded the right to counsel in civil cases or improved the quality of appointed counsel, even while experiencing severe economic strain. The panel featured NCCRC participants Laura Abel and Gerry Singsen, as well as Amy Schwartz (Empire Justice Center), Bill Leahy (Committee for Public Counsel Services in Massachusetts), and Peter Bovingdon (Montana Legal Services Association). John Pollock, the ABA Section on Litigation Civil Right to Counsel Fellow at the Public Justice Center, moderated both panels.

UNC Conference Features NCCRC Participants

On Oct. 30, 2009, the University of North Carolina Center on Poverty, Work and Opportunity hosted an access to justice conference focused on the right to counsel in civil cases in North Carolina. The conference featured comments from North Carolina Supreme Court Chief Justice Sarah Parker and Associate Justices Patricia Timmons-Goodson, Mark Martin, and Robin Hudson, as well as Legal Aid of North Carolina Executive Director George Hausen, past and current presidents of the North Carolina Bar Association, the president of the North Carolina State Bar, and Representative Rick Glazier of the North Carolina General Assembly, among others. Justice Timmons-Goodson noted in her presentation that the U.S. is one of the only Western democracies that does not provide a right to counsel in civil cases, while other speakers referenced the finding in the North Carolina Access to Justice Commission's 2008 report that 80 percent of legal needs go unmet. NCCRC participants Laura Abel and John Pollock served as panelists and laid out the current status of the right to counsel across the country, while NCCRC Facilitator Deb Gardner spoke about potential approaches to expanding the right. The conference came on the heels of the state Access to Justice Commission's decision to form a committee to report on efforts to secure a right to counsel in civil cases and propose possible approaches. [Links](#) to more about this and other conferences are on the national coalition's website.

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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