



# Civil Right to Counsel Update

March 2009  
No. 3

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## Wash. Appellate Court Finds Right to Counsel in Truancy Proceedings



Students in Washington State have a due process right to counsel in truancy proceedings that can lead to eventual detention, according to a January appellate court ruling. When a Washington public school student has missed school for a specified period, the school district must offer services to address the

causes of the truancy and then, if the absences continue, petition the court. The court will typically order the child to attend school. If the child remains truant, the court may hold the child in contempt and order the child detained for up to a week and other penalties. Washington has incarcerated hundreds of youth under this procedure. While the statute provides a right to counsel at the contempt hearing, a previous appellate case had found no such right at the initial fact-finding stage.

In *Bellevue School District v. E.S.* the truant student was a 13-year-old Bosnian immigrant. Her family's primary language is Bosnian, yet the notice of the petition and all subsequent communication was in English. At the initial hearing E.S. had neither a lawyer nor a guardian ad litem. No sworn testimony or physical evidence was offered in support of the truancy petition; rather, in a six-minute proceeding, a school administrator told the court that E.S. and her mother had agreed to an order declaring E.S. a truant and waiving her right to a hearing. E.S. was later found in contempt and only then was provided counsel.

Because of the fundamental rights at stake the court applied the due process balancing test of *Mathews v. Eldridge*. Finding that "a child's interests in her liberty, privacy, and right to education are in jeopardy at an initial truancy hearing, and she is unable to protect these interests herself," the court said, "due process demands she be represented."

The court denied the school district's motion to reconsider or withdraw its opinion, and appeal to the Washington Supreme Court may follow. Briefs from the case can be found [at the Civil Right to Counsel website](#).

### **Welcome John Pollock, ABA Civil Gideon Fellow**

The National Coalition for a Civil Right to Counsel is delighted to announce that John Pollock has come on board to fill the recently created American Bar Association Civil Gideon Fellowship. This two-year post is funded through the generosity of the ABA's Section of Litigation. John will be based at the Public Justice Center in Baltimore, and will tackle a full range of NCCRC concerns. He joins Sharon Rubinstein, another fellow at the PJC working full time on right to counsel issues.

John comes to us from the Central Alabama Fair Housing Center (CAFHC) in Montgomery, Alabama, a nonprofit focused on enforcement of the federal Fair Housing Act, where he was Enforcement Director.

Prior to CAFHC, John was a law fellow for the Southern Poverty Law Center in Montgomery, working on immigrant wage and hour cases and hate crime litigation and serving as SPLC's representative on predatory lending and land loss issues.

John is also the founder and facilitator of the Heirs' Property Retention Coalition (HPRC), a network of organizations and individuals throughout the southeast focused on the prevention of the loss of heritage and historical land in black communities. HPRC is responsible for a proposal for a uniform law on forced partition sales that is currently being drafted by the National Conference of Commissioners on Uniform State Laws. John graduated from Northeastern University School of Law in 2005, and is admitted in Maryland and Massachusetts.

Welcome, John!

### **Texas Bill to Appoint Counsel in Eviction Appeals**



A bill now before the Texas Legislature, [H.B. 2824](#), would require appointment of counsel for persons who appeal a judgment of eviction from a justice of the peace court and perfect the appeal on a "pauper's affidavit," i.e., affirm their low income. Under Texas court rules, anyone eligible for representation by a Legal Services Corporation-funded program meets this standard.

According to Randy Chapman, Executive Director of Texas Legal Services Center, less than 1% of eviction judgments are appealed, and most of those involve warranty of habitability claims. Judges in justice of the peace courts need not be lawyers and most are not; proceedings there have no court reporters and no record is made. Thus, appeal is de novo, before a judge who is a lawyer and with a right to a jury trial. Chapman reports that warranty of habitability claims became a particular concern

in the wake of Hurricane Ike, which rendered many apartments partially or totally uninhabitable due to mold--and yet landlords often refused to abate rent.

If the bill is to become law the legislature must act on it within two months.

### **Calif. Legislature Considering Pilot Projects to Expand Availability of Counsel**

A "civil Gideon" bill pending in the California legislature, [AB 590](#), would create pilot projects "to test and evaluate new methods for the fair and cost-efficient resolution of legal disputes, and the comprehensive enforcement of vital legal rights, with respect to basic human needs."

Introduced by Assemblyman Mike Feuer, former executive director of Bet Tzedek Legal Services, a large non-LSC-funded program in Southern California, the legislation is intended to be amended to become more specific about the pilot projects during the hearing process. It must be reported out of committee in the Assembly by May 1 in order to stay alive this year. Significantly, in this year's tough budget climate, the bill steers clear of an allocation tied to the state's general fund, instead identifying as a funding source a \$10 surcharge on post-judgment fees.

Civil Right to Counsel Update will report on the bill's progress. For more information, contact [Clare Pastore](#).

### **No Civil Right to Counsel Ruling from VA Supreme Court**

Follow-up to a case reported in the December 2008 issue of *Civil Right to Counsel Update*: In *Mitchell v. O'Brien*, the high court in Virginia failed to find a right to counsel for a father appealing the adoption of his child. In a three-page unpublished order the court affirmed an intermediate court's dismissal of the appeal on procedural grounds: that the father failed to provide either a transcript or statement of facts required for appellate review. In a single sentence of dictum, citing [Lassiter](#) but without analysis, the court stated that the father had no statutory or constitutional right to counsel on appeal. Apparently because it viewed the right to counsel at trial as not having been preserved for review, the court did not address that issue at all. The order does not constitute an opinion of the court and appears to have little precedential value. Virginia lawyers associated with the case and present at oral argument retain some optimism that the court might look favorably on a future effort.

### **Texas Study: Spend on Legal Aid, Save Money!**

Funding for civil legal assistance is not only critically important to individuals facing dire legal predicaments--such funding also provides a "sizable stimulus to the ... economy" by increasing consumer spending, personal income, and gross product output, according to a recent study.

Released in February and entitled [The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential](#), the study was conducted by an economic research and analysis firm. Among other findings, it noted that every dollar spent on indigent civil legal services led to an overall gain to the economy of \$7.42.