

RESOLUTION 01-06-2006

DIGEST

California Constitutions: Right to Counsel in All Cases

Adds Article 1, section 32 of the California Constitution to provide the right to counsel in all cases.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add article 1, section 32 of the California Constitution as follows:

- 1 Section 32
2 All people shall have a right to the assistance of counsel in cases before forums in
3 which lawyers are permitted. Those who cannot afford such representation shall be provided
4 counsel when needed to protect their rights to basic human needs, including sustenance,
5 shelter, safety, health, child custody, and other categories the Legislature may identify in
6 subsequent legislation.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Does not provide counsel to litigants in many civil cases.

This Resolution: Would require the government to provide for counsel in all civil and criminal cases which are preparing for and in the courts of California.

The Problem: Hundreds of thousands of Californians are required to be in court without a lawyer. In some family courts, the percentage of *pro se* parties exceeds 75%. Very often, these cases are enormously important to the unrepresented parties, who are ill-equipped to handle the complexities of a legal system designed for parties with lawyers. The government has an obligation to ensure that all residents are afforded access to justice.

The extent of the unmet need for legal services is staggering. In a recent report, the Legal Services Corporation found “a very serious shortage of civil legal assistance – an urgent justice gap – in the United States.” The report concludes that at least 80% of those who require legal assistance do not receive the help they need. *See* Legal Services Corporation, *Documenting the Justice Gap in America*, at 18-19 (Sept. 2005).

The situation in California is equally grim. Though increased funding for legal services programs, better planning at the state level, and more attention to the gap in access to legal assistance have provided some measure of relief, only 28% of the legal needs of lower income

California residents are being addressed. See California Commission on Access to Justice, *The Path to Equal Justice*, at 3 (Oct. 2002).

In a great many industrialized nations, access to counsel in civil cases is provided as a matter of statutory or constitutional right. See, e.g., Earl Johnson, Jr., *Access to Justice: Will Gideon's Trumpet Sound a New Melody? The Globalization of Constitutional Values and Its Implications for a Right to Equal Justice in Civil Cases*, 2 Seattle J. Soc. Just. 201 (Fall 2003/Winter 2004). The basic problem in California is that the right to counsel is viewed as charity, not as a matter of right.

Inadequate legal assistance primarily affects the nearly 14 million low and moderate income Californians in cases involving basic human needs such as housing, employment, education, and safety. The state's failure to provide equal access to justice is an obstacle not only to the underserved litigants themselves, but also to the courts that struggle to function efficiently in the face of the burgeoning number of unrepresented parties. See California Commission on Access to Justice, *The Path to Equal Justice*, at 37, 40.

This resolution would provide better access to justice for all California residents, particularly those who could not otherwise afford legal representation. This resolution would also affect for the better various court procedures and lighten the load of judges who now must facilitate the cases of people who are unrepresented. A significant increase in state funding for legal services would be required to implement this resolution.

IMPACT STATEMENT

This resolution does not affect any other statute, law or rule.

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