

# **The Right to Civil Counsel Under Minnesota Law**

**A White Paper Presented to the Minnesota State Bar  
Association's Civil *Gideon* Task Force**

**September 11, 2008**

## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>3</b>
<b>DISCUSSION .....</b>	<b>4</b>
<b>I. The Right To Counsel in Cases Involving Shelter .....</b>	<b>4</b>
A. Current Scope of the Right .....	4
B. Potential for Expansion.....	4
1. Eviction from public housing.....	4
2. Section 8 benefits .....	6
3. Foreclosure/Equity stripping .....	7
<b>II. The Right to Counsel in Cases Involving Child Custody, Safety, and Support .....</b>	<b>9</b>
A. Cases Involving Child Custody and Parental Rights .....	9
1. Current scope of the right .....	9
2. Potential for expansion.....	10
B. Cases Involving Child Safety .....	11
1. Current scope of the right.....	11
2. Potential for expansion.....	11
C. Cases Involving Child Support.....	12
1. Current scope of the right.....	12
2. Potential for expansion.....	12
<b>III. The Right to Counsel in Cases Involving Government Benefits .....</b>	<b>13</b>
A. Current Scope of the Right .....	13
B. Potential for Expansion.....	13
<b>IV. The Right to Counsel in Cases Involving Health. ....</b>	<b>15</b>
A. Current Scope of the Right .....	15
B. Potential for Expansion.....	16
<b>V. The Right to Counsel in Cases involving the Environment. ....</b>	<b>16</b>
A. Current Scope of the Right .....	16
B. Potential For Expansion.....	18
<b>VI. The Right to Counsel in Prisoners' Rights Cases.....</b>	<b>18</b>
A. Current Scope of the Right .....	18
B. Potential For Expansion.....	19

## INTRODUCTION

In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) the U.S. Supreme Court found that:

[R]eason and reflection require us to recognize that in our adversary system...any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. . .From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.

In 2006, the ABA house of delegates recommended that United States jurisdictions expand *Gideon's* imperative to civil litigants in cases involving important individual rights:

RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.<sup>1</sup>

The Minnesota State Bar Association (“MSBA”) recognizes along with the ABA that indigent civil litigants in Minnesota are often forced to litigate over their health, safety, children, and sustenance without the benefit of counsel. To that end, Minnesota has a strong and relatively well-funded legal services delivery system.

But even Minnesota’s legal services system can only meet about 20 percent of the client need. Thus, expanding the availability of court-appointed counsel presents a potential opportunity to expand access to legal services to those who stand to risk the most by unjust outcomes in civil proceedings.

It is not clear whether civil-*Gideon* is the best solution to the problem of insufficient legal services, however. Minnesota’s budget for court-appointed legal services and legal aid is finite, and recent well-publicized budget cuts have pared back the available resources even further.<sup>2</sup>

In light of the promise and the potential pitfalls of civil-*Gideon*, the MSBA Assembly passed the following resolution in December 2007 creating a civil-*Gideon* task force:

While it is not likely that a Minnesota Civil *Gideon* will be created in the near future, given national trends this issue will continue to develop in the coming years and it is important that the Minnesota State Bar Association (MSBA) lead the discussion in this state. Minnesota has a strong and relatively well-funded legal services delivery system but it can only meet,

---

<sup>1</sup> Report to House of Delegates, American Bar Association Task Force on Access to Civil Justice (August 7, 2006).

<sup>2</sup> See, e.g. Elizabeth Stawicki, “Public defenders to stop representing poor parents in child protection cases,” Minnesota Public Radio (July 3, 2008) available at [http://minnesota.publicradio.org/display/web/2008/07/03/who\\_will\\_pay/](http://minnesota.publicradio.org/display/web/2008/07/03/who_will_pay/).

at best, about 20 percent of the client need. Creating a right to counsel in civil cases is one way to expand access to justice, but it is not clear whether this is the best, or even a desirable, solution. A fact-finding task force convened by the MSBA would bring together representatives from the legal services, public defender, county attorney, law school, and judicial communities to examine the pros and cons of a civil right to counsel. The task force would encourage collaboration amongst the interested parties and identify the needs and concerns of the many stakeholders. The task force would research whether there is a basis for a civil right to counsel in Minnesota, perhaps conduct public hearings, and explore the cost of having such a right and how it might impact funding for legal services, public defenders, county attorneys and the judiciary. The task force report and findings will be important for shaping any future action on the issue in Minnesota.

The aim of this white paper is to help guide the MSBA's civil-*Gideon* task force's analysis of merits of civil-*Gideon* by providing a legal backdrop. This white paper explores the current state of Minnesota law in several areas where court-appointed counsel may ensure that indigent litigants are not unjustly deprived of basic rights. For each such area, this paper then discusses the potential for expansion of the right to court-appointed counsel.

## **DISCUSSION**

### **I. The Right To Counsel in Cases Involving Shelter**

#### **A. Current Scope of the Right**

Minnesota does not extend the right to counsel to civil housing matters. For example, there is currently no right to counsel in Minnesota for indigent persons challenging their eviction actions or the determinations of a Public Housing Authority in court.<sup>3</sup> There is also no right to counsel in Minnesota related to mortgage foreclosure or in civil cases involving predatory lending, mortgage fraud, or equity stripping.

#### **B. Potential for Expansion**

Although a multitude of proceedings exist which in some way touch upon the basic right to shelter, this section will cover proceedings that present the most viable option for extending the right to counsel to civil proceedings.

##### **1. Eviction from public housing**

A promising opportunity exists for establishing the right to counsel in eviction proceedings where tenants are evicted from Public Housing.

First, the right at stake is a vested right to a government benefit, a benefit provided in the form of shelter. This right is not easily acquired. For example, the Minneapolis Public Housing

---

<sup>3</sup> See *Maeberry v. Housing and Redevelop. Auth. of Duluth, Minn.*, 341 F.Supp. 643, 647 (D. Minn., 1971) (“[T]he court does not believe that it has the legislative authority to order [the welfare department or public housing authority] to expend money for the purpose of employing counsel, nor to void the Housing and Redevelopment proceedings because thereof.”).

Authority (“MPHA”) is the largest public housing authority in the State of Minnesota, yet there are 5,190 individuals on its highrise public housing waiting list and 6,400 families on its family public housing waiting list.<sup>4</sup> At the moment, MPHA is not even accepting new applications for the Family Wait List.<sup>5</sup> Moreover, the loss of this right can lead to severe consequences, as families evicted “for cause” from Public Housing may be barred from Public Housing for up to three years after eviction.<sup>6</sup> The MPHA can also deny qualification for up to five years if the applicant has been evicted for drug-related criminal activity, and may permanently disqualify applicants for any past criminal activity if MPHA believes that the applicant “may adversely affect the health, safety, or welfare of other tenants, neighbors, or MPHA staff, contractors, or subcontractors.”<sup>7</sup>

Second, Public Housing Authorities (“PHAs”) are the “landlord” in such proceedings. Although Federal law governs several aspects of PHAs’ leasing practices, state law continues to govern evictions. Federal regulations require that all tenants evicted by local PHAs have the right to challenge their evictions in court under State law.<sup>8</sup> However, these proceedings differ from other evictions because the tenant’s adversary is not a regular landlord, but a government-funded, federally regulated agency. The PHA will be represented during the eviction proceeding by attorneys paid with public funds, often at an advantage to the tenant because they routinely practice before the Court seeking similar evictions against public housing tenants.

With regard to Public Housing evictions, the most compelling area for applying Civil *Gideon* would be for eviction proceedings where the PHA evicts a tenant for alleged criminal activity. The Federal Assisted Housing Code requires state and local PHAs to incorporate the following language in their leases with their Public Housing tenants, which empowers PHAs to evict for:

...[1] any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or [2] any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control...<sup>9</sup>

While PHAs typically must hold some form of hearing before evicting a public housing tenant for lease violations, Congress expressly eliminated the administrative hearing requirement for “criminal activity” evictions.<sup>10</sup>

---

<sup>4</sup> Minneapolis Public Housing Authority, Agency Fact Sheets, *available at* <http://www.mphaonline.org/agencyfa.cfm>.

<sup>5</sup> Minneapolis Public Housing Authority, MPHA Family Waiting List Information, *available at* <http://www.mphaonline.org/iting.cfm>.

<sup>6</sup> MPHA Statement of Policies, p. 21, *available at* [www.mphaonline.org/docs/SOP-Final%206-20-06.pdf](http://www.mphaonline.org/docs/SOP-Final%206-20-06.pdf).

<sup>7</sup> MPHA Statement of Policies, p. 20, *available at* [www.mphaonline.org/docs/SOP-Final%206-20-06.pdf](http://www.mphaonline.org/docs/SOP-Final%206-20-06.pdf).

<sup>8</sup> 24 C.F.R. §§ 966.51-966.53, 966.57; *see e.g.* Minn. Stat. § 504B.171 (preventing the eviction of any tenant unless tenant knew or had reason to know of alleged criminal activity).

<sup>9</sup> 42 U.S.C. § 1437d(l)(6); *see also* 24 C.F.R. § 966.4(f)(12) (2006) (also requiring every public housing lease to contain terms set forth in § 1437d(l)(6)).

<sup>10</sup> *See* 24 C.F.R. § 966.51.

PHAs may evict for suspected criminal activity even where there is no criminal conviction, charge, arrest, or investigation.<sup>11</sup> Further, PHAs need not determine that the alleged conduct would meet the criminal standard of proof for constituting a crime – i.e. “beyond a reasonable doubt” – indeed, PHAs are not bound to require any level of proof to support an eviction.<sup>12</sup>

Without counsel, eviction defendants are hard pressed to even identify the myriad of defenses that may be available to them, and are plainly ill-equipped to raise such defenses in court. Because of the quasi-criminal nature of “criminal activity” and “drug-related activity” eviction cases, a successful eviction defense may depend on, among other things, an understanding of both civil and criminal procedure, Fourth Amendment search and seizure law, evidence, and substantive criminal law. These complexities suggest a strong need for counsel, a luxury that Public Housing tenants cannot be expected to afford.

Due to the importance of the right at stake, the severe consequences of eviction, and the likely complexities of the proceedings, eviction from Public Housing should be further investigated as a possible area to expand the right to counsel.

## 2. Section 8 benefits

The termination of assistance with respect to Section 8 benefits or vouchers presents another opportunity to establish a right to counsel.

The Section 8 program “offers financial assistance for rental housing to low income families” by providing subsidies for use in renting units from private landlords.<sup>13</sup> “The intent of the program is to lessen the burden on the family’s budget for housing costs, helping them to better afford their rental payment.”<sup>14</sup>

Prior to termination of assistance, PHAs are required to offer an “informal hearing” for participants in the Section 8 voucher program and to notify the participants of the right to such hearing.<sup>15</sup> The notice will contain a deadline to request an informal hearing, for example, MPHA’s deadline is ten days from when notice was given.<sup>16</sup>

The informal hearing permits certain discovery rights to both the program participants and to the PHA.<sup>17</sup> Participants are also permitted to be represented by counsel (at their own expense) and participants and the PHAs may present witnesses and evidence.<sup>18</sup> However, the

---

<sup>11</sup> 24 C.F.R. 966.4(l)(5)(iii)(A).

<sup>12</sup> *Id.*

<sup>13</sup> Minneapolis Public Housing Authority, Section 8/HCV Program, General Information, *available at* <http://www.mphaonline.org/grambene.cfm>.

<sup>14</sup> *Id.*

<sup>15</sup> 24 C.F.R. § 982.555(a)(1)(v) and 24 C.F.R. § 982.555(c).

<sup>16</sup> Minneapolis Public Housing Authority, Section 8 Administrative Plan, ch. 16,11, *available at* <http://www.mphaonline.org/s8polic.cfm>.

<sup>17</sup> 24 C.F.R. § 982.555(e)(2).

<sup>18</sup> *Id.* at (e)(3) and (e)(5).

traditional rules of evidence do not apply and presumptively every piece of evidence is admissible.<sup>19</sup>

Section 8 assistance, similar to admittance to Public Housing, is a benefit not easily obtained. The MPHA has 6,970 families on its Section 8 waiting list.<sup>20</sup> Also, like eviction from Public Housing, the consequences of termination of assistance can be severe. A PHA will most likely deny a new application for assistance if any PHA has ever terminated assistance under the program for any member of the family.<sup>21</sup>

Participants face an additional risk in such proceedings, because the termination of Section 8 assistance results in an automatic termination of the lease.<sup>22</sup> Although the owner may offer the participant a separate unassisted lease, the cost of the unit would be greater than the participant could afford. In sum this proceeding is often a de-facto eviction proceeding that never goes in front of a judge, but is instead heard by a panel of PHA employees.

Further, the PHA's decision to terminate Section 8 benefits is subject to deference. An appeal would be a complicated process, only by writ of certiorari, and the participant must show that the decision was "arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it."<sup>23</sup>

For the foregoing reasons, termination of assistance with respect to Section 8 benefits or vouchers is another potential area for establishing a right to counsel under *Civil Gideon*.

### 3. Foreclosure/Equity stripping

Although mortgage foreclosure was examined as a possible area to extend the right to counsel, Minnesota law allows mortgage foreclosure by "power of sale," also known as foreclosure by advertisement.<sup>24</sup> Hence, Minnesota statutes provide that as long as lenders follow certain procedures and timelines, they do not need to go before a court in order to foreclose on a mortgage in default.<sup>25</sup>

A Minnesota *Civil Gideon* right to counsel makes much more sense in the context of equity stripping. Equity stripping is a practice in which businesses allow homeowners facing foreclosure to stay in their homes in exchange for transferring title to the property to the

---

<sup>19</sup> *Id.* at (e)(5).

<sup>20</sup> Minneapolis Public Housing Authority, Agency Fact Sheets, *available at* <http://www.mphaonline.org/agencyfa.cfm>.

<sup>21</sup> Minneapolis Public Housing Authority, Section 8 Administrative Plan, ch. 3, *available at* <http://www.mphaonline.org/s8polic.cfm>.

<sup>22</sup> Minneapolis Public Housing Authority, Section 8 Administrative Plan, ch. 12,10, *available at* <http://www.mphaonline.org/s8polic.cfm> (when the family's assistance is terminated, the lease and contract terminate automatically).

<sup>23</sup> *Hinneberg v. Big Stone County Housing and Redevelopment Authority*, 2004 WL 2986536, \*2 (Minn. Ct. App. 2004). *See also Carter v. Olmsted County Housing and Redevelopment Authority*, 574 N.W.2d 725 (Minn. Ct. App. 1998) (Housing authority terminating Section 8 benefits acted in a quasi judicial capacity and the housing authority's decision is subject to deference).

<sup>24</sup> See Minn. Stat. § 580.001-580.30.

<sup>25</sup> *Id.*

business.<sup>26</sup> The equity stripping business then sells the homes back to the original homeowner under a contract for deed.<sup>27</sup> The equity stripper charges the original homeowner excessive fees, and when they cannot pay, and therefore breach the contract for deed, the equity stripper evicts them.<sup>28</sup> Homeowners who are victims of equity stripping lose not only their homes but all of the equity they had built up over years of paying a mortgage.

Victims of equity stripping tend to be low-income, uninformed, and elderly.<sup>29</sup> The transactions involved in equity stripping tend to be exceedingly complex and many victims do not even know that they are transferring ownership of their home to the equity stripping business.<sup>30</sup>

Minnesotans who have been the victims of equity stripping do have recourse, however. Under a provision of the Minnesota Consumer Fraud Act (“MCFA”), the state has regulated equity stripping practices and has given a private right of action to victims.<sup>31</sup> Among other things, the anti-equity-stripping provisions of the MCFA mandate that equity-stripping businesses verify a homeowner’s ability to pay fees associated with any contract-for-deed arrangement and make a number of disclosures to the homeowner before entering into any such arrangement.<sup>32</sup> Further, the anti-equity stripping provisions ban a number of deceptive practices by equity-strippers.<sup>33</sup>

Most important for past victims of equity stripping, however, are two aspects of the MCFA. First, the Minnesota legislature passed the equity-stripping portion of the MCFA in 2004, just before the peak of such practices in Minnesota. This means that the vast majority of victims have a plausible recourse available to them.<sup>34</sup> Second, the equity-stripping provisions of the MCFA include a right of rescission.<sup>35</sup> Under the MCFA, a homeowner can rescind any agreement with an equity-stripping business that does not comply with broad disclosure requirements.<sup>36</sup> The requirements mandate full, written disclosure of the exact nature of the arrangement between the homeowner and the equity-stripper.<sup>37</sup> The written disclosure must be the same as what the equity stripper orally told the homeowner.<sup>38</sup> Because a hallmark of equity stripping is an oral misrepresentation of the agreement between homeowner and equity-stripper, many victims will have a right of rescission under the MCFA.

---

<sup>26</sup> Michelle Lore, *Lawyers Need to Assist Victims of Mortgage Fraud and Foreclosure*, MINNESOTA LAWYER, Dec. 31, 2007.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*; Telephone interview with Mark Ireland, Staff Attorney, Foreclosure Relief Law Project (July 29, 2008) (hereinafter “Ireland Interview”).

<sup>30</sup> Michelle Lore, *Lawyers Need to Assist Victims of Mortgage Fraud and Foreclosure*, MINNESOTA LAWYER, Dec. 31, 2007; Ireland Interview.

<sup>31</sup> Minn. Stat. § 325N.18, Minn. Stat. § 8.31.

<sup>32</sup> See Minn. Stat. § 325N.17.

<sup>33</sup> See *id.*

<sup>34</sup> Ireland Interview.

<sup>35</sup> Minn. Stat. § 325N.02.

<sup>36</sup> See Minn. Stat. § 325N.03.

<sup>37</sup> Minn. Stat. § 325N.03(c).

<sup>38</sup> *Id.*

The MCFA gives Minnesota equity-stripping victims viable and useful claims. Such claims are generally quite complicated.<sup>39</sup> Whether an equity-stripping victim successfully brings such a claim can be the difference between keeping his or her home on the one hand or losing the home and all home equity on the other.

Further, the Minnesota legislature has demonstrated its desire to see victims of equity stripping have attorney representation by allowing for recovery of attorney costs and fees.<sup>40</sup> Despite the attorney's fees provision in the MCFA, however, a great need exists for more lawyers to represent victims of equity stripping in Minnesota.<sup>41</sup>

For the foregoing reasons, potential exists for a Civil *Gideon* right for plaintiffs bringing MCFA claims based on equity stripping.

## **II. The Right to Counsel in Cases Involving Child Custody, Safety, and Support**

### **A. Cases Involving Child Custody and Parental Rights**

#### **1. Current scope of the right**

There is no general right to appointed counsel in custody cases in Minnesota.<sup>42</sup> However, a right to counsel exists for individuals in the following types of cases with custody implications:

- 1) A putative father who has registered with the father's adoption registry and is seeking to exercise his paternal rights over a child being put up for adoption.<sup>43</sup>
- 2) The birth parents in a direct adoption proceeding.<sup>44</sup>
- 3) The minor parent of a child being given up for adoption prior to consenting to the adoption.<sup>45</sup>

---

<sup>39</sup> Michelle Lore, *Lawyers Need to Assist Victims of Mortgage Fraud and Foreclosure*, MINNESOTA LAWYER, Dec. 31, 2007; Ireland interview.

<sup>40</sup> Minn. Stat. § 325N.18; MINN. STAT. § 8.31.

<sup>41</sup> Michelle Lore, *Lawyers Need to Assist Victims of Mortgage Fraud and Foreclosure*, MINNESOTA LAWYER, Dec. 31, 2007; Ireland interview.

<sup>42</sup> *Robinson v. Stegora*, 2003 Minn. App. LEXIS 523 (Minn. App. 2003) (rejecting parents' claim that trial court erred by not advising them of "right" to appointed counsel before a custody trial in which the court transferred legal and physical custody of their children to the grandparents; "a decision to extend the right to court-appointed counsel to include custody proceedings is not the province of this court"); *Bjerke v. Bacon*, 1993 Minn. App. LEXIS 951 (Minn. App. 1993) (rejecting mother's claim that she was entitled to court-appointed counsel when appealing custody determination which awarded sole legal and physical custody of her son to his father).

<sup>43</sup> Minn. Stat. § 259.52(12) (2007) (upon proof of indigency); Minn. R. Adoption P. 23.02(2) (same).

<sup>44</sup> Minn. Stat. § 259.47(5) (2007) (requiring adoptive parents to pay for birth parents' counsel upon request); Minn. R. Adoption P. 23.04(1)-(2) (same).

<sup>45</sup> Minn. Stat. § 259.24(2) (2007) (guaranteeing right to consult with an attorney, physician, or member of clergy and requiring county to pay for counsel if minor cannot afford it).

- 5) A child, parent, guardian, or custodian in cases where the remedy sought is out-of-home placement, foster care, or inpatient treatment.<sup>46</sup>
- 7) A child and their parent or guardian for the preparation of an out-of-home placement plan for the child.<sup>47</sup>
- 8) All parties in proceedings under the Parentage Act, which primarily involves paternity establishment.<sup>48</sup>
- 9) Parents and children in termination of parental rights proceedings.<sup>49</sup>
- 10) A party has a right to court-appointed counsel on custody and parenting time issues if they are necessary for the initial establishment of parentage.<sup>50</sup>

## 2. Potential for expansion

One area in which the right to counsel may be expanded is the representation of children in cases that influence who has custody of them, such as paternity and custody proceedings. The Minnesota Supreme Court has at least twice left open the issue of whether children should have their own counsel in paternity suits.<sup>51</sup> The Parentage Act provides that a child may be made a party to a proceeding under the Act and provides for the appointment of a guardian ad litem in such cases.<sup>52</sup> However, counsel could be appointed in place of, or in addition to, the guardian ad litem to pursue the child's wishes, rather than the guardian's conception of the child's best interests.<sup>53</sup> Furthermore, Minnesota law provides that a court should consider the child's wishes in custody disputes and adoptive placements so long as the child is of "sufficient age to express preference."<sup>54</sup> The appointment of counsel for children in cases affecting their custody could help ensure their preferences are made known and taken into consideration by the courts.

Another area for expansion is a right to counsel for indigent parents in custody disputes. Counsel is important in these cases because they have dramatic results that potentially remove a child from the custody of their mother or father, but Minnesota courts have so far rejected

---

<sup>46</sup> Minn. Stat. § 260C.163(b)-(c) (2007).

<sup>47</sup> Minn. Stat. § 260C.212(1)(d) (2007).

<sup>48</sup> Minn. Stat. § 257.69 (2007) ("the court shall appoint counsel for a party who is unable to pay timely for counsel in proceedings under sections 257.51 to 257.74," otherwise known as the Parentage Act).

<sup>49</sup> Minn. Stat. § 260C.163(3)(a).

<sup>50</sup> Minn. Gen. R. Prac. § 357.03.

<sup>51</sup> *Hepfel v. Bashaw*, 279 N.W.2d 342 (Minn. 1979) (using supervisory power to find a right to counsel for indigent defendants in paternity suits but leaving issue of child's representation undecided); *Ramsey County Public Defender's Office v. Fleming*, 294 N.W.2d 275 (Minn. 1980) (reserving issue as to whether child's interests might be best protected if it had its own legal counsel).

<sup>52</sup> Minn. Stat. § 257.60.

<sup>53</sup> Minn. Stat. § 518.165(2) ("The guardian ad litem shall represent the interests of the child and advise the court with respect to custody and parenting time.")

<sup>54</sup> Minn. Stat. § 257.025 (custody dispute factors); Minn. Stat. § 259.29 (adoptive placement factors).

claims for a right to counsel for parents in custody determinations.<sup>55</sup> A right to counsel may be most important in third party custody cases in which custody may be transferred to someone other than a parent.<sup>56</sup>

## B. Cases Involving Child Safety

### 1. Current scope of the right

A child taken into custody for placement in a secure detention or child care facility and his or her parent, guardian, or custodian have the right to counsel at the detention hearing if the child is in need of protection or services, neglected and in foster care, or parental rights may be terminated.<sup>57</sup> The right also extends to a child, parent, guardian, or custodian in child protection proceedings before a juvenile court such as children in need of protection or services (“CHIPS”) and termination-of-parental-rights (“TPR”) proceedings.<sup>58</sup>

### 2. Potential for expansion

As noted above, both the child and their parent(s) generally have a right to appointed counsel in such proceedings. One problem, however, is that public defenders have stopped representing parents and children in these cases, which they had been doing since the 1970s.<sup>59</sup> Public defenders must represent children 10 or older in CHIPS proceedings but there is no requirement that they represent the parents.<sup>60</sup> Private attorneys are now representing many of these people but there are disputes between the state and counties as to who should be responsible for paying these private attorneys.<sup>61</sup> A statutory requirement that public defenders also represent parents in CHIPS proceedings would be helpful in solving this problem, but with recent state budget cuts funding would obviously be a problem.<sup>62</sup>

---

<sup>55</sup> See, e.g., *Robinson v. Stegara*, 2003 Minn.App. LEXIS 523 (Minn. App. 2003) (no due process violation where sole legal and physical custody of children was transferred to their grandparents because the children’s parents had no right to counsel in the custody case).

<sup>56</sup> *Id.*

<sup>57</sup> Minn. Stat. § 260C.176(3)(g) (2007).

<sup>58</sup> Minn. Stat. § 260C.163(3)(a) (2007).

<sup>59</sup> Barbara L. Jones, *Ugly Confrontation Brewing Over CHIPS Representation*, Minnesota Lawyer, June 30, 2008, at 1.

<sup>60</sup> Minn. Stat. § 611.14(4); Jones, *supra*, at 14.

<sup>61</sup> Jones, *supra*, at 14.

<sup>62</sup> Chief Judge Jon Maturi of the 9th Judicial District recently issued an order to all public defenders in the district to continue representing their clients, parents in CHIPS proceedings, until the cases are concluded. Judge Maturi said that under Minn. Stat. §. 611.16 the court could appoint a public defender in any case where a statute requires that a person be represented by counsel and where no rule or statute excludes the client from those whom public defenders may be appointed to represent. He also stated that although his order may increase the burden on public defenders, “that concern pales when contrasted with the possible unjustified loss of a parent’s relationship with their child.” The Judge’s order, however, does not apply to public defenders in *new* juvenile protection hearings so this dilemma will likely persist.

## C. Cases Involving Child Support

### 1. Current scope of the right

Each party in the expedited child support process has the right to counsel, but not necessarily the right to appointed counsel.<sup>63</sup> Any party in expedited child support cases has the right to an attorney if they cannot afford one, but only if the case involves either the establishment of parentage or contempt proceedings in which incarceration of the indigent party is a possible outcome.<sup>64</sup> A party has a right to court-appointed counsel on child support issues if they are necessary for the initial establishment of parentage.<sup>65</sup>

### 2. Potential for expansion

The right to counsel in child support proceedings applies only in the expedited process in which the county is involved in the collection of child support. However, the right to *appointed* counsel exists only in expedited child support proceedings in which contempt proceedings or paternity are in issue.<sup>66</sup> The right could be extended to cover all expedited child support proceedings due to the fact that the county is assisting with the collection of support.<sup>67</sup>

The right to appointed counsel could also be expanded to cover custodial parents or guardians seeking child support regardless of whether the county is involved in the collection. Establishment, collection, or modification of child support requires extensive fact gathering (e.g., all sources of the respondent's income) with which an attorney could assist the petitioners. However, Minnesota courts provide rather simple forms that parties can use in the child support process. Assistance by some type of social services agency would probably be adequate in this regard and counsel may be unnecessary.

---

<sup>63</sup> Minn. Gen. R. Prac. § 357.01 (2008).

<sup>64</sup> Minn. Gen. R. Prac. § 357.03 (2008); *Cox v. Slama*, 355 N.W.2d 401, 403 (Minn. 1984) (Minnesota Supreme Court used its supervisory power to find a right to appointed counsel for indigent persons facing civil contempt charges for failing to pay child support).

<sup>65</sup> Minn. Gen. R. Prac. § 357.03.

<sup>66</sup> *Id.*

<sup>67</sup> See *Hepfel v. Bashaw*, 279 N.W.2d 342, 346 (Minn. 1979) (noting that welfare department may become "the aggressive and predominant party in interest" in paternity actions as one factor warranting a right to counsel for indigent respondents in such actions).

### III. The Right to Counsel in Cases Involving Government Benefits

#### A. Current Scope of the Right

Through cash assistance,<sup>68</sup> health care,<sup>69</sup> and unemployment assistance programs,<sup>70</sup> Minnesota provides government benefits to Minnesotans whose basic needs are not being met. The process for receiving these government benefits includes (1) the applicant's an initial application; (2) the government's request for supporting documentation; and (3) an interview during which an initial determination is made regarding eligibility. If benefits are denied or if the applicant wishes to contest the amount of the award, the applicant has a right to appeal to an administrative agency and, in some instances, state courts.<sup>71</sup>

Minnesota law does not currently afford the right to counsel in cases involving government monetary payments or unemployment benefits.<sup>72</sup> It is estimated that less than 10% of applicants are represented by counsel in these hearings.<sup>73</sup>

#### B. Potential for Expansion

Stakeholders involved in government benefit hearings have identified several areas in which the deprivation of these basic needs is most at risk and, accordingly, a right to counsel would be most beneficial. Broadly speaking, these areas include those in which (1) an applicant risks temporary or permanent loss of benefits or (2) the law provides the judges presiding over the hearings with discretion to determine the appropriate amount of support based on the factual evidence presented by the applicant.

First, the need for sustenance is implicated in administrative hearings involving the government's decision to sanction the applicant by reducing, terminating, or denying support. In areas involving food stamps, unemployment benefits, and other cash benefits, if an applicant makes a false representation or conceals facts regarding his or her eligibility, the applicant's benefits may be denied or revoked.<sup>74</sup> The period of lost support can range from 13 weeks to

---

<sup>68</sup> Cash assistance programs include (1) Food Support (formerly Food Stamps), (2) Minnesota Family Investment Program, which provides financial support to families with dependent children while encouraging the parents to find work, (3) General Assistance, which provides financial support to individuals without children, and (4) Minnesota Supplemental Aid, which bolsters the financial situation of Minnesotan dependent on federal Supplemental Security Income. MN. DEP'T HUM. SERV., HUMAN SERVICES APPEALS PROCESS 2 (2006).

<sup>69</sup> Health care programs include Medical Assistance and General Assistance Medical Care, which provide medical care for low-income and disable people, and MinnesotaCare, which provides subsidized medical insurance for low-income people without health coverage. *Id.* at 2-3.

<sup>70</sup> The unemployment assistance provides cash benefits for some individuals upon separation from employment. See Minn. Stat. Ch. 268 (2007).

<sup>71</sup> Minn. Stat. § 256.045 (7) (2006).

<sup>72</sup> See Minn. Stat. § 268.105 subd. 6(b) (Unemployment Insurance appeals hearings).

<sup>73</sup> See Interview with Craig Gustafson, Unemployment Insurance statistician (August 15, 2008) (estimating that, in unemployment benefit appeals hearings, approximately 10% of employers and 5% of applicants are represented by counsel); Interview with Kenneth Mentz, Chief Appeals Judge, Appeals and Regulations Division, Dep't Hum. Serv., in Mn. (July 22, 2008) (estimating that in health and cash assistance program hearings 90% of applicants are not represented by counsel).

<sup>74</sup> Minn. Stat. 268.182 (unemployment benefits).

two years.<sup>75</sup> In addition, the applicant may be subject to criminal<sup>76</sup> or civil penalties<sup>77</sup> for unemployment fraud.<sup>78</sup> To balance these harsh penalties, the government's burden of proof is heightened to clear and convincing evidence,<sup>79</sup> which means that an applicant may easily prevail simply by showing up and providing a logical explanation for the applicant's statements. Nevertheless, many applicants do not even show up for these hearings, and those that do regularly fail to present basic facts that could assist their defense. Were experienced counsel to be provided in these hearings, counsel could assist the applicant to understand the implications of phrases such as "clear and convincing evidence" and mens rea standards,<sup>80</sup> which, in turn, would enable the applicant to mount a more successful defense. Situations in which an applicant who has provided only truthful statements nevertheless ends up being deprived of his or her basic needs could be prevented.

Second, the need for sustenance is implicated in areas in which judges must determine the appropriate amount of support based upon factual evidence presented by the applicant. This is often the case, for example, in cases involving specialized medical knowledge. Unlike those cases in which the judge simply applies clearcut guidelines,<sup>81</sup> the law provides judges with discretion in determining the proper amount of support.<sup>82</sup> For example, in unemployment benefit hearings, the issue is often whether the applicant was forced to leave his or her jobs due to the employer's refusal to make reasonable accommodations for the applicant's serious medical condition.<sup>83</sup> In areas of specialized medicine, such as mental illnesses, judges may lack knowledge and may not know how to elicit all the relevant evidence concerning a condition.<sup>84</sup> By the time the applicant has an opportunity to request reconsideration or appeal

---

<sup>75</sup> Minn. Stat. 268.182 subd. 2 (disqualification from receiving unemployment benefits ranging from 13 to 104 weeks).

<sup>76</sup> Minn. Stat. 609.52 subd. 3 (the criminal penalty is imprisonment or fine, with the maximum fine for a first time offender is two to five times the amount of benefits received).

<sup>77</sup> Minn. Stat. 268.18 subd. 2, subd. 2b (the civil penalty for fraud can be up to 140% of the benefits received plus 1.5% monthly interest plus collection fees).

<sup>78</sup> Minn. Stat. 268.182 (unemployment benefits).

<sup>79</sup> Interview with Louis Thayer, Appeals Judge, Appeals and Regulations Division, Dep't Hum. Serv., in Mn. (July 30, 2008).

<sup>80</sup> The standard is "intentionally" for criminal penalties in the unemployment context and in cash assistance program termination hearings. Minn. Stat. 268.182 subd. 1 (an applicant is subject to criminal penalties if he or she intentionally makes a false representation) ; Interview with Louis Thayer, Appeals Judge, Appeals and Regulations Division, Dep't Hum. Serv., in MN (July 30, 2008) (explaining that the standard in cash assistance program termination hearings is intent). The standard is "knowingly" for civil penalties in the unemployment context. Minn. Stat. 268.182 subd. 2 (an applicant can be subject to civil penalties if he or she knowingly makes a false representation).

<sup>81</sup> See Combined Manual, available at [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_016956](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_016956) (setting forth the guidelines for determining program eligibility); see also Interview with Margaret Manderfeld, Appeals Judge, Appeals and Regulations Division, Dep't Hum. Serv., in MN (July 30, 2008) (noting that the majority of cases involve the application of guidelines).

<sup>82</sup> Interview with Rita McDermott, Appeals Representative for Hennepin County, Dep't Hum. Serv., in MN (July 29, 2008).

<sup>83</sup> Minn. Stat. 268.085 subd.13a; Minn. Stat. 268.095 subd.1(7).

<sup>84</sup> Interview with Judge Frank Bloom, Unemployment Law Judge, August 11, 2008.

the decision, the record is sealed.<sup>85</sup> Similarly, some health and cash benefit programs vary in the amount of support the applicant receives based on the applicant's need (e.g., financial support for foster parents<sup>86</sup>) or degree of disability. Because this determination largely turns on the applicant's ability to document and establish the degree of need or disability,<sup>87</sup> it is critical that the applicant present relevant factual information at the initial hearing. Were counsel to be provided in these cases, counsel could assist the applicant to establish the full extent of the need or disability by presenting relevant factual evidence in a manner that is tailored to the law. In contrast, without counsel, applicants may fail to address relevant factual issues that could dramatically increase the amount of support they are entitled to under the highly subjective standards.

#### **IV. The Right to Counsel in Cases Involving Health.**

##### **A. Current Scope of the Right**

According to the Minnesota Department of Health, one in twelve Minnesotans lack health insurance.<sup>88</sup> Currently, Minnesota does offer a statutory right to counsel for certain limited health-related issues.<sup>89</sup> These statutes provide rights to counsel only where certain liberties and freedoms are at stake. However, no right to counsel exists in Minnesota for people seeking access to healthcare or healthcare insurance.

According to the ABA, "health" includes access to appropriate healthcare for treatment of significant health problems, whether that healthcare is financed by government agencies (e.g. Medicare, Medicaid, VA, etc.) or as an employee benefit through private insurance or otherwise.<sup>90</sup> The ABA focused its civil-*Gideon* resolution on the rights of individuals to obtain healthcare and medical treatment.

Presently, Minnesota law does not provide a right to counsel for proceedings related to state healthcare benefits. Minnesota has three main programs for those that meet the stringent eligibility requirements and are unable to participate in Medicare or Medicaid: MinnesotaCare, General Assistance Medical Care (GAMC), and Medical Assistance (MA). Roughly 666,000 Minnesotans receive health care through these three publicly-funded basic health care

---

<sup>85</sup> See Minn. Stat. 286.105 subd. 2(c).

<sup>86</sup> Interview with Louis Thayer, Appeals Judge, Appeals and Regulations Division, Dep't Hum. Serv., in MN. (July 30, 2008).

<sup>87</sup> *Id.*

<sup>88</sup> Minn. Dept. of Health *available at* <http://www.health.state.mn.us/divs/idepc/refugee/immigrant/access.html>.

<sup>89</sup> See Minn. Stat. § 144.4195(1)(b) (requiring that an ex parte order for the quarantine of a person or group of persons notify those quarantined of their right to a court hearing and their right to counsel or appointed counsel if indigent, at any proceeding related to the court order); *see also* Minn. Stat. § 144.4890(3) (describing the petition and hearing process for enforcement or relief of an order designating someone a tuberculosis health threat and requiring that, in cases where the petitioning party is the government seeking enforcement of such order, notice of the hearing notifying the respondent of his or her right to appointed counsel); *see also* Minn. Stat. § 144.7407(2)(e) (guaranteeing the respondent's right to counsel in proceedings related to the non-consensual taking of a blood sample for pathogen-testing purposes).

<sup>90</sup> ABA, *Resolution of Civil Right to Counsel*, 15 Temple Political & Civ. Rights L. Rev. 508, 522 (2006).

programs.<sup>91</sup> The Minnesota Department of Human Services (DHS) administers MinnesotaCare and oversees MA and GAMC, which are administered by counties.<sup>92</sup> About one-half of the combined enrollees are under the age of twenty-one.<sup>93</sup>

Participants may pursue two avenues to remedy their complaints or grievances with the programs. Participants may file a verbal or written grievance or appeal with the health plan regarding a particular action taken by the healthcare plan. They also have the right to seek a “fair hearing” with the Minnesota Department of Human Services. However, strict time limits apply. Participants only have ninety days to file a grievance or appeal, and only thirty days to request a State fair hearing from the time the action complained of was taken.<sup>94</sup> The grievance/appeals and “fair hearing” avenues may be pursued concurrently.<sup>95</sup>

Currently, the State of Minnesota provides limited help and information to those navigating the grievance/appeals process in the State healthcare system. Minnesotans that participate in one of these plans can seek help from the Office of the Ombudsman for State Managed Health Care Programs. The Ombudsman office reviews and investigates complaints and recommends actions to remedy complaints related to access, service, and billing problems. The Ombudsman office also provides information to participants regarding the grievance and appeals process and the State fair hearing process.

## **B. Potential for Expansion**

While participants in Minnesota health care programs have a number of avenues to pursue their complaints, they may be unaware of these avenues, and are forced to represent themselves in connection with these important benefits. Counsel would certainly be beneficial in assisting beneficiaries in hearing procedures that adjudicate the potential reduction or termination of their health care benefits. State-appointed counsel could also reduce the number and refine the type of complaints that are made regarding state health-care benefits, because counsel could help beneficiaries assess the merits of their claim before it is raised with the plan or the Department of Human Services. The task force should consider whether the cost of appointing counsel in these cases would save money in the long run, and whether the cost is justified by the important benefits counsel could provide to beneficiaries.

## **V. The Right to Counsel in Cases Involving the Environment.**

### **A. Current Scope of the Right**

Minnesota provides citizens with several private rights of action to enforce Minnesota’s environmental safety laws, but does not provide a right to court-appointed counsel in such actions.

---

<sup>91</sup> Minn. Dept. of Health *available at*:  
[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16\\_136855](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_136855).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Minn. Dept. of Health *available at*:  
[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_052228#P56\\_6819](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_052228#P56_6819).

<sup>95</sup> *Id.*

The Minnesota Pollution Control Agency (MPCA) was organized “to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state...”<sup>96</sup> In pursuit of its goal, the MPCA is authorized to devise and adopt standards governing air quality and emissions (including livestock odor), solid waste disposal, noise levels, and hazardous waste management.<sup>97</sup> Although the MPCA may itself issue administrative penalties and field citations to non-compliers, both the Minnesota Environmental Rights Act (MERA) and the Minnesota nuisance statute contemplate private rights of action for noncompliance with certain MPCA standards.<sup>98</sup>

Through MERA, the Minnesota legislature declared that “it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.”<sup>99</sup> When bringing an action under MERA, a plaintiff may establish a prima facie case by identifying a protectable natural resource and showing that the conduct of the defendant violates or is likely to violate an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit...<sup>100</sup>

For example, in *State by Schaller v. County of Blue Earth*, the plaintiff brought a MERA claim alleging that construction of a new highway would violate MPCA noise standards.<sup>101</sup> Additionally, in *Overgaard v. Rock County Bd. of Com’rs*, the plaintiffs brought a MERA claim alleging that a local pig feedlot was violating MPCA odor and emissions standards.<sup>102</sup> Finally, in *Safe Grant*, the plaintiffs alleged a successful prima facie MERA claim when the defendant’s gun club degraded quietude and materially adversely affected the environment (although MPCA does not have a specific noise standard for gun clubs).<sup>103</sup>

Similar to a MERA claim, the Minnesota nuisance statute provides for private rights of action based on MPCA or other state mandated standards.<sup>104</sup> Specifically, that statute explains that “an action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance...”<sup>105</sup>

For example, in *Wendinger v. Forst Farms Inc. & Wakefield Pork Inc.*, the court held that invasive odors from a confined-animal feeding operation qualified as a nuisance.<sup>106</sup> In particular, the court explained that “a plaintiff who presents evidence that the defendant intentionally maintains a condition that is injurious to health, or indecent or offensive to the

---

<sup>96</sup> Minn. Stat. § 116.01 (2007-2008).

<sup>97</sup> Minn. Stat. § 116.07 (2007-2008); Minn. Stat. § 116.0713 (2007-2008).

<sup>98</sup> Minn. Stat. § 116B.03 (2007-2008); Minn. Stat. § 561.19 (2007-2008).

<sup>99</sup> Minn. Stat. § 1116B.01 (2007-2008); Minn. Stat. § 116B.03.

<sup>100</sup> *Citizens for a Safe Grant v. Lone Oak Sportsmen’s Club, Inc.*, 624 N.W.2d 796, 805 (Minn. Ct. App. 2001); Minn. Stat. § 116B.04 (2007-2008).

<sup>101</sup> No. C2-96-1004, 1996 WL 438845 (Minn. Ct. App. Aug. 6, 1996).

<sup>102</sup> No. Civ. 02-601(DWF/AJB), 2002 WL 31924522 (D. Minn. Dec. 30, 2002).

<sup>103</sup> 624 N.W.2d at 806.

<sup>104</sup> Minn. Stat. § 561.01 (2007-2008).

<sup>105</sup> *Id.*

<sup>106</sup> 662 N.W.2d 546, 552 (Minn. Ct. App. 2003).

senses, or which obstructs free use of property, states an actionable claim in nuisance.”<sup>107</sup> Although the plaintiffs in *Wednginger* did not rely on a MPCA or other state sponsored standard, it is likely that they could have as Minn. Stat. § 561.19 Subd. 2(c)(1) contemplates a private right of action for violations of “state or local laws, ordinances, rules or permits....”

## **B. Potential For Expansion.**

The Minnesota legislature has already evinced an intent that private individuals should help enforce Minnesota’s environmental safety standards, particularly when the violation of those standards may lead to personal injury or health concerns. Minnesota’s environmental standards are best preserved by private litigants, who are uniquely able to deter violations of environmental standards and quantify environmental damages. Private plaintiffs bringing MERLA claims and claims under Minnesota’s nuisance statute should be provided counsel to insure their ability to comprehensively vindicate environmental rights. Providing counsel in such cases will further the stated environmental goals of the Minnesota legislature. The legislature should seriously explore whether the costs of providing counsel to private litigants in such cases could protect environmental standards for less money than the cost of funding a state agency charged with aggressively prosecuting violations of environmental standards.

## **VI. The Right to Counsel in Prisoners’ Rights Cases.**

### **A. Current Scope of the Right**

It is well documented that individuals confined in U.S. prisons are subject to civil rights violations as well as physical injury and/or death.<sup>108</sup> Although prisoners may have some legal recourse, including the ability to file federal 42 U.S.C. 1983 claims in state court, many obstacles can impede a prisoner’s ability to secure such a remedy.<sup>109</sup> One commonly seen obstruction is a lack of legal representation.

Unlike criminal defendants facing incarceration, prisoners who file civil actions have no constitutional or statutory right to counsel. On the contrary, such prisoners typically have less access to legal assistance than the average civil litigant. In addition to the obvious barriers created by incarceration (e.g. inability to conduct factual investigation or discovery, lack of fixed income and inability to make court appearances), prisoners do not have access to legal aid programs that receive funding from the Legal Services Corporation.<sup>110</sup> Furthermore, the Prison Litigation Reform Act of 1995 (PLRA) significantly reduces the attorneys fees available to successful prisoner plaintiffs and, thereby, further decreases the incentive for attorneys to represent incarcerated individuals.<sup>111</sup> Finally, the PLRA works generally to make civil litigation

---

<sup>107</sup> *Id.*

<sup>108</sup> See generally Jamie Fellner, *Prisoner Abuse: How Different are U.S. Prisons?* (2006), available at <http://www.hrw.org/english/docs/2004/05/14/usdom8583.htm>; Allen J. Beck et al., *Bureau of Justice Statistics Special Report: Sexual Violence Reported by Correctional Authorities* (2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca06.pdf>.

<sup>109</sup> *Fisher v. State, Dep’t. of Corr.*, Nos. A06-76, A06-77, 2007 WL 1673642 (Minn. App. June 12, 2007).

<sup>110</sup> Omnibus Consol. Rescissions & Approps. Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996); 45 C.F.R. part 1637.

<sup>111</sup> 42 U.S.C. § 1997e(d).

more difficult for prisoners by mandating that all administrative remedies be exhausted before civil rights claims may be alleged under 42 U.S.C. § 1983.<sup>112</sup>

**B. Potential For Expansion.**

Prisoners depend on agents of the State (namely guards and other prison staff) for all of their basic human needs, yet Minnesota does not provide them with an effective method to redress violations of their basic human rights. Minnesota should consider whether a tailored policy can be implemented to provide prisoners with non-frivolous abuse claims with court-appointed counsel to ensure that the state's prisons are complying with basic standards for the proper treatment of prisoners. In light of the high potential for prisoner abuse and the difficulty involved in achieving a legal remedy, a strong argument may be proffered in support of a right to counsel for prisoners.

---

<sup>112</sup> See 47 U.S.C. § 1997e(a).