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**REPORT AND RECOMMENDATION TO  
THE MINNESOTA STATE BAR ASSOCIATION**

**Regarding a Proposal to Create a Task Force to Explore the Feasibility of a  
Civil Right to Counsel in Minnesota**

**MSBA Legal Assistance to the Disadvantaged Committee  
August 1, 2007**

**RECOMMENDATION**

RESOLVED, that the Minnesota State Bar Association (MSBA) create a task force to explore the feasibility of a civil right to counsel in Minnesota. The mission of the task force should be fact-finding in nature, with the goal of providing a thorough analysis of whether there exists a basis to establish a civil right to counsel, and how such a right would affect the legal services delivery, public defense, county attorney and judicial systems in Minnesota.

**REPORT**

The effort to establish a right to counsel in civil cases implicating certain fundamental rights (referred to as civil *Gideon* in recognition of the case *Gideon v. Wainwright*, which established a right to counsel in criminal cases) is accelerating throughout the United States. While it could be decades before a civil right to counsel is recognized by the United States Supreme Court, many states are examining whether civil *Gideon* is a viable means of ensuring that more low-income clients have access to an attorney, at least in the cases involving basic needs such as housing and family stability. In Washington state, for example, a custody case with a right to counsel component is pending decision from the state supreme court (*King v. King*, No. 57831-6-I). In California, efforts are being directed toward developing a model statute and a pilot project. The American Bar Association (ABA) passed a resolution in 2006 supporting the concept of civil *Gideon* and the MSBA was one of 13 state, county, and city bar associations to endorse the resolution. The resolution was also supported by the National Legal Aid and Defender Association as well as many ABA committees, sections and commissions.

Minnesota has a strong and relatively well-funded legal services delivery system, but estimates are that it meets only about 20 percent of the client need. Creating a right to counsel in civil cases may expand access to justice, but it is not clear yet whether it is the best, or even a desirable, solution. There are several concerns, including the possible negative influence on legal services, public defenders, county attorneys, and the judiciary as well as questions about which civil cases

would qualify for counsel and how legal services priorities would be affected by right to counsel service requirements. On the other hand, more and more low-income clients are attempting to address complicated legal matters on a pro se basis. The courts are expanding self-help centers and web-based services, but many unrepresented litigants remain at a disadvantage. An attorney could make a difference in whether these individuals stay in their homes or keep custody of their children.

It is important that representatives from all facets of the Minnesota legal community examine civil *Gideon*. A fact-finding task force convened by the MSBA would bring together local and national experts with representatives from the court system as well as the legal services, pro bono, public defender, county attorney, law school and legislative communities to study the pros and cons of a civil right to counsel. The task force would provide a forum for a wide-ranging, thoughtful, and coordinated discussion including the need for civil *Gideon* and the basis for such a right if the need were found to exist. The task force would also identify implementation issues that would arise if the right were established in Minnesota. Examples from other states as well as other countries would be reviewed, and the full range of perspectives would be represented on the task force. The task force could also conduct public hearings. This would be particularly interesting given that national studies have shown that some 70 percent of the public believe that a civil right to counsel already exists.

While it is not likely that a Minnesota version of civil *Gideon* will be enacted in the immediate future, given national trends this issue will continue to develop in the coming years. The MSBA is the appropriate entity to assume a leadership role in the discussion. If or when a civil right to counsel is established it will impact all aspects of the legal system. The task force findings will be important for shaping any future action, encouraging collaboration amongst the interested parties, and identifying the needs and concerns of the many stakeholders affected.

Ideally the task force chairs and members would be appointed by the MSBA president during the fall of 2007 and the body would convene in January 2008 with a goal of completing its work by December 2008. The LAD committee will provide recommendations for task force membership to the MSBA president. The task force will report its findings to the MSBA Assembly in the spring of 2009. In addition, a local law review will be contacted to publish the report.

Respectfully submitted,

Legal Assistance to the Disadvantaged Committee  
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