

Minnesota State Bar Association

Civil Gideon Task Force

November 13, 2008

Minutes

Present: Mary Schneider, Kent Harbison, Bricker Lavik, Cathy Haukedahl, Bridget Gernander, Gary Hird, Dianne Heins, Rana Fuller, Jack Van de North, Russell Anderson, John Stuart, Emily Matson, Mary Jane Morrison, Perry Wilson, Kathleen Murphy, Janine Laird, Mary McGinnis, Stacey Tidball (MSBA staff), Steve Hirsh (MSBA staff)

By telephone: Jean Binkovitz, Kathleen Heaney, Max Heerman, Deb Gardner (guest)

1. Introductions
2. Presentation by Deb Gardner
 - a. National Coalition for a Civil Right to Counsel: Began in 2004. About 170 members from 35 states participate – full range of stakeholders. Information sharing and strategizing on how to advance a civil right to counsel. Discuss issues including possible scope of right, implementation issues. Can provide litigation support, amicus briefs, strategizing, public education help, develop social science research (costs, cost savings, impacts), help develop approaches state by state.
 - b. Current Civil Gideon efforts: litigation (Alaska), legislation (Louisiana, New York City), bar associations (Massachusetts, New York). No current federal strategy because of *Lassiter* decision.
 - c. Litigation strategy in Maryland: *Frase v. Barnhart* case, 2003. Didn't reach issue, but 3 of 7 judges wanted the court to address it. Looking for another case to bring forward under state constitution. Considerations: Maryland is relatively well-resourced for civil legal services, with several state funding streams. Also funding exists for cases with state-mandated counsel. Still significant unmet needs, and not likely to increase resource level. Plan was to go to legislature once a court had found the right exists. Entire justice community supports effort. Legal aid and pro se programs are referring possible cases. Public defenders are supportive – they are adequately funded.
 - i. Questions
 1. Possible revenue sources: general state revenue funds, since equal justice is basic government function. Examples: California proposed pilot project, New York City, Maryland.
 - a. Initiative similar to new dedicated funding for clean water and arts.
 2. Studies of cost of establishing and not establishing right: Massachusetts is developing study to identify costs and social savings. Public Justice Center and Brennan Center are developing a proposal for studying question for a particular substantive area (e.g. housing).

3. Impact of Washington case: doesn't think the rationale in *King* would affect Maryland court. Comment: courts resort to Constitution last – important to find case that doesn't allow for resolution on non-constitutional basis.
3. Dorsey white paper (Perry Wilson): Based on Laura Abel's study for New York. Looks at specific legal areas and analyze possibility of establishing right.
 - a. Key considerations:
 - i. Consequences of a proceeding (what's at stake).
 - ii. Any available remedy providing for attorneys fees? If so, not a good candidate.
 - iii. How many people would be impacted? Needs to be a large number.
 - b. Examples of areas which could support establishing a right
 - i. Public housing cases:
 1. Public Housing Agency is represented, tenant usually is not.
 2. Eviction frequently based on charges of criminal or quasi-criminal behavior.
 3. Consequences are severe – eviction likely to result in homelessness.
 4. Presence of counsel likely to positively affect outcome for tenant.
 5. Court of Appeals regularly reverses PHA evictions.
 - ii. Mortgage foreclosure – not a good candidate.
 1. Most foreclosures are non-judicial.
 2. Only court proceeding is eviction after foreclosure has occurred.
 3. Equity stripping cases provide attorneys fees.
 - iii. Government benefits (food stamps, sustenance benefits)
 1. Discussed questions with ALJs and others involved in process.
 2. Consequences of losing benefits are severe – benefits can be lost for years, maybe based on client mistake.
 3. Amount of benefits might be based on client's ability to prove extent of need, which lawyer could provide significant help with.
 - c. Need to assess different legal areas individually. Some areas strongly lend themselves to trying to establish a right. Important to apply appropriate methodologies to each area.
 - d. Paper does not look at every possible area. Focus was on developing a methodology for evaluating different legal areas.
 - e. Questions:
 - i. Proceedings based on an underlying procedure where there was no counsel: paper doesn't specifically study those kinds of proceedings, but they are very important. Uses significant judicial resources to re-litigate proceedings.
 - ii. Possibility of meeting client needs by increasing pro bono service, making it mandatory?
 - iii. What next:
 1. Dorsey does not currently have an active Civil Gideon project.
 2. Need to focus in on most likely areas.

3. Need to figure out how to pay for it.
4. Minutes of September 11, 2008 meeting: approved.
5. Budget request – approved by the Assembly, approximately \$8200.
6. Committee reports
 - a. Judiciary Committee: Jack Van de North (chair), Russ Anderson, Sam Hanson, Jay Quam
 - b. Academic activities (Mary Jane Morrison)
 - i. Legal Scholarship for Equal Justice: at all 4 law schools. At Hamline this year, Marie Failing is supervising. Students do independent research projects. Mary Jane will draft several possible proposals for students. Students produce research papers, sometimes submit them to journals. Looking for topic suggestions from members. Possibilities:
 1. Factual research needed for analyzing different substantive areas in Dorsey white paper.
 2. Analysis of whether having a lawyer would make a difference in Hennepin County Housing Court.
 3. Look at results from civil legal issues re-entry project for women from Shakopee Prison (current project involving Dept of Corrections and Public Defenders).
 4. CHIPS: extent to which counties are providing counsel to indigent parents.
 5. Collect data on private custody cases, extent of impact of no lawyer for parent.
 6. Survey of right to counsel internationally.
 7. Literature search that identifies information relevant to each subcommittee.
 8. Develop some of the factual basis – the stories – behind select appellate court decisions.
 9. Members asked to think of research topics and forward them to Mary Jane.
 - ii. MJF can also recruit students for specific research projects at any time during the year.
 - iii. Contact researchers at U of MN for help with economic issues.
 1. Bricker, Gary, Steve will make inquiries.
 - iv. Use of MNCIS: length of proceedings in pro se cases (Bridget) v. for cases with representation.
 - v. Consider possibility of law review and academic symposium.
 - vi. Question: whether to consider access to counsel issues for people who do not qualify for legal aid, but cannot afford counsel. Maybe reach out Family Law Section.

- c. Practical Issues: met November 12 to brainstorm possible issues. Will categorize and create structure, use that to develop action plan. Committee will meet again before January Task Force meeting.
- 7. Task Force communication: use MSBA staff as clearinghouse. All communications should go to Steve and Stacey.
- 8. Task Force timeline: initial charge expires June 2009. Intent is to have an initial report by then. Committee reports should be ready in sufficient time to compile Task Force report. Deadlines to be set at January meeting.
- 9. Invitation for Task Force presentation on local cable TV shows. Moderated by judges. Chairs are authorized by Task Force to appear.

Put link to Mass report on website