

Minnesota State Bar Association

Civil Gideon Task Force

September 11, 2008

MINUTES

Present: Mary Schneider (co-chair), Kent Harbison (co-chair), Karl Robinson, Beverly Balos, Mike Ford, Peter Knapp, Janine Laird, John Allison, Barb Ross, Cathy Haukedahl, Diane Heins, John Stuart, Mary Jane Morrison, Karen Lindquist, Amy Helsene, Perry Wilson, Lew Linde, Bridget Gernander, Gary Hird, John Minge, Wood Foster, Conor Tobin, Leo Brisbois

By Telephone: Kathleen Heanny, Karen Horezeinicki, Jon Stafsholt

Guests: Laura Abel, Brennan Center

Staff: Steve Hirsh, Stacey Tidball

1. Introductions and interest in Civil Gideon
2. Initial remarks by MSBA President Ford on court funding, the rule of law and the MSBA's 1000Supporters website (www.1000supporters.org)
3. Video presentation by ABA Past President Michael Greco
4. Presentation by Bridget Gernander, Legal Services Grant Program Manager, MN Supreme Court
 - a. Data maps available at <http://www.mncourts.gov/?page=2151>
 - b. Data collected from all LSAC/LTAB grantees. Some law firm projects not represented, if not performed through and LSAC/LTAB grantee (i.e., Volunteer Lawyers Network)
 - c. Eligible client defined as within 200% of the federal poverty law guidelines
 - d. Current maps use data through calendar 2006. Maps will be updated with 2007 data shortly.
 - e. Cases closed per 1000 poor people:
 - i. Highest numbers in counties with a legal services office present
 - ii. Need to analyze whether counties with lower concentrations of cases have fewer legal needs. Case data will be compared to percentage of IFP filings
 - f. 2007 data will distinguish between brief service and extended representation cases. Attempt to fine tune data to better reflect amount of resources available.

- g. State and federal funding is distributed on a per capita poverty population basis in all 87 counties. But overall resources are not equally distributed across the state.
- h. Staff and pro bono case closings
 - i. Staff programs close approximately 75% of all cases statewide
- i. Large disparity across counties of number of lawyers per poor person
- j. Approximately 51,000 cases closed in Minnesota in 2006. LSC report found that 1 meritorious case was declined for lack of resources for each case that was accepted.
- k. Law school clinic cases are not included in the data.
- l. LSC report found that there is one private lawyer per 525 people; there is 1 legal services lawyer for every 6,861 poor people. Ratios for Minnesota are 1 legal services lawyer per 2,198 poor people; 1 private lawyer per 613 of general population.

5. Dorsey Whitney white paper

- a. Prepared this past summer. Based on model from New York.
- b. Examined discreet substantive areas, and analyzed basis for establishing a right to counsel. Included information based on interviews with judges and others involved in the judicial system.
- c. To be considered at next meeting

6. Presentation by Laura Abel

- a. Working with coalition in NYC to establish right to counsel for seniors in housing court
- b. New York State Bar working on expanding right to counsel in eviction/foreclosure cases, for disabled people unable to represent themselves, workers in unemployment compensation cases.
- c. National Coalition on Civil Right to Counsel: monthly conference call meetings. Task Force members are welcome to join. Web site: www.civilrighttocounsel.org.
- d. Nationally, 80% of legal needs of poor are unmet, despite significant improvements in funding around the country. Need to change the paradigm.
- e. Studies show most Americans believe there is a right to counsel in civil matters.
- f. Most other developed democracies have a right to counsel in civil cases effecting basic human needs. *Aire v Ireland* (private divorce case): European Court of Human

Rights found that either process needs to be simple enough for nonlawyers to navigate, or counsel must be provided.

- g. Problems with funding even where a right already exists (criminal, TPR).
- h. Need to de-link criminal right to counsel issues from civil matters. Practically, this is difficult, but we need to develop strategies.
 - i. Louisiana: Katrina decimated criminal defense system. Funding was from parking ticket fines, and revenue disappeared. Nonetheless, state recently established right to counsel in TPR cases not initiated by the state.
 - ii. New York: long-standing indigent defense funding issues. State operating under court order, multiple bills pending. Nonetheless, state legislature expanded right to counsel to custody matters in trial courts (right already existed for custody cases in family court).
- i. Need to bring more people to the table: community members, people who do family advocacy, community organizers, etc. Need to broaden the discussion.
- j. Need to act incrementally, while thinking big. Look for ways to advance the issue, while keeping sight of the overall need.
- k. Scope of existing civil right to counsel
 - i. Greater than usually understood.
 - ii. Compelled by federal and state law.
 - 1. Representation required for children in neglect/abuse proceedings (condition of federal funding).
 - a. Required for people facing civil forfeiture of homes (through LSC)
 - b. Parents of Native American children under Indian Child Welfare Act
 - c. Service members relief act: requires counsel for service members.
 - iii. Compelling practical reasons for providing counsel. Important to identify these.
 - iv. ABA resolution: shelter, sustenance, safety, health and child custody. Builds on existing civil right to counsel requirements.
 - 1. Shelter: civil forfeiture cases

2. Sustenance: only NY unemployment insurance appeals
 3. Safety: children in abuse/neglect; NY in domestic violence cases; non-citizen children in neglect/dependency who might be eligible for status adjustment, to have status adjusted.
 4. Health: counsel required by some states for minors seeking to avoid parental notification for abortion. Counsel frequently available for people fighting forced medication.
 5. Custody: most states require counsel for parents in state-initiated TPR cases, and proceedings leading up to that; paternity proceedings in most states; MN for men seeking to be adjudicated if child is subject to adoption proceeding; parents of children in foster care.
- v. Areas not addressed by ABA resolution:
1. Civil contempt
 2. Involuntary commitment
 3. Involuntary release of mental health records
 4. Private party seeking commitment of another (Alabama)
- vi. No right available:
1. For children in suspension/expulsion proceedings
 2. People whose disability prevents them from representing themselves (Washington has a narrow exception).
- vii. *Lassiter*: requires case-by-case analysis of whether counsel is required – does not simply say no counsel required.
- I. Efforts around the state
- i. National Coalition
 - ii. Interest from national bar leaders organization
 - iii. Various state-based efforts
- m. Areas of focus
- i. Child custody
 - ii. Adoptions
 - iii. Evictions/foreclosures

- iv. Tax foreclosures
- v. School suspension/expulsion
- n. Boston Bar Association – new report (on Task Force web page)
 - i. Guiding principles
 - 1. Matters related to criminal proceedings (civil contempt, immigration detention)
 - 2. Clients faced with deprivation of basic rights because of fundamental power imbalance
 - ii. Pilot projects being developed in various areas.
- o. New York Bar Association: large conference last year. Wide array of stakeholders.
 - i. Working group on each of ABA areas, and one on special populations
 - ii. Produced white paper (distributed to Task Force). Pending final approval.
- p. Philadelphia Bar Association is developing response.
- q. California has proposed pilot project.
- r. Issues for consideration:
 - i. What cases are important in Minnesota
 - ii. What are needs given local practices and resources
 - iii. Analyze where right already exists, look at how to expand it
 - iv. Understand how rights were originally created: policy rational, supporters, etc, and see how they could be applied to expanding right.
 - v. Look at existing experience where right exists (including criminal defense system).
 - vi. Is legislature aware of potential savings from expanding right (e.g. reducing numbers of foster care placements; reducing costs of unnecessary pre-trial detention, including loss of tax revenue while people are incarcerated, placement of their children in foster care, etc.).
 - vii. Consider right in context of other state ATJ efforts – how it fits with legal aid funding structure, how it would impact legal aid programs, pro se services.
 - viii. In what kind of cases would lawyers be most useful?

- ix. Any substantive rights in MN Constitution not present in U.S. Constitution? (E.g., right to education and representation in suspension/expulsion cases.)
- x. Willingness of state Supreme Court to tell legislature to spend money.
- xi. Interest of Supreme Court in how other jurisdictions (in U.S. and out) are addressing issue.
- xii. State legislature: document savings, don't discuss cost of providing right without presenting savings. Moral argument in those cases where there is no cost savings.
- xiii. Recruit allies outside the legal profession: poverty advocates, housing, family services, seniors, faith-based groups, etc.
- xiv. Examine use of non-lawyers, reform of court rules/procedures to reduce need for counsel.

7. Current federal and state funding overview:

- a. LSC: about half of 1979 funding level.
- b. State appropriation: bipartisan support, coming session will be very difficult, \$1 million of current funding is one-time (not in base). Still below staffing levels prior to 2002 cuts.
- c. IOLTA: current revenue down 50% from last year.

8. Task Force member biographies: submit by email, to be used in final report

9. Public hearings: consider at future meetings

10. Economic impacts: need to identify potential researchers

11. Subcommittees: request by email for members to commit to a subcommittee

- a. Unmet needs and resources (include impact of unrepresented litigants)
 - i. Chair: Bridget Gernander
- b. Academic inquiry
 - i. Janine Laird, Peter Knapp, Mary Jane Morrison
- c. Practical issues of establishing right, including dealing with judiciary and legislature
 - i. Chair: Gary Hird

12. Closing remarks from chairs, MSBA President-Elect Leo Brisbois

13. Upcoming meetings: November 13, January 15