

Why a Civil Right to Counsel is Part of the Solution Even in a Time of Economic Crisis

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Brief Description:

A civil right to counsel is an inspiring concept that is often criticized as unaffordable. But, while it may be difficult to imagine a government-funded lawyer for every litigant, strong arguments support providing counsel, as of right, to some categories of individuals in some categories of cases. Moreover, civil right to counsel can play an essential role in state court systems that seek to assure comprehensive access to justice based on plans that may also rely on new roles for judges and clerks and on new models for delivering forms of legal assistance in addition to full representation. Some civil right to counsel initiatives have already borne fruit, while others are still in progress. Come hear about new statutory developments, civil right to counsel cases in the courts, societal cost savings associated with the civil right to counsel, and work being done by Access To Justice Commissions, state bar associations, and academics on the issue. Then participate in an active conversation about where we go from here.

Topical Outline:

- I. Introduction of civil right to counsel movement, self help movement, and other reform initiatives**
 - a. The Justice Gap
 - i. Kinds of cases
 - ii. Problems for individuals & communities
 - iii. Problems for courts
 - iv. Recession exacerbates problems
 - v. Recession means there is less money to solve problems
 - vi. Responses to the Justice Gap – civil justice systems, legal services, civil right to counsel, self help, more

- b. Introduction to Civil Right to Counsel Movement
 - i. Context (existing rights to counsel)
 - ii. ABA resolution
 - iii. National Coalition for a Civil Right to Counsel (<http://www.civilrighttocounsel.org/>)
 - iv. Features of the modern civil right to counsel movement
 - v. Stakeholders in the states
- c. Introduction to Self Help Movement
 - i. Context (familiar categories of *pro se* assistance)
 - ii. Self Represented Litigants Network (<http://www.srln.org/>)
 - iii. Features of the modern self help movement
 - iv. Stakeholders in the states
- d. Introduction to Some New Roles for Familiar Players
 - i. Judges & clerks
 - ii. Legal services providers
 - iii. Law firms
 - iv. Law clinics
 - v. Non-attorneys
- e. Research
 - i. What works & what doesn't work
 - ii. Costs and benefits
 - iii. Who should get counsel, who should get something else: how best to allocate the resources
 - iv. Lessons from other countries

II. Overview of current CRTC activities

- a. Litigation:
 - i. *Bellevue v. E.S.* (2009-10): right to counsel in Washington State truancy cases
 - ii. *In re DR/AR* (2010): right to counsel in Washington dependency/termination proceedings
 - iii. *Office of Public Advocacy v. Alaska Court System* (2009): right to counsel in custody cases where opponent represented by private agency
- b. Legislation:
 - i. MA guardianship RTC (Uniform Probate Code)
 - ii. NYC housing bill (evictions/foreclosures of seniors)
 - iii. Florida RTC for children (various proceedings)

iv. Washington State bills on notification to minors of RTC (dependency/TPR)

c. Pilots:

- i. Boston pilots
- ii. Texas pilots

d. Other:

- i. ABA Model Act and Basic Principles
- ii. Education campaigns (symposia/conferences, LR articles, etc)

III. Overview of California's efforts on pro se assistance and right to counsel

a. Background on California: scope of need

b. Self-Help Permutations:

- i. Self-help centers: structure and operation
- ii. Use of students and volunteers
- iii. Forms: simplification, plain language
- iv. Mediation
- v. Self-represented litigant calendars
- vi. Caseload management
- vii. Outreach
- viii. Judicial and court staff education
- ix. Bar and Legal Aid partnerships

c. CA Pilots as CRTC approach

IV. Wrapup

Bibliography & Website Links:

Civil Right to Counsel:

1. Laura Abel, *Keeping Families Together, Saving Money, and Other Motivations Behind New Civil Right to Counsel Laws*, <http://ssrn.com/abstract=1503007>
2. Laura Abel and Paul Marvy, *Current Developments in Advocacy to Expand the Civil Right to Counsel*, 25 Touro L.R. 132 (2009).
3. Russell Engler, *Pursuing Access To Justice and Civil Right To Counsel in a Time of Economic Crisis*, 15 Roger Williams U. L. Rev. (forthcoming 2010)
4. Fact Sheet about California AB 590 civil right to counsel pilots: http://www.courtinfo.ca.gov/reference/documents/factsheets/AB_590.pdf

5. National Coalition for a Civil Right to Counsel, <http://civilrighttocounsel.org>
6. Russell Pearce, *Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 Fordham L.R. 969 (2004), <http://ssrn.com/abstract=745444>

Self-Help / Other:

1. Kathryn Alfisi, *Access to Justice: Helping Litigants Help Themselves*, Washington Lawyer (January 2010):
http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/january_2010/access_justice.cfm
2. Gillian Hadfield, *Making Legal aid More Accessible and Affordable*, Washington Post (March 12, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031103654.html>
3. Bonnie Hough, *Self-Represented Litigants in Family Law: The Response of California's Courts*, California Law Review (February 2010),
<http://www.californialawreview.org/articles/self-represented-litigants-in-family-law-the-response-of-california-s-courts>
4. Bonnie Hough, *Description of California Courts' Programs for Self-Represented Litigants* (June 2003),
<http://www.courtinfo.ca.gov/programs/equalaccess/documents/harvard.pdf>
5. Pro Bono Week toolkit:
www.courtinfo.ca.gov/programs/equalaccess/probonotoolkit.htm
6. Reference materials for self-represented litigants:
http://www.courtinfo.ca.gov/reference/4_24legalsvcs.htm