The Right to Counsel in Civil Cases: History and Current Status

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Nature of the Right to Counsel
Sought: “This Isn’t Gideon”

- Focus on 5 “basic human needs”: shelter, sustenance, safety, health, child custody. Not all civil cases.
- Merits test
- Contemplation of incorporation into other models (example: limited scope)
Why is RTC in Civil Cases Important?

- Basic human needs at stake
- Difference that counsel makes in outcomes
- Providing equity in proceedings
- Increasing belief in judicial system
- Financial benefits of providing counsel
- Spillover effect on strained indigent defense system
US. Supreme Court’s View on Criminal Cases: Trending Upward

- *Powell v. Alabama* (1932)
- *Johnson v. Zerbst* (1938)
- *Betts v. Brady* (1942) and *Gideon v. Wainwright* (1963)
- *Argersinger v. Hamelin* (1972)
U.S. Supreme Court’s View on Civil Cases: Trending Downward

- *In re Gault* (1967) (juveniles)
- *Gagnon v. Scarpelli* (1973) (parole revocation)
- *Goss v. Lopez* (1975) (school discipline)
- *Vitek v. Jones* (1980) (transfer of prisoner to mental health facility)
Right to Counsel Post-Lassiter: Majority of States

* = exists in Michigan

- Parents* and/or children* in abuse/neglect (dependency) and TPR cases: statutory* or constitutional*
- Civil contempt: statutory or constitutional*
- Involuntary commitment for mental health: statutory
- Civil commitment: statutory* or constitutional
- Quarantine: statutory*
- Judicial bypass: statutory* (1 const.)
- Guardianship: statutory*
Right to Counsel Post-Lassiter: Many States

- Adult protective proceedings: statutory
- Putative father in paternity proceedings: statutory/court rule* and constitutional
- Nonconsensual adoption: statutory/constitutional
- SDP/SVP: statutory/constitutional
- Parole revocation or other postconviction: mostly statutory
Right to Counsel Post-Lassiter:
One or two states (sometimes only discretionary)

- Custody (parents or child)
- Domestic violence
- Public benefits
- Special immigrant juvenile status
- Prisoners failing to defend
- Police officers sued in civil action
- Compliance with livestock disease prevention
- Out-of-state owners of cars seized for illegal explosives transportation
- All civil cases – discretionary
Right to Counsel Post-\textit{Lassiter}

What’s missing?

1. Shelter
2. Sustenance
3. Safety
4. Health
5. Child custody (private)
Taking Action: Legislation Pt 1

Family law

- Adults in abuse/neglect cases: MT (DHHS), NH
- Children in abuse/neglect cases: GA (3 nonprofits), CT, FL, WA
- Contested adoptions: LA (private bar), TN
Taking Action: Legislation Pt 2

- **Housing**: TX (Naishtat bill), NYC (legal services)
- **Guardianship**: MA (legal services)
- **Immigration**: S744/HR15 (federal)
- **Juvenile RTC**: OH (waiver), PA (waiver), TN (truancy)
- **Misc**: San Francisco (“RTC city”), WA (RTC as reasonable accommodation), pilot legislation (IL, CA), NY broad bill (basic human needs)
Taking Action: Litigation

Family law


Taking Action: Litigation

- **Truancy**: *Bellevue v. E.S.* (WA), *B.R.* (TN)

- **Contempt**: *Turner v. Rogers* (SC), *Miller v. Deal* (GA)


- **Sex offenders**: *Merryfield v. State* (KS), *State v. Ontiberos* (KS)

- **Immigration**: *Franco-Gonzalez* (federal)

- **Guardianship**: *McQueen* (OH)
Taking Action: Pilots

- **California:**
  - Funded by legislative court fee increase ($11 million/yr for 6 yrs)
  - 8 sites, and range of topics

- **Massachusetts:**
  - Privately funded
  - Evictions in 2 kinds of courts
  - 2nd round of pilots just starting now

- **Illinois:**
  - Funded by legislative court fee increase ($5-6 million/year for 5 years)
  - Focused on evictions

- **Elsewhere:** TX (evictions; IOLTA funding), IA (DV; privately funded), NY (immigration)
Taking Action: Bar Associations

- ABA: 2006 Resolution (10 state cosponsors), Model Act, Basic Principles
- California Model Acts
- CRTC subcommittees: AK, Boston/MA, NY, MN, Philly/PA, TX
- Many state/local bars heavily involved in pilot projects
- Moot courts, symposia, articles
Taking Action: Access to Justice Commissions

- MD Implementation Report
- AR, CA, HI, MD, NH, NM, NC, SC, TX have RTC subcommittees
- AR, MD, MA, NC, WI endorsed ABA Resolution
Taking Action:
Other Efforts

- Wisconsin petition
- NY Chief Judge Lippman’s efforts
- Dignity in Schools Campaign: Model Education Code
- Model Act for Dependency
- International law: U.S. obligations under CERD/ICCPR