

Civil Gideon: Advocating for the Right to Counsel in Civil Cases

By Amy Lin Meyerson

RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction.

– American Bar Association House of Delegates Resolution 112A (adopted August 2006)

In 1963 in the case of *Gideon v. Wainwright*, 372 U.S. 335, the United States Supreme Court held that, under the Sixth Amendment as applied to states under the Fourteenth Amendment, defendants who cannot afford to pay for a lawyer have a constitutional right to be represented by an attorney, at no charge, in state criminal cases.

The Court has yet to extend this constitutional right to counsel to people of limited means facing civil legal proceedings determining critical issues where basic human needs are at stake, including eviction, domestic violence, child custody, and access to life-saving medical care and subsistence income for food and clothing.

A 1994 study by the American Bar Association found that four of every five civil legal needs for low-income families were not being met.¹ Increasingly, pro se litigants are not only the indigent but also members of the middle class, small businesses, and low-income veterans and military service personnel who find themselves unable to afford an attorney.

In 2006, the American Bar Association House of Delegates passed the above Resolution 112A urging all states to join the civil *Gideon* movement and promote the right to counsel to indigent defendants in civil matters.

Furthering this policy, in August 2010, the ABA House of Delegates adopted the ABA Model Access Act that provides a

mechanism for states and territorial governments to address the need for civil representation. The Model Access Act directly serves the fundamental goals of the ABA, namely Goal IV, which is to “Advance the Rule of Law,” in its fourth objective that the ABA “[a]ssure meaningful access to justice for all persons.”²

Connecticut has joined with jurisdictions throughout the country, the ABA, and the National Coalition for a Civil Right to Counsel in the civil *Gideon* movement to explore and implement strategies for the provision of legal counsel, as a matter of right and at public expense, to people of limited means in civil cases.³ The Connecticut Bar Association continues to work to provide civil legal service solutions for low-income people, including both civil *Gideon* and better information for pro se litigants.

In 2015, LawyerCorps Connecticut brought together an innovative collaboration of private companies, legal aid service organizations, and the Connecticut Judicial Branch to help expand civil legal services resources in Connecticut. LawyerCorps Connecticut placed a lawyer fellow at each of the three legal aid partner agencies: Connecticut Legal Services, Greater Hartford Legal Aid, and New Haven Legal Assistance Association. Before the program’s conclusion, these LawyerCorps Fellows “represented several hundred clients, assisting them across a wide spectrum of urgent civil matters including protection from domestic violence, homelessness prevention, securing educational and em-

ployment opportunity, and preserving basic subsistence benefits such as food and health care.”⁴

The following year, in 2016, the Connecticut General Assembly established the Task Force to Improve Access to Legal Counsel in Civil Matters to “study the nature, extent, and consequences of unmet legal needs of state residents in civil matters” and to “examine on a state-wide basis, the impact that the lack of access to legal counsel in civil matters is having on the ability of state residents to secure essential human needs.”⁵

The task force report issued on December 15, 2016, recommended the establishment of “a statutory right to civil counsel in three crucial areas where the fiscal and social cost of likely injustice significantly outweighs the fiscal cost of civil counsel”:

1. Restraining orders;
2. Child custody and detained removal (deportation) proceedings; and
3. Defense of residential evictions.

In response, the Connecticut General Assembly authorized the establishment of a yearlong pilot program to provide legal representation for applicants and respondents at any hearing on an application for a restraining order seeking relief from abuse in the Waterbury Judicial District. The Connecticut Office of the Attorney General provided the funding for this pilot program.

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Supreme Deliberations

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insignificant in relation to the superseding cause that the original negligence cannot be deemed to be a proximate cause of the injuries.” Connecticut law “does not contemplate a situation in which the original negligence may be found to be a substantial factor in producing the injuries if there is a finding of superseding cause.”

In light of these principles of Connecticut law, the jury’s verdict could not stand. The jury’s finding that the plaintiff had proven that Sainval’s negligence had proximately caused her injuries was inconsistent with its finding that the defendant had proven that the teenagers’ conduct was the superseding cause of the plaintiff’s injuries, such that their conduct foreclosed the plaintiff’s recovery. Indeed, the trial court had expressly instructed the jury that a finding of superseding cause “precludes a finding that [Sainval’s] conduct was a proximate cause of the plaintiff’s injuries” and that “[t]o the extent that you find that

the plaintiff has proven, by a preponderance of the evidence, that the negligence of...Sainval was a proximate cause of any or all of the injuries and damages claimed to have been sustained by the plaintiff, you are to proceed to determine the issues as to the amount of damages....”

Given the inherently fact-specific nature of any torts case, do *Cochran* and *Snell* stand for anything more than that it was a good summer for plaintiffs’ counsel? Maybe. In a short concurring opinion in *Snell*, Justice Ecker bemoaned the confused state of law. Channeling his inner appellate attorney, he further lamented the fact that the Court was unable to clear up the law of superseding cause because of the “gravitational pull of existing doctrine,” and because the parties, also “constrained by the perceived limitations imposed by...precedent,” had not challenged this precedent. Should one feel emboldened by Justice Ecker’s expression of frustration to challenge even well-established precedent? We’ll let you be the judge. ■

Pro Bono

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“All people should be entitled to equal and impartial justice under the law especially the most vulnerable among us whose health and safety are in jeopardy. Our office will continue to work with the state legislature and attorneys and other pro bono providers throughout the state to support people facing life-altering legal issues in Connecticut who cannot afford to hire a lawyer,” said Attorney General William Tong.

In the July 1, 2019 Civil *Gideon* Pilot Program: Report To The Connecticut General Assembly, in addition to considering the other recommendations of the task force report the Connecticut Judicial Branch recommended “that a pilot program be established in one judicial district to provide legal representation for defendants and plaintiffs in residential eviction cases” and suggested “that the General Assembly enact legislation to establish a pilot program to provide legal

representation to indigent defendants facing eviction and to indigent landlords seeking to have a tenant evicted.”⁶

The Connecticut Bar Association, through our Legislative Policy and Review Committee, Executive Committee, and CBA Director of Government and Community Relations Bill Chapman, continues to support the recommendations of the task force report and other policy positions and legislation favoring the right to counsel in civil proceedings for those in dire need.

Interested in promoting the civil *Gideon* movement? Pro bono is a key component of Connecticut’s civil *Gideon* effort. Join us as we work toward providing access to justice for everyone! To get involved or for more information, please contact info@ctbar.org or visit ctlawhelp.com, Connecticut’s one-stop resource for pro bono attorneys who would like to provide free legal assistance to people with very low income. ■

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NOTES

1. www.americanbar.org/groups/bar_services/publications/bar_leader/2007_08/3206/gideon
2. Report to the ABA House of Delegates on Resolution 104 (Revised), www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_104_revised_final_aug_2010.authcheckdam.pdf
3. civilrighttocounsel.org
4. lawyercorpsect.org
5. Public Acts. Spec. Sess., June, 2016, No. 16-19, § 1 (a)
6. Civil *Gideon* Pilot Program: Report To The Connecticut General Assembly, July 1, 2019, pp. 14-15