



A Weekly Newspaper
Covering Minnesota's
Courts and Legal
Community

My account

- Home
- News Archive
- Verdicts Search
- Appellate Courts
Edition

- Classifieds/
Employment/Misc.
- Lawyer Directory
- ADR Directory
- Submit Verdicts/
Settlements
- 2007 Lobbyists
Directory

- Advertise
- Subscribe
- Contact Us

Editorial Offices:
Minnesota Lawyer
730 South Second Ave.
Minneapolis, MN
55402
(612) 333-4244



The push for civil 'Gideon' gaining ground

By Michelle Lore | April 23, 2007
michelle.lore@minnlawyer.com

Should low-income individuals faced with a crisis situation — like the potential loss of their home or their child — be entitled to legal counsel?

The question is one that has been percolating through many jurisdictions throughout the United States for the past several years — and it's gaining ground. Late last month nearly 100 lawyers, educators, advocates and others from the civil justice system gathered at the American Bar Association's 2007 Equal Justice Conference in Denver to hear a panel discussion on the right to counsel in civil cases, commonly referred to as "civil Gideon." (The constitutional right to counsel in criminal cases was established by *Gideon v. Wainwright* in 1963.)

Minnesota has been a national leader in the discussion of the topic. Last year, the Minnesota State Bar Association's Legal Assistance to the Disadvantaged Committee recommended that the MSBA endorse a resolution relating to civil legal services that was making its way through the ABA.

At its annual meeting in June, the MSBA Assembly formally adopted the ABA resolution, urging "state, territorial and federal jurisdictions 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."

"It's an issue that is very very important to the MSBA and to the public," MSBA President Patrick Kelly told *Minnesota Lawyer* last week.

The LAD Committee recently resolved to begin looking at the issue again in more depth. "After a brainstorming session this spring it was decided that it should be among the priority areas for the LAD committee in the coming year," reported Caroline Palmer, the MSBA's pro bono development coordinator.

Office of Lawyers Professional Responsibility First Assistant Director Patrick R. Burns, co-chair of the LAD committee, confirmed that civil Gideon is an issue the committee will continue to pursue. "We are hoping to keep it in the forefront somehow," he said.

It's only fair

Proponents of the right to counsel in civil cases say that the time is right for states to begin implementing it. In fact, many say the time is past due.

"It's never the wrong time to be thinking about people's access to justice and how we promote that in this society," said Burns.

Minneapolis attorney Perry M. Wilson, who has been researching the legal status of civil Gideon around the country, said the primary reason to support the right to civil counsel is that "it's fair."

Many low-income people have serious legal problems with serious legal consequences, Wilson said, adding that many of the cases involve complicated issues that pro se parties cannot handle on their own. "They need the help," he said.

Mary Schneider, executive director of Legal Services of Northwest Minnesota, has been involved in the fight for civil Gideon for several years. She contends that providing counsel in certain civil cases would also aid the functioning of the legal system in general by assisting people who would otherwise proceed pro se, which can cause the entire process to be less efficient.

“Counsel is important to the administration of justice,” said Schneider. “Access to counsel promotes the smooth running of the system.”

Wilson agreed, pointing out that lawyers are able to focus on the important issues in a case or even advise against filing a claim when it has no merit. “They streamline out things that are not relevant,” he said.

Cost concerns

The primary arguments against the right to counsel in civil cases are the cost and the difficulty in drawing a line as to which cases the right would apply.

Proponents of civil Gideon acknowledge that it will be expensive, but they assert that the government has an obligation to provide counsel in certain civil cases, just as it does in criminal matters.

“It’s as important to people’s lives as are many of the criminal matters,” said LAD Committee co-chair Katie Trotzky.

Wilson conceded that while there is not an easy solution to the problem of funding, the right to civil counsel has to become a priority. “There has to be a public policy decision that it is important enough that you are going to allocate resources to it,” he said.

According to Schneider, when the right to counsel in criminal cases was being discussed more than 40 years ago, cost was a concern then too. “But it didn’t break the bank. ... It was an important right that overshadowed the concerns,” she said.

Proponents of civil Gideon contend that generally the right should apply in cases involving critical needs, like food, housing, custody and the safety of children.

Trotzky acknowledged that there will be some “grey areas” that will likely end up before the Supreme Court, but added that that’s not a reason to avoid implementation of the civil right to counsel.

Schneider agreed that all of the cases involving basic or critical human needs have not been defined yet, but called the list identified in the MSBA resolution “an important start.”

An additional argument against civil Gideon is that unlike the right to counsel in criminal cases, there is not a constitutional provision for the right to counsel in civil cases.

But proponents counter that the right dates back to the Magna Carta.

The right to civil counsel came to the colonies through the common law, said Schneider. “It was a given when the Constitution was drafted that there was a civil right to counsel,” she said.

A coordinated effort

Schneider believes that Minnesota is well-positioned to pull together the many pieces necessary to establish broader access to civil justice for low-income individuals. “Different groups are working in different ways to provide better services to the poor,” she said.

According to Palmer, several things are going on in the state around the topic of civil Gideon. Several members of the LAD committee are involved in local and national civil Gideon efforts. Janine Laird, executive director of the Minnesota Justice Foundation, is working on MJF’s 25th anniversary celebration in November that will include a civil Gideon seminar. And attorneys at Dorsey & Whitney, under the guidance of Wilson and Bricker Lavik, have written a research memo on the application of civil Gideon under Minnesota law.

Palmer is also working with Schneider and another MSBA staff member, Steve Hirsh, on an article on civil Gideon for the ABA. Palmer, Hirsch, Schneider and Lavik also regularly participate in monthly conference calls organized by the National Coalition for a Civil Right to Counsel.

The push for civil Gideon is not a new in Minnesota, but is a coordinated effort by many different groups that are looking at the issue, said Schneider. “In Minnesota, we are not starting from ground zero.”

