

Real People, Real Needs, Real Solutions Access to Legal Representation in Civil Litigation

In 2006, the American Bar Association resolved to urge "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." The ABA thereby firmly placed the issue of access to counsel in civil cases on both the bar's and nation's agendas.

The Access to Civil Justice Symposium, Dec. 4-5, 2008 in Atlanta, \ will explore questions about the ABA's call to action and how to advance it, first, in the context of those of low income and, second, more broadly in American society.

The Symposium will begin by asking several leading legal thinkers to consider the historical, social and economic background out of which the call for a right to civil counsel arises. What lessons can be learned from the development of the right to counsel in criminal cases? How do social and economic forces both sharpen the demand for access and raise barriers to it?

The development of empirical literature regarding access to counsel in the civil setting began as long as forty years ago but has languished in recent times. The Symposium will call together some of the most sophisticated empirical scholars to review and update what we know about access to counsel in civil cases. Questions to be explored include the scope of the need for counsel, the cost of providing it, the savings that might accrue to society if access is enhanced, and the experience of litigants who proceed without counsel.

Providing counsel in civil matters will present an array of real world challenges. One session of the Symposium will be devoted to exploring questions about practical problems and solutions. When should access to counsel be established through litigation, when by legislation, and when by other means? What can we learn from foreign approaches to access to counsel and are the lessons transferable? What are the lessons from our own history of funding for social needs?

Finally, a segment of the Symposium will focus on the need for and right to access to counsel outside of the traditional courtroom, in settings relying on alternative dispute resolution (ADR) mechanisms. As more and more disputes are moved from the courts into ADR proceedings, especially involuntarily, it seems an appropriate moment to consider whether concern about access to counsel should be extended to such settings, especially when one side only has counsel or the ADR professional determines that one of the parties before her needs assistance.