This workshop was held at the 2017 Equal Justice Conference in Pittsburgh, Pennsylvania

Title:
Hot Topics in Civil Right to Counsel: Pilots, Research Results, Legislation

Presenters:
Lise Adams, D.C. Bar Pro Bono Center, Washington, DC
Mike Grunenwald, Pro Bono Net, Washington, DC
Mairi McKeever, Justice & Diversity Center of the Bar Association of San Francisco, San Francisco, CA
John Pollock, National Coalition for a Civil Right to Counsel, Baltimore, MD

The civil right to counsel movement has gained national momentum, leading to a massive uptick in legislation, litigation, and research. We'll provide updates on projects in California, San Francisco and D.C. as well as groundbreaking litigation and legislation involving housing, domestic violence, child custody, and debtor's prison.
Hot Topics in Civil Right to Counsel: Pilots, Research Results, Legislation, Impact Litigation and More

Equal Justice Conference
May 4, 2017
Introductions

- **Panelists**
  - John Pollock
    - Coordinator, National Coalition for the Civil Right to Counsel
  - Lise Adams
    - Assistant Director, D.C. Bar Pro Bono Center
  - Mairi McKeever
    - Director, Pro Bono Legal Services Program, Justice & Diversity Center of The Bar Association of San Francisco

- **Host**
  - Mike Grunenwald
    - Program Coordinator, Pro Bono Net
Today’s Agenda

- Getting to Know You
- Hot Topics in Civil Right to Counsel
- DC’s Housing Right to Counsel Pilot Project
- San Francisco’s Right to Counsel in Civil Matters and JDC’s Pilot Project
Which of these applies to you?

- I’m from a legal services provider interested in starting a civil right to counsel project

- I’m from a law firm interested in getting involved in a civil right to counsel project

- I’m already involved in a civil right to counsel project and I am interested in learning more
About NCCRC

- http://www.civilrighttocounsel.org
- ~300 participants in 38 states
- State/locally driven (not “top-down, one-size-fits-all” approach), and incremental
So, About That New Administration ...

- State-driven / non-SCOTUS approach

- “Too early to tell” about indirect effects
What’s Hot: Legislation

Housing (NYC)

• SRR report: $320 million savings
• 1% → 27% representation, and 24% drop in eviction
New York State Becomes First in the Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation

New York, NY – The Vera Institute of Justice and partner organizations today announced that detained New Yorkers in all upstate immigration courts will now be eligible to receive legal counsel during deportation proceedings. The 2018 New York State budget included a grant of $4 million to significantly expand the New York Immigrant Family Unity Project (NYIFUP), a groundbreaking public defense program for immigrants facing deportation that was launched in New York City in 2013.
What’s Hot: Legislation

- **Other Housing**: D.C., MA, Philadelphia, federal

- **Custody**:
  - Parent rep in dependency/TPR: AR (emergency hearing), MS
  - Child rep in dependency/TPR: ME, NV
  - Continued child rep through permanency: MN, NJ, RI, TX

- **Debtor’s prison**: NE, NH, UT

- **Civil forfeiture**: DE, IL, IN, MA, federal

- **Domestic violence**: CT (pilot), MA (minors)

- **Guardianship**: OR
### 2017 CIVIL RIGHT TO COUNSEL BILLS

Listed below are all of the 2017 bills that address the right to counsel in civil cases. The NCCRC monitors all such bills and regularly reports on their progress, and we also are involved with some of them.

- **Enacted Bills**
- **Pending Bills**
- **Dead Bills**
- **2016 Bills**

#### Enacted bills

<table>
<thead>
<tr>
<th>State</th>
<th>Bill #</th>
<th>Sponsor</th>
<th>Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>MT</td>
<td>HB 99</td>
<td>Rep. Dukik</td>
<td>Requires putative father to be successfully served and to request counsel before counsel is appointed in child welfare proceedings.</td>
<td>Signed by Governor on 3/1/17.</td>
</tr>
<tr>
<td>MT</td>
<td>HB 201</td>
<td>Rep. Cook</td>
<td>Specifies that where court-appointed special advocate not available to serve as guardian ad litem, court can appoint attorney to be GAL.</td>
<td>Signed by Governor on 3/29/17.</td>
</tr>
<tr>
<td>UT</td>
<td>SB 71</td>
<td>Sen. Thatcher and Rep. Roberts</td>
<td>Requires counsel to be appointed for collection and enforcement of criminal debt, which is treated as contempt matter.</td>
<td>Signed by Governor on 3/323/17.</td>
</tr>
</tbody>
</table>

#### Pending bills

<table>
<thead>
<tr>
<th>State</th>
<th>Bill #</th>
<th>Sponsor</th>
<th>Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT</td>
<td>SB 496</td>
<td>Sen. Doyle</td>
<td>Would implement recommendations of legislative Task Force to improve access to counsel in civil matters, which would create right to counsel for cases involving restraining orders, evictions, detained and arrested individuals.</td>
<td>Introduced and referred to Joint Committee on Judiciary on 1/20/17.</td>
</tr>
</tbody>
</table>
What’s Hot: Litigation

✿ **Custody:**
  ✿ **Dependency:** NJ (admin), WA (child)
  ✿ **Termination of parental rights:** NJ (adoption), OH (adoption), PA (child)
  ✿ **Child guardianship:** MA (for both parents and guardian)
  ✿ **Private custody cases:** AK

✿ **Debtor’s prison:** AR, MO, WA

✿ **Driver’s licenses:** NJ

✿ **Guardianship of adults:** NY

✿ **Immigration:** children in removal proceedings
<table>
<thead>
<tr>
<th>State</th>
<th>Subject area</th>
<th>Funding source</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Custody/DV, eviction, probate guardianship</td>
<td>Court fee increase</td>
<td>Ongoing (prev. 6 years)</td>
</tr>
<tr>
<td>CA (SF)</td>
<td>Evictions</td>
<td>City government</td>
<td>1 year</td>
</tr>
<tr>
<td>D.C.</td>
<td>Evictions</td>
<td>D.C. government</td>
<td>ongoing</td>
</tr>
<tr>
<td>IA</td>
<td>Services for DV victims (custody, protective orders, etc.)</td>
<td>Nat’l Institute for Justice</td>
<td>2 years</td>
</tr>
<tr>
<td>MA</td>
<td>Evictions</td>
<td>1st round: foundations 2nd round: AG</td>
<td>18 months</td>
</tr>
<tr>
<td>MS</td>
<td>Child welfare</td>
<td>Foundation</td>
<td>ongoing</td>
</tr>
<tr>
<td>NY (NYC)</td>
<td>Immigration</td>
<td>City</td>
<td>ongoing</td>
</tr>
<tr>
<td>WI</td>
<td>Family law - DV victims</td>
<td>federal STOP grants administered through WI Office of Justice Assistance</td>
<td>ongoing</td>
</tr>
</tbody>
</table>
### Best Practices Table: Locations Where Specific Practices Are Present and Absent

<table>
<thead>
<tr>
<th>Select a Jurisdiction</th>
<th>Select an Indicator</th>
<th>Filter Indicator by Finding</th>
<th>Hover over cells to see sources: “Yes” means adoption of practice has been established “No” means adoption of practice has not been established “No*” means adoption of practice has not been established but information is provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>(All)</td>
<td>(All)</td>
<td>All</td>
<td>Does the state, through a statewide statute, rule, regulation, appropriation, or other written guidance:</td>
</tr>
<tr>
<td>Q29</td>
<td>COLLECT DATA ON FREQUENCY OF RIGHT TO COUNSEL APPOINTMENTS. Collect data on how often counsel is appointed in any categories of civil cases in which there is a statewide right to counsel?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>AL</td>
<td>AR</td>
<td>AZ</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q30</td>
<td>COLLECT DATA ON QUALITY OF RIGHT TO COUNSEL REPRESENTATION. Collect data on the quality of representation provided by attorneys who are appointed pursuant to a statewide right to counsel?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q31</td>
<td>COLLECT DATA ON FREQUENCY OF DISCRETIONARY APPOINTMENTS OF COUNSEL. Collect data on how often counsel is appointed in any categories of civil cases in which the state provides discretion to a decisionmaker to decide whether to…</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q32</td>
<td>RECOGNIZE A RIGHT TO COUNSEL IN HOUSING CASES. Require the appointment of counsel at public expense for indigent parties in any type of housing proceeding (e.g., eviction, foreclosure, discrimination, etc.)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q33</td>
<td>RECOGNIZE A RIGHT TO COUNSEL IN ABUSE/NEGLECT CASES. Require the appointment of counsel at public expense to indigent accused parents in abuse/ neglect/dependency proceedings where the state seeks to remove a child?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
What’s Hot: Public Figure Support

Former U.S. Attorney General Eric Holder
What’s Hot: Public Figure Support

"Establishing publicly funded legal services for low-income families in housing court would be a cost-effective measure that would prevent homelessness, decrease evictions, and give poor families a fair shake ... The consequences of eviction are many — and so are its burdens on the public purse ... If America extended the right to counsel in housing court, it would be a major step on the path to a more fair and equitable society.”

- Matthew Desmond, *Evicted: Poverty and Profit in the American City*
States look to provide lawyers for the poor in civil cases

By DAVE COLLINS Mar. 30, 2016 1:52 PM EDT

HARTFORD, Conn. (AP) — A flood of poor defendants representing themselves — often ineffectively — in dire cases involving eviction, foreclosure, child custody and involuntary commitment has led to a push in legislatures to expand rights to free lawyers in certain civil proceedings.

Everyone has a right to a free lawyer in criminal cases if they can't afford one. But the same right isn't guaranteed in civil cases.

More than being considered in 18 states this year would provide public defenders or private lawyers at state expense for low-income people in certain civil cases, according to the National Coalition for a Civil Right to Counsel, which is run by the Public Justice Center nonprofit group in Baltimore.

"When your basic human needs are at stake, you should have a lawyer to protect those needs," said John Pollock, a lawyer with the Public Justice Center who coordinates the national coalition. "The consequences are too great."
Seeing the latest developments: http://www.civilrighttocounsel.org
Seeing the latest developments:
http://www.civilrighttocounsel.org

Orange coloring indicates states with recent or relatively recent activity. Clicking on any state will pop up a list of the recent activity (if there is any) along with a link to all activity over time in the state.

11/04/2016: Philly City Council resolution authorizes hearings on right to counsel in housing cases
The Philadelphia City Council passed a resolution authorizing hearings on solving landlord/tenant issues, including looking at right to counsel.
See all activity over time for Pennsylvania.
D.C.’S HOUSING RIGHT TO COUNSEL PROJECT
Background – Right to Housing Initiative

• The D.C. Right to Housing Initiative emerged from a collaboration among the D.C. Access to Justice Commission, the D.C. Bar Pro Bono Center and a number of local legal services providers.

• Groundbreaking initiative which recognizes that securing safe, affordable, stable and accessible housing for all D.C. residents requires a multi-faceted and coordinated strategy with a diverse group of stakeholders.
Background – Housing Right to Counsel Project

• The Housing Right to Counsel Project is one piece of the Housing Initiative.

• Since 2015, Bread for the City, the Legal Aid Society of the District of Columbia, and Legal Counsel for the Elderly have received annual funding through the D.C. Bar Foundation (this year $389,500) to implement this new project, with others, including the D.C. Bar Pro Bono Center, joining as important partners in the effort.
State of Affordable Housing in D.C.

• Over 40,000 households are in line for a voucher or public housing.

• District of Columbia Housing Authority (DCHA) stopped accepting new applications effective April 12, 2013, and has not reopened the list.

• The median rent for a one-bedroom is $2,000. SSI payments for people with disabilities is $733 per month.

• In Landlord Tenant Court, “eviction court,” approximately 90-95% of all tenants sued are unrepresented, while 95% of landlord have counsel.
Current Resources Available for Tenants in D.C.

• Landlord Tenant Resource Center – D.C. Bar Pro Bono Center

• Court-Based Legal Services Project – Legal Aid Society of the District of Columbia, Bread for the City, D.C. Law Students in Court

• Advocacy & Justice Clinic – D.C. Bar Pro Bono Center

• Extended representation by the above and other legal services providers

• Pro bono placement by the above and other legal services providers
Housing Right to Counsel Project ("RTC") - Pro Bono

- **14** law firms are currently participating with the project.

- Each firm is assigned to one of the participating non-profits for external mentoring.

- RTC offers multiple trainings and court tours throughout the year for lawyers and legal assistants.
Housing Right to Counsel Project by the Numbers

• Since June 2015, letters offering free legal representation are sent to approximately 1 out of 5 tenants in subsidized housing facing eviction in Landlord Tenant Court.

• 27% of the recipients responded to the letter.

• About half of those who respond follow up for representation.

• More than 500 tenants obtained legal representation through this project.
Outcomes of the Housing Right to Counsel Project

- Right to Counsel (“RTC”) clients are more than 5 times less likely to get a writ of restitution (the paper that allows the Marshalls to schedule an eviction) than a control group*.

- **18%** of tenants in the control group got judgments without trial (tenant default). Only **1%** of RTC clients received judgments without trial.

- RTC clients are **3.5 times** more likely to enter into settlement agreements than the control group.

- **43%** of tenants in the control group sign consent judgments compared to **8%** of our RTC clients.

* control group: randomly selected group of tenants facing eviction in subsidized housing.
Why Firms Should Participate

• Participating in a cutting edge project by providing a right to counsel in civil cases involving a fundamental right to housing.

• Develop critical practice skills and courtroom experience, such as:
  • Counseling the client
  • Negotiating, mediating, and preparing settlement agreements
  • Preparing and arguing motions
  • Conducting discovery
  • Preparing for and conducting hearings
  • Trial
ProBono.Net – making litigation less daunting

• RTC’s Pro Bono attorneys have access to an extensive list of helpful materials on probono.net/dc including:
  • Templates for Answers
  • Templates for Discovery Requests
  • Sample Motions
  • Notices of Appearance
  • Sample settlement agreements
  • Training videos & corresponding PowerPoints
  • Links to relevant laws, rules and regulations
Lessons Learned

• Firms are more likely to succeed when they have an internal champion or a committed RTC “practice” group.

• Impact on other programs and areas of law.

• Utilization of non-lawyers from partner firms.
Looking Ahead

• Continue **growing the project** by adding more firms and strengthening the commitment of those firms.
  • Build internal expertise and “practice groups” at the firms so the project is self-sufficient.

• **Evaluate** the projects impact individually and systemically.
Justice & Diversity Center of the Bar Association of San Francisco (JDC)
JDC Legal Services Programs

• The JDC Legal Services Programs advances justice by providing free legal and related social services to low-income and underserved individuals, families, and nonprofit organizations in our community

• 2,000 JDC volunteers

• 8,500 clients with legal consultation and representation
JDC Legal Services Programs

Legal Services Programs:
Who We Are:
38 staff members
21 attorneys
Social workers
Legal Advocates
Small support staff

Our Volunteers:
Attorneys
Interpreters
Students
(college, law, and social service)
JDC’s Legal Services Programs

Practice Areas
Eviction Defense
Family Law

Consumer: Collection Defense & LITC
Federal Disability Benefits Advocacy
Immigration
Business Law for Nonprofits
JDC’s Legal Services Programs

Staff Based and Volunteers

Levels of service:

– Full-Scope Representation
– Limited-Scope Representation
– Legal Information at Self Help Centers
– Legal Advice
San Francisco Administrative Code – Article 58
Right to Counsel in Civil Matters

• “This title is intended to represent the City and County’s firm commitment to creating a local judicial system that provides representation to all residents involved in civil proceedings that could deny them basic human needs, such as child custody, shelter, sustenance, safety or health, regardless of their income or ability to pay.”
San Francisco’s Right to Counsel in Civil Matters

- Passed: March 16, 2012
- Funding: $100,000 for a 1-year pilot project
- Evaluation required in the legislation
San Francisco’s Right to Counsel in Civil Matters

The Road to Passage

• Bar Association of SF Justice Gap Committee members drafted proposed legislation
• Legislator with legal services background sponsored the ordinance, others co-sponsored
• Judiciary: Supervising Judge of the Family Court
• Legal services community support
• Stanford Law School
San Francisco’s Right to Counsel in Civil Matters

The Road to Passage

• Legal services organization helps with the nuts and bolts
  – Original drafts of ordinance stated all services would be provided by pro bono attorneys
  – Framed pilot project to include representation by legal services attorneys
  – Set income cap at 200% of FLP
  – Gathered support from other legal services organizations
Pilot Project

• Eviction cases most appropriate for 1 year study

• Supplemented and expanded JDC’s existing services

• Limited Scope Representation
  Housing Negotiation Project
  Representation during mandatory settlement conferences

• Full-scope representation
  Largely handed by smalls and solos
Pilot Project

Focus on increasing large law firm involvement in basic human needs cases

- Asked firms to commit to a certain number of cases within 12 months
- San Francisco’s Rent Ordinance provides significant litigation opportunities
- JDC provides training and supervision
- Probono.net
  - Case blasts
  - Library with sample pleadings, training manual, and other resources
San Francisco is the nation’s first “Right to Civil Counsel City” which recognizes that everyone should have access to legal services in cases where basic human needs are at stake.

Basic human needs include housing, sustenance, child custody, safety and health.

• Housing, family law, consumer, supplemental security income (federal disability benefits) cases
San Francisco’s Right to Counsel in Civil Matters

Stanford Law School’s Documentation Report

- 117 full scope representation cases
  - 25 law firms = 60 cases
  - 18 “RTCC” firms = 38 cases

- 692 Limited-scope representation cases
  - Law firms = 322 cases
  - Others = 370
San Francisco’s
Right to Counsel in Civil Matters

Stanford Law School’s Documentation Report

Key Findings

• Tenants twice as likely to stay in their homes with full scope representation
• $1,100,000 savings to the City for keeping 609 tenants out of shelters
• Doubled firm involvement in full scope cases
• No More David & Goliath
San Francisco’s Right to Counsel in Civil Matters

Since the Ordinance Passage

• Social Return on Investment Report
  $11.74 return on $1 investment in housing legal services

• Data gather procedures carried from prior report
San Francisco’s Right to Counsel in Civil Matters

Since the Ordinance Passage

• Representation is a game changer for tenants – within the past three years JDC has had the highest number of cases go to trial and the most cases conclude with plaintiffs dismissing the actions.
San Francisco’s Right to Counsel in Civil Pushing the Needle

Coordination of Advocacy
- Fellow legal services organizations
- Social Service organization
- City Departments
San Francisco’s Right to Counsel in Civil Pushing the Needle

Describe the Problem
- Who is unrepresented?
  - Community members
- Why does representation matter?
  - Basic human need
  - Changes Outcomes
San Francisco’s Right to Counsel in Civil Pushing the Needle

Provide a Solution

- Quantify Unmet Need
  - Data: Relationship with court
  - Number of those unrepresented?
  - Price Tag: have a dollar amount
San Francisco’s Right to Counsel in Civil Pushing the Needle

Funding for Legal Services SF Mayors Office on Housing

<table>
<thead>
<tr>
<th>Year</th>
<th>Defense</th>
<th>Eviction Defense</th>
<th>Immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2014</td>
<td>$2.4 million</td>
<td></td>
<td>$2.8 million</td>
</tr>
<tr>
<td>FY 2015</td>
<td>$4 million</td>
<td></td>
<td>$3.7 million</td>
</tr>
<tr>
<td>FY 2016</td>
<td>$4.4 million</td>
<td></td>
<td>$4.9 million</td>
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</tbody>
</table>
San Francisco’s
Right to Counsel in Civil Pushing the Needle

Mandatory Settlement Conferences
Percentage of Tenants with Counsel
July - December
2010: 12%
2014: 27%
2016: 41%
Recruiting Volunteers

• Pro Bono Menu
• Take Action Now
• Trump factor
  – Non-LSC funded org
Federal Pro Bono
Represent low-income litigants in Federal Court
Training: none
Time Commitment: varies by matter/case

Tax
Assist low-income taxpayers who have issues in controversy with the IRS
Training: none
Time Commitment: varies by matter/case

Transactional/Business
Represent and advise nonprofit organizations
Training: none
Time Commitment: varies by matter

Legal Advice and Referral Clinic
Saturday Walk-In Clinics
Providing Brief Legal Advice: Consumer, civil, employment/labor, family, immigration, housing, personal injury, probate, real estate, SSI, veteran affairs, small business law, student, tenants, attorneys of all backgrounds, contract, estate, social security, workers' compensation
Training: No for non-expert attorneys; None for expert appeal attorneys
Time Commitment: 4-6 hours per clinic

Interpreter
Interpreter for JDC's monolingual clients at meetings, depositions, trial and Saturday Legal Advice and Referral Clinics, bilingual Spanish, Cantonese or Mandarin-speaking community members
Training: Yes
Time Commitment: varies

*Attorneys need at least 5 years of experience in substantive practice area, or work under the supervision of senior attorneys/partners in their office

Contact Gloria Chiu, JDC Pro Bono Manager, at gchun@sfbar.org or 415-792-8970.
Visit www.sfbar.org/volunteer
Sign up for a training at www.sfbar.org/probono/trainings
Support JDC at jdc.sfbar.org.
Text to donate: Text the keyword GIVE2JDC to 41444.

CONSUMER PROJECTS
Both projects provide training, supervision, and ongoing case support by JDC supervising attorney and/or mentor.

Collection Defense & Education Clinic
Represent people defending against collection actions and/or harassment by debt collectors. (California licensed attorneys, no specific practice area or experience required)
Training: 3 hours; on-site supervision
Time Commitment: 3 per clinic

Collection Defense Representation
Represent people defending collection actions. (California licensed attorneys, basic litigation experience in any area of law required)
Training: 3 hours
Time Commitment: 1.5-20 hours over 3-4 months

FAMILY LAW PROJECTS
All projects provide training, supervision, and ongoing case support by JDC supervising attorney and/or mentor.

Simple Divorces
Represent litigants in dissolutions/divorces without custody or property issues. (California licensed attorneys, no specific practice area or experience required)
Training: 4 hours
Time Commitment: 10-15 hours over 6 months

Get Involved
Contact Gloria Chiu, JDC Pro Bono Manager, at gchun@sfbar.org or 415-792-8970.
Visit www.sfbar.org/volunteer.
Sign up for a training at www.sfbar.org/probono/trainings
Support JDC at jdc.sfbar.org.
Text to donate: Text the keyword GIVE2JDC to 41444.

HOUSING PROJECTS
Both projects provide training, supervision, and ongoing case support by JDC supervising attorney and/or mentor.

Eviction Defense
Represent tenants defending unlawful detainer actions. (California licensed attorneys, no specific practice area or experience required)
Training: 4 hours
Time Commitment: 40-50 hours over 4-6 weeks

Settlement Conferences
Represent tenants at trial, settlement conferences, and other hearings. (California licensed attorneys, no specific practice area or experience required)
Training: 2 hours; on-site supervision
Time Commitment: 6 hours during settlement conference

 Custody and Spousal Support
Represent litigants with child custody or spousal support matters which require motion and hearing appearance. (California licensed attorneys, no specific practice area or experience required)
Training: 6 hours
Time Commitment: 20-30 hours over 3-4 months
Closing Reflections

What is the future of the civil right to counsel movement?