Access to Justice for Low-Income Litigants in Civil Cases

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Webinar, March 26, 2014
Outline

I. What is the “Justice Gap?”

II. Civil Gideon & Self-Represented Litigant Movements

III. Access to justice initiatives

IV. Turner v. Rogers, 2011

V. Debtors’ prisons

VI. Judicial engagement approach to SRLs

VII. International perspectives on access to justice
What is the “Justice Gap?”

At most 20% of the legal needs of low-income communities are met and the vast majority of low-income civil litigants are unrepresented.

Legal Services Corporation, Documenting the Justice Gap in America, 2009
What is the “Justice Gap?”

For every client served by civil legal aid offices, one potential client was turned away.

Nationwide, for every 6,415 people who meet legal aid requirements, there is only one legal aid attorney available to meet their needs.

Legal Services Corporation, *Documenting the Justice Gap in America*, 2009
There are hundreds of existing state laws that provide for a civil right to counsel. Origin of right to counsel laws vary. Most laws fall into one of three areas:
- Family law
- Involuntary commitment
- Medical treatment

Appointed counsel often lacks adequate training and experience, caseload limits, and adequate compensation to ensure competent representation.
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.

Pro Se Legal Assistance Innovations

• Court navigators & facilitators
• Self-help centers & hotlines
• Simplified court forms and “how to” packets
• Lawyer-for-a-day programs & clinics
• Technological and online resources
• Judicial and court staff education on SRL issues
• Law libraries & librarians
• Non-lawyer advocates
• Unbundled legal services
Justice Index

• National Center for Access to Justice's 50-state survey of Americans' ability to use the justice system. Released in 2/2014.
• States evaluated on 4 key issues: attorney access, self-representation, language assistance, disability assistance.
• Each state was on a 100-point scale. National average of 48.7, with range from 23.7 (Oklahoma) to 69.4 (Minnesota).
• http://www.justiceindex.org/
Turner v. Rogers (SCOTUS, 2011)

- Michael Turner sought right to counsel
- Summary of Facts
  - Delinquent child support obligor in SC
  - OTSC hearing on why he should not be held in civil contempt for failure to pay child support
  - Held in contempt and incarcerated for 12 months
  - Revolving door experience
    - At least 6 contempts for nonpayment of support
    - Over $20,000 in arrearages
South Carolina’s Legal Process

- Civilly incarcerated child support debtors are 13-16% of SC jail population
- Automated OTSC enforcement process
- No right to counsel
- Hearings are cursory and last a few minutes
- No judicial findings on ability to pay in Turner’s case
Low-Income NC Parents and CSE

• Federal OCSE Data (2008)
  – Half of child support debt in US owed by parents with less than $10,000 annual income
  – On average, these parents owe $20,000 in arrearages
  – 70% of these arrearages owed to state, not families

• Why?
SCOTUS *Turner* decision

• 5-4 decision
• Unanimous rejection of Civil Gideon claim
  – Due process clause does not provide a categorical right to counsel in a civil contempt proceeding for nonpayment of child support even though there is risk of imprisonment
• 5-Justice majority ruled that Turner’s constitutional right to due process had been violated in South Carolina’s civil contempt proceeding
Turner’s Substitute Procedural Safeguards

States must provide unrepresented litigants with “substitute procedural safeguards”

- Notice that ability to pay is a critical issue
- Form to elicit relevant financial information
- Opportunity for a hearing
- Express findings by court on ability to pay

Critique: no empirical basis for ruling
Implications of Turner Decision

• Increased awareness of debtors’ prisons
• Judicial engagement approach required
• Is Turner a landmark decision for self-represented litigants?
• Resolving Turner’s unanswered questions
Judge’s Role in Access to Justice

• Current movement among states to amend their judicial codes to address self-represented litigants.

• 24 states and D.C. have language in their judicial code that is similar or identical to 2007 ABA Model Rule 2.2 and Comment 4

• Several states, including Wisconsin, are currently considering such amendments.
ABA Model Code of Judicial Conduct

Impartiality and Fairness

Rule 2.2: A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment 4: It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.
Proposed Amendment to WI Judicial Code

• Pending petition to amend to state’s Code of Judicial Conduct, filed 9/2013 by WI Access to Justice Comm.

• Proposed new rule: “A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge shall also afford to every person who has a legal interest in a proceeding, or to that person’s lawyer, the right to be heard according to the law. It is consistent with this rule for a judge to make reasonable efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.”

• The petition lists examples of reasonable steps a judge may take in the exercise of such discretion.
Cont., Examples of What Judges Can Do

- Construe pleadings to facilitate consideration of the issues raised.
- Provide information or explanation about the pleadings.
- Explain legal concepts in everyday language.
- Ask neutral questions to elicit or clarify information.
- Modify the traditional order of taking evidence.
- Permit narrative testimony.
- Allow litigants to adopt their pleadings as their sworn testimony.
- Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
- Inform litigants what will be happening next in the case and what is expected of them.
State Initiatives

Georgia Deprives Children As Indigent Parents Languish In Debtors’ Jail For Inability To Pay Child Support

Court Takes Swift Action to End Debtors’ Prison

Ohio Supreme Court Creates Bench Card After ACLU Investigation Found Courts Jailing People Too Poor to Pay Fines

February 5, 2014
International A2J Issues and Initiatives

U.S. Justice Gap is Under International Scrutiny

U.N. committee wants answers about this country's disparity in access to civil legal services.

March 03, 2014 | 0 Comments

United Nations European HQ in Geneva
Photo: alamdj / iStockphoto.com

THE NATIONAL LAW JOURNAL
How to represent yourself in court

Proposed changes to legal aid will remove whole areas from the scheme, leaving many people little choice but to go it alone.

Jon Robins
The Observer, Saturday 6 August 2011 17:59 EDT
Jump to comments (12)
Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

An Act to make provision about legal aid; to make further provision about funding legal services; to make provision about costs and other amounts awarded in civil and criminal proceedings; to make provision about referral fees in connection with the provision of legal services; to make provision about sentencing offenders, including provision about release on licence or otherwise; to make provision about the collection of fines and other sums; to make provision about bail and about remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; to make provision about the rehabilitation of offenders; to create new offences of threatening with a weapon in public or on school premises and of causing serious injury by dangerous driving; to create a new offence relating to squatting; to increase penalties for offences relating to scrap metal dealing and to create a new offence relating to payment for scrap metal; and to amend section 76 of the Criminal Justice and Immigration Act 2008.

[1st May 2012]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—
United Kingdom A2J

A Guide to Representing Yourself in Court

The Bar Council
Integrity, Excellence, Justice.


Abel, Laura and Max Rettig, State Statutes Providing for a Right to Counsel in Civil Cases, 40 Clearinghouse Rev.245 (2006).


National Coalition for a Civil Right to Counsel. [www.civilrighttocounsel.org](http://www.civilrighttocounsel.org)


