



PHILADELPHIA
BAR ASSOCIATION

**PHILADELPHIA BAR ASSOCIATION
CHANCELLOR'S TASK FORCE ON CIVIL GIDEON**

PRELIMINARY REPORT, FINDINGS AND RECOMMENDATIONS

NOVEMBER 9, 2009

TABLE OF CONTENTS

| | PAGE |
|---|------|
| ACKNOWLEDGEMENTS | 1 |
| I. EXECUTIVE SUMMARY | 2 |
| II. HISTORY AND BACKGROUND OF CIVIL GIDEON EFFORTS | 6 |
| III. LEGISLATIVE/LOBBYING AND COURT IMPLEMENTATION AND FUNDRAISING WORKING GROUPS PRELIMINARY REPORT AND RECOMMENDATIONS | 14 |
| IV. HOUSING WORKING GROUP PRELIMINARY REPORT AND RECOMMENDATIONS | 21 |
| V. FAMILY LAW WORKING GROUP PRELIMINARY REPORT AND RECOMMENDATIONS | 29 |
| VI. OUTREACH TO BENCH, BAR AND COMMUNITY AND COMMUNICATIONS WORKING GROUP PRELIMINARY REPORT AND RECOMMENDATIONS | 35 |

ACKNOWLEDGEMENTS

As co-chairs of the Chancellor's Task Force on Civil Gideon, we would like to thank all Task Force members and leaders in the legal community who participated as members of our working groups or otherwise assisted in our initial efforts. We particularly wish to recognize Philadelphia Bar Association Chancellor Sayde Ladov for initiating the Task Force, and Chancellor-Elect Scott F. Cooper and Vice Chancellor Rudolph Garcia for their ongoing support. We also thank Ken Shear, Executive Director of the Philadelphia Bar Association, for his substantive input and administrative support.

We are grateful to the many members of the legal community committed to Civil Gideon and improving access to justice in Philadelphia, and we would like especially to thank the judges who joined the Task Force and attended the many plenary and working groups meetings over the last several months. In particular, we recognize the Honorable Pamela Pryor Dembe, President Judge of the Philadelphia Court of Common Pleas, the Honorable Marsha H. Neifield, President Judge of the Municipal Court, and the Honorable Annette M. Rizzo, the Honorable Kevin M. Dougherty and the Honorable Margaret T. Murphy for contributing their time, insight and experience to our efforts. We also thank Charles A. Mapp, Sr., Deputy Court Administrator, Civil Division, Court of Common Pleas, and the staff at Family Court and Municipal Court for providing relevant court statistics.

This preliminary report is the product of dedication and many hours of hard work by many individuals. Special thanks to the following leaders: Anita Santos-Singh, chair of the Housing Working Group, Michael Viola and Ourania Papademetriou, co-chairs of the Family Working Group; Professor Louis Rulli, co-chair of the Legislative/Lobbying Working Group, and Albert S. Dandridge III, chair of the Bench, Bar and Community Outreach and Communications Working Group. We are grateful to Molly Callahan, Michael Carroll, George Gould, Susan Pearlstein, Stefanie Seldin and Beth Shay for their efforts on behalf of the working groups. We also thank Catherine Carr for bringing many resources to the table; Laura K. Abel from the Brennan Center for Justice for attending our meetings and providing guidance and Ira Goldstein of The Reinvestment Fund for sharing details of his ongoing study of Philadelphia's Mortgage Foreclosure Diversion Pilot Project and his insights on our efforts.

We recognize Assistant Dean Arlene Rivera Finkelstein of Penn Law School for recruiting Penn Law students to provide essential research and writing assistance, including Mark Brown, John Caddell, Maisha Elonai, Jesse Krohn, Sarah Levin, and Lindsay Martin. Special thanks to John Caddell for assistance in editing this report.

Finally, we thank Marsha Levick and Karen Forman, co-chairs of the DLSC Civil Gideon subcommittee, for their early efforts to make Civil Gideon a priority, and the dedicated staff of the Philadelphia Bar Association and, in particular, Merril Zebe, public interest coordinator, for their invaluable assistance.

Joseph A. Sullivan and Andrew F. Susko, Co-Chairs, Civil Gideon Task Force.

I. EXECUTIVE SUMMARY

In 2005-2006, the American Bar Association created a Presidential Task Force on Access to Justice in civil cases to study whether a resolution should be introduced to support the provision of counsel as a matter of right to low-income persons in certain adversarial proceedings where basic human needs are at stake. This inquiry became known as the “Civil Gideon” inquiry. In Spring 2006, the ABA Task Force recommended that the House of Delegates approve Resolution 112A, calling for a system of Civil Gideon “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.” Resolution 112A was adopted in August 2006.

In April 2006, the Philadelphia Bar Association Delivery of Legal Services Committee formed a working group to explore strategies to expand the right to counsel pursuant to the overall approach taken by the ABA. In May, 2006, the Board of Governors approved a resolution authorizing the Philadelphia Bar Association to serve as an official supporter of the ABA Task Force and Resolution 112A.

At the start of 2009, Chancellor Sayde Ladov appointed the Philadelphia Bar Association’s Civil Gideon Task Force (“Task Force”).

In April 2009, the Board of Governors unanimously adopted a Resolution Calling for the Provision of Legal Counsel for Indigent Persons in Civil Matters Where Basic Human Needs Are at Stake. The Resolution called upon the Task Force to, *inter alia*, examine Civil Gideon efforts underway in other jurisdictions, develop strategies for developing Civil Gideon and to focus initially on making recommendations in two areas of basic need: cases involving the imminent loss of shelter and child custody.

The Task Force formed five working groups: Legislative/Lobbying and Court Implementation Strategies Working Group (“Legislative Working Group”), Fundraising Working Group, Housing Working Group, Family Working Group, and Bench, Bar and Community Outreach and Communications Working Group (“Communications Working Group”). Each group was asked to meet and to investigate, analyze and discuss the issues with which it was charged, and to prepare a written report of initial findings and preliminary recommendations, to be incorporated into a Preliminary Report, Findings and Recommendations of the Task Force.

The Legislative Working Group and the Fundraising Groups, working together, reviewed the ample evidence of the lack of legal representation for the majority of low-income persons in adversarial proceedings in areas of basic human need. These groups also conducted a detailed review of the current financial and political situation in Harrisburg and Philadelphia, and determined that the most critical first step is to develop an educational strategy and plan to be presented to all key constituencies. These groups also concluded that broad support from all potential stake holders would be essential to implementing Civil Gideon.

The Legislative Working Group and Fundraising Group reviewed numerous reports on a national and regional scale documenting the legal need, and other national and local reports supplying evidence of societal and economic benefits from funding legal services.

These groups propose a number of specific steps to implement an education strategy in the short term, such as developing a case statement for Civil Gideon, conducting outreach to key legislators, the Chief Justice and other members of the judiciary and to other key sectors of the legal community.

These groups further recommend development of a legislative strategy to follow the educational plan, including the possibility of commissioning an “urgent needs” report and a study of the costs and benefits of fully funding legal services.

These groups also recommend the identification of incremental steps that could lead ultimately to the expansion of access to counsel in cases involving basic human needs, such as the development of pilot projects providing legal representation.

The Housing Working Group conducted a preliminary assessment of the local unmet need for representation in the housing area, and reviewed various studies, scholarly articles and reports, and examined strategies and models employed in jurisdictions around the United States engaged in the Civil Gideon movement.

The Housing Working Group focused on the need for legal representation in mortgage foreclosure cases and eviction cases, noting the overwhelming lack of representation in both areas and the fact that the decline of the overall economy and the mortgage foreclosure debacle have increased the need for legal representation and present a crisis whose magnitude cannot be overstated. The Housing Working Group made similar findings involving eviction cases, noting that in Philadelphia’s Municipal Court, 97% of eviction cases in 2007 and 2008 were disposed of without counsel for the tenant.

The Housing Working Group examined Philadelphia’s Mortgage Foreclosure Diversion Pilot Project, noting that it has been successful in helping thousands of low-income homeowners, that the representation afforded is limited in scope and that more resources for full legal representation by legal services providers is needed to address the crisis, and to enable homeowners to fully pursue any and all viable legal defenses.

The Housing Working Group similarly examined the CLS Housing Unit’s Tenant Representation Project, an effort to address the unmet need by expanding the number of *pro bono* attorneys and law students representing tenants, after training and monitoring by legal services lawyers who practice in this area. As with the mortgage foreclosure project, the Tenant Representation Project has been limited in part by the economic downturn and its impact on the availability of *pro bono* counsel to take cases.

The Housing Working Group recommends first that financial resources be increased for existing legal services providers engaged in the full representation of low-income homeowners in foreclosure and tenants in eviction proceedings.

The Housing Working Group also recommends that the Mortgage Foreclosure Diversion Pilot Project and the Tenant Representation Project serve as “demonstration/pilot projects” and proposes that data from the projects be collected to measure the social and economic effectiveness of the provision of legal representation to homeowners facing foreclosure and tenant facing eviction, and also to serve as a foundation for seeking significant funding from federal, state and other sources to support the expansion of legal services for low-income persons facing imminent loss of shelter.

The Housing Working Group also recommends that the Fundraising Group work with it collaboratively to identify sources of funding; that the Philadelphia Bar Association assist in recruiting pro bono attorneys for the Mortgage Foreclosure Diversion Pilot Project and the Tenant Representation Project as well as VIP’s Mortgage Litigation Project, a new undertaking designed to use *pro bono* attorneys to provide full representation to low-income homeowners at risk of foreclosure. The Group also proposes to continue to evaluate and explore the viability of various limited representation projects in the housing area to implement in the short term and to highlight the potential benefits of expanding access to representation.

The Family Working Group noted that in Philadelphia, roughly 90% of litigants in custody cases are unrepresented, and that the lack of representation is particularly serious as family law is a complex system for unrepresented litigants to navigate.

The Family Working Group observed that outcomes of custody disputes can vary greatly depending on whether or not counsel is involved, and that in a case where one party is represented and the other is not, the matter is more likely to be prolonged and to absorb far more resources than when both parties have counsel.

The Family Working Group observed that current models using *pro bono* attorneys and/or finite representation have significant limitations, in some cases because *pro bono* attorneys are reluctant to make a long-term commitment to a case and in others because representation in a single proceeding, without an ongoing role by counsel, can leave a party at a loss when trying to represent himself or herself in subsequent proceedings.

The Family Working Group recommends that financial resources for existing legal services providers who handle custody cases be expanded, in light of their extensive level of expertise and track record in providing high-quality representation.

The Family Working Group also recommends that the Philadelphia Bar Association approve a pilot project providing for the appointment by the Family Court supervising judge of counsel from a “Judge’s List” of experienced, and accomplished family law practitioners.

The Family Working Group proposes that to be eligible for inclusion in the Judge’s List pilot project, the custody dispute involve allegations of physical and/or mental abuse, drug addiction or other factors that would hinder a parent’s ability to nurture a child, as well as cases where there are serious concerns for the safety of the child. Participation

would be limited to seasoned attorneys who have at least five years' experience and are members of the Association's Family Law Section or similar professional organization.

The Family Working Group also recommends that the Bar Association and the First Judicial District implement a "wheel" project that parallels the court appointed counsel system in the Dependency Court in the Juvenile Branch of Family Court, using a uniform screening process to identify cases. Participating attorneys would need to have taken a VIP or other training program and be required to maintain membership in the Family Law Section or similar professional organization. An oversight component would be included. Subject to further research on resources, the Working Group recommends that participating attorneys be compensated at a minimum rate of \$50 per hour.

The Family Working Group also offered recommendations on training and mentoring, the scope of future pilot projects and funding.

The Communications Working Group recommends that an education plan be developed, including a communications plan and an outreach strategy to make the case for Civil Gideon with the public at large, the judiciary, the legislature, the private bar and other key stakeholders.

The Communications Working Group proposes to incorporate the recommendations of the Legislative Working Group, including the development of educational materials, including case statements highlighting the unmet need, the benefits of representation to individuals and to the larger society, and case studies of real people to foster persuasive arguments for funding and general support.

The Communications Working Group recommends the development of a communications strategy to include articles and op-ed pieces in various publications, as well as public service announcements and appearances on radio and television programs and in other media to which the public turns on issues of community-wide importance.

The Communications Working Group also recommends that various venues and forums be identified in which to present focused outreach to specific stakeholders that address their concerns and build momentum for Civil Gideon initiatives.

The Communications Working Group concludes that the Philadelphia Bar Association would be instrumental in disseminating educational materials, and supporting the execution of communications and outreach strategies.

II. HISTORY AND BACKGROUND OF CIVIL GIDEON EFFORTS

THE UNMET NEED FOR LEGAL REPRESENTATION FOR LOW-PERSONS IN CIVIL MATTERS

The Philadelphia Bar Association has a long history of action promoting access to justice for all, without regard to ability to pay for legal counsel. The Association's efforts over many decades to expand access to justice in areas of basic human need to those who cannot afford counsel have been broad in scope and extensive in reach, and have included but not been limited to:

- Incubating and promoting public interest law centers focused on substantive legal areas involving basic human needs such as shelter, health care, sustenance, safety, parental rights and child custody, among others;
- Establishing and supporting Association sections and committees devoted to promoting collaborations between the private bar and legal services organizations to provide legal services involving basic human needs;
- Encouraging and facilitating *pro bono* legal services in areas of basic human needs through training, mentoring and organizational support;
- Creating educational programs and forums to highlight the fundamental legal needs of the poor in areas such as shelter, sustenance and parental rights; and
- Collaborating with the judiciary, the legislature and the private sector to expand opportunities for all sectors of the legal community to render legal services to the disadvantaged in areas of basic need.

Despite these efforts, studies by the American Bar Association, state and local bar associations, universities, government agencies and others estimate that at most 20% of disadvantaged persons who require legal services in areas of basic need are able to obtain such services.¹ In September 2009, the Legal Services Corporation (LSC), the institution charged by Congress with the administration of the federally-funded civil legal assistance program, issued a report that updates an earlier comprehensive report and concludes that there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive.² The specific findings in this report include the following:

¹ See *Summary of Legal Needs Studies*, memorandum written by Mark C. Brown, University of Pennsylvania Law School, October 2009, attached as Appendix 1.

² Legal Services Corporation, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans* (September 2009), available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

- Data collected in the spring of 2009 show that for every client served by an LSC-funded program, one person who seeks help is turned down because of insufficient resources.
- Recent state legal needs studies have added depth to a body of social science knowledge that has produced consistent findings for a decade and a half, documenting that only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of either a legal services lawyer or a private attorney (*pro bono* or paid).
- Analysis of the most recent available figures on attorney employment shows that nationally, on the average, only one legal aid attorney is available for every 6,415 low-income people. By comparison, there is one private attorney providing personal legal services for every 429 people in the general population (i.e., among those above the LSC poverty threshold).
- New data indicate that state courts, especially those courts that deal with issues affecting low-income people, and such specialized courts as housing and family courts, are facing significantly increased numbers of unrepresented litigants. Studies show that the vast majority of people who appear without representation are unable to afford an attorney, and a large percentage of them are low-income people who qualify for legal aid. A growing body of research indicates that outcomes for unrepresented litigants are often less favorable than those for represented litigants.³

The LSC report notes that the number of people in poverty has significantly increased because of the recession and high unemployment rate.⁴ Lack of resources continues to be the major factor why LSC-funded programs turn away half of those seeking help.⁵

A survey of the Pennsylvania legal services providers by the Pennsylvania Bar Association confirms that only approximately 20% of eligible clients applying for legal services are provided full representation by legal services providers.⁶ While comparable data from the Philadelphia legal services providers is not available, anecdotal reports from local legal services providers support the conclusion that thousands of low-income people in Philadelphia with critical civil legal problems are turned away each year due to a chronic shortage of legal aid resources. These reports also confirm that the gap in available resources to meet the unmet

³ *Id.* at 1-2.

⁴ *Id.* at 5.

⁵ *Id.* at 9.

⁶ See Pennsylvania Bar Association Legal Services to the Public Committee, Resolution in Support of Recognizing a Right to Counsel For Indigent Individuals in Certain Civil Cases (2007), available at <http://www.pabar.org/public/committees/lspublic/resolutions/right%20to%20counsel%20resl%20boardapprovdoc.pdf>.

need has only worsened in the past several years due to the economic downturn that has resulted in both the reduction of funding and resources for providers, and an increase in the poverty rate.

New census data suggests that the problem is likely to get worse. The American Community Survey conducted by the U.S. Census Bureau and released in September 2009 reports that the percentage of households receiving food stamps in Philadelphia increased by nearly 3 percentage points between 2007 and 2008. The poverty rate also increased in Philadelphia from 23.8 % in 2007 to 24.1 % in 2008. Philadelphia remains one of the five counties with the highest percentage of people with income below the poverty level in the state. These numbers are only expected to increase in 2010 due to the weak economy.

National Civil Gideon Efforts

In 2003, the legal community across the nation celebrated the 40th Anniversary of *Gideon v. Wainwright*, the landmark United States Supreme Court decision that established a constitutional right to appointed counsel in state criminal cases for indigent defendants.⁷ This celebration included the publication of numerous articles on the subject, educational programs, conferences and other activities held throughout the nation, and coincided with an emerging national movement to explore strategies to expand the right to counsel for indigent people in certain critical civil cases. These emerging efforts have become known as “Civil Gideon.”⁸ In some states, litigation was initiated in an effort to compel expanded provision of counsel in certain civil cases; other states created Access to Justice Commissions, often by state Supreme Court orders, to assess the unmet legal civil needs of the indigent and develop strategies to better address those needs.⁹ The National Coalition for a Civil Right to Counsel (NCCRC) was formed to facilitate collaboration among advocates nationwide and provide training, research and other support to legal services programs, bar associations, law schools, private law firms, and others in their local efforts to establish a civil right to counsel.¹⁰

In 2005-2006, American Bar Association President Michael Greco formed a Presidential Task Force on Access to Justice in Civil Cases (“ABA Task Force”) to study and recommend whether a proposed resolution should be introduced to support the provision of counsel as a matter of right to low-income persons in certain adversarial proceedings where basic human needs are at stake. In the Spring of 2006, the ABA Task Force recommended that the ABA House of Delegates approve proposed Resolution 112A, as follows:

⁷ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁸ See Russell Engler, *Shaping a Context-Based Civil Gideon From the Dynamics of Social Change*, TEMP. POL. & CIV. RTS. L. REV. 497 (2006) available on the National Coalition for a Civil Right to Counsel web site at <http://civilrighttocounsel.org/pdfs/englercontextbased.pdf>

⁹ *Id.* at 698-700.

¹⁰ *Id.* at 698-99. For more information about the National Coalition for A Civil Right to Counsel generally, see <http://civilrighttocounsel.org>.

RESOLVED: That the American Bar Association urges state, territorial and federal jurisdictions to provide 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.¹¹

In August of 2006, the ABA unanimously passed Resolution 112A. The history of efforts to support the creation of a right to counsel in civil cases was outlined in a report that accompanied the resolution; the report noted that the resolution represented an incremental approach, limited to those cases where the most basic of human needs are at stake.¹² The report also noted that the categories identified in the resolution involve the threat of losing fundamental and critical human needs and interests that justify providing attorneys at no cost to low-income persons who otherwise cannot obtain counsel.¹³

The ABA resolution established a mandate for local jurisdictions to explore how to create and implement a right to counsel in civil cases involving critical human needs. During the past several years, legal service programs, bar associations, law schools, private law firms, courts, and other key stakeholders across the nation have begun working to create a right to counsel for low-income individuals in a variety of civil cases through a variety of approaches, including legislative and litigation strategies.¹⁴

Some states have decided to pursue a litigation strategy in child custody cases (Maryland). Other jurisdictions have pursued a legislative strategy. For example, in New York City, a bill is pending before the New York City Council that would expand the right to counsel in eviction and mortgage foreclosure cases for low-income seniors.¹⁵

In Massachusetts, the Boston Bar Association organized a Civil Right to Counsel Task Force, which proposed the development of five pilot projects statewide in the following substantive law areas: juvenile, immigration, housing, family and collateral consequences of criminal convictions.¹⁶ In 2008, the Boston Bar Association task force recommended

¹¹ See ABA Resolution 112A and Report, available at <http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwelvea.doc>

¹² *Id.* at 2-8, 12.

¹³ *Id.* at 12.

¹⁴ Laura K. Abel and Paul Marvey, *Current Developments in Advocacy to Expand the Civil Right to Counsel*, 25 TOURO L. REV. 131 (2009), available at http://www.tourolaw.edu/lawreview/pdfs/8_WWW_Abel_Marvey_CurrentDevelopment_SM_Final_12.23.08_.pdf; see also related articles in Symposium, *An Obvious Truth: Creating an Action Blueprint for a Civil Right to Counsel in New York State*, 25 TOURO L. REV. 1 (2009) (published in partnership with the New York State Bar Association) available at http://www.tourolaw.edu/lawreview/Vol25_No1_2009.html

¹⁵ *Id.* at 141-42.

¹⁶ See Boston Bar Association, *Gideon's New Trumpet* 5-6 (2008), available at <http://bostonbar.org/prs/reports/GideonsNewTrumpet.pdf>

implementing pilot projects in each of these substantive areas, with a study component and funding plan for each project.¹⁷ In 2009, the Boston task force launched a pilot project exploring the impact of full legal representation in eviction cases, with funding from the Boston Foundation, the Boston Bar Foundation, and the Massachusetts Bar Foundation. The project includes an evaluation tool to measure the efficacy of the program, testing the theory that representation leads to a preservation of shelter as well as cost savings. The results will be used in an effort to convince the legislature to provide increased funding for the provision of legal counsel statewide in eviction cases.

On October 11, 2009, California Assembly Bill 590 was signed into law by Governor Arnold Schwarzenegger, creating a right to counsel for indigent individuals in critical human-needs cases and establishing pilot projects in selected courts that will study and demonstrate the cost savings of providing counsel.¹⁸ This is the first law in the nation to recognize a right to representation in key civil cases. Local legal aid programs will partner with the courts in applying for the funding and determining the types of cases to be included in the projects. The pilot projects will be funded by a \$10 surcharge of fees assessed on certain court services, including those for issuing a writ to enforce an order, recording or registering a license or certificate, issuing an order of sale, and filing and entering an award under the state's Worker's Compensation law.

Civil Gideon Efforts in Pennsylvania

In April 2006, the Philadelphia Bar Association's Delivery of Legal Services Committee formed a working group, known as the DLSC Civil Gideon Subcommittee, to explore strategies to expand the right to counsel for low-income individuals in civil cases. The initial work of this subcommittee included researching developments in expanding the right to counsel in civil cases in Pennsylvania and nationwide, and reaching out to the then-incoming President of the Pennsylvania Bar Association, Andrew F. Susko, to enlist the support of the state bar association for the subject of its work. The Civil Gideon right also was comprehensively evaluated at the University of Pennsylvania Law School's Edward R. Sparer Symposium held in May 2006 in conjunction with the 2006 Equal Justice Conference in Philadelphia, co-sponsored by the ABA and the National Legal Aid and Defender Association at which overwhelming support for Civil Gideon was expressed.

In May 2006, the Philadelphia Bar Association's Board of Governors approved a resolution offered by the DLSC authorizing the Association to serve as an official supporter of a Report and Recommendations of the ABA's Presidential Task Force on Access to Justice in Civil Cases and Resolution 112A.¹⁹ Following the adoption of the ABA resolution, in

¹⁷ *Id.* at 5-6.

¹⁸ 2009 Cal. Legis. Serv. 457 (West).

¹⁹ The Philadelphia Bar Association's May 25, 2006, Resolution to Cosponsor the Report and Recommendation of the ABA's Presidential Task Force on Access to Justice in Civil Cases is available at

(continued...)

September 2007, the Pennsylvania Bar Association's House of Delegates passed a resolution urging the state to provide counsel as a matter of right in civil cases involving basic human needs.²⁰

The Philadelphia Bar Association's Public Interest Section and its DLSC Civil Gideon subcommittee partnered with the Pennsylvania Bar Association to co-sponsor the presentation of an educational symposium on Civil Gideon, which was held in Philadelphia on April 10, 2008.²¹ The purpose of this program was to educate the legal community about the strategies being pursued nationwide to obtain and implement a right to counsel in civil matters and to begin a discussion about strategies to implement a right on the local level. Panelists included Pennsylvania State Representative Kathy Manderino; Debra Gardner, Legal Director of the Public Justice Center and Coordinator of the National Coalition for a Civil Right to Counsel; and Laura K. Abel, Deputy Director of the Justice Program at the Brennan Center for Justice at New York University School of Law. Following the symposium, the DLSC Civil Gideon Subcommittee proposed the formation of a Task Force on Civil Gideon to Chancellor-Elect, Sayde J. Ladov in the late fall of 2008.

Currently, Pennsylvania provides a right to court-appointed counsel for indigent people in a limited number of civil proceedings, which include child dependency cases, termination of parental rights, paternity, civil commitment proceedings for sexually violent delinquent children, and involuntary commitment pursuant to the Mental Health Procedures Act.²² The creation of the right to counsel in these cases was achieved through litigation or legislative action.

Formation of the Philadelphia Bar Association Task Force

Chancellor Sayde Ladov appointed the Civil Gideon Task Force ("Task Force") in early 2009, calling for the Task Force to investigate and consider all aspects of establishing an effective system of Civil Gideon in Philadelphia. Members of the Task Force include judges, private attorneys, representatives from the Public Interest, Family Law and Real Property

(continued...)

<http://www.philadelphiabar.org/page/BoardResolution0525200606?appNum=2&wosid=j3wuqyaFghq79dcHDerVDw>

²⁰ Pennsylvania Bar Association Resolution, *supra* note 6, at 1.

²¹ A podcast of this program is available at http://www.philadelphiabar.org/page/Podcasts_Speaker_Programs?appNum=2&wosid=PXIUJgZod14KrvFgmSc9T0

²² Pennsylvania Bar Association Resolution, *supra* note 6, at 2. This Resolution sets forth a list of the known civil cases in which court appointed counsel is required in Pennsylvania. The Resolution also cites an extensive list of states and the most common substantive areas where some level of right to counsel has been identified by statute, as well as the status of Civil Gideon activities in selected states. Available at <http://www.pabar.org/public/committees/1spublic/resolutions/right%20to%20counsel%20res1%20boardapprovdoc.pdf>.

Sections, public interest legal attorneys, and future leaders of the Association.²³ The Task Force convened its first meeting in March 2009, and determined that its initial goal would be to formulate an enabling resolution that would be presented to the Philadelphia Bar Association's Board of Governors. The Task Force's resolution was endorsed by the Public Interest Section, Real Property Section, Family Law Section, and the Civil Rights Committee, and on April 30, 2009, the Philadelphia Bar Association's Board of Governors unanimously adopted the Resolution Calling for the Provision of Legal Counsel for Indigent Persons in Civil Matters Where Basic Human Needs Are at Stake.²⁴

After the resolution was adopted, the Task Force determined that its first steps would include examining Civil Gideon efforts underway in other jurisdictions and developing a process to begin working on the objectives and goals set forth in the resolution. At its second meeting, the Task Force invited Laura Abel of the Brennan Center for Justice at New York University School of Law, to present an overview of developments nationwide. Ms. Abel outlined a number of key strategies to consider, including demonstrating to the legislature, judiciary and county and municipal governments that the provision of counsel in civil matters furthers judicial economy, is cost effective and is socially and economically beneficial.

The April resolution directed the Task Force to examine strategies for developing full, no-cost representation of low-income persons in areas of basic human need as well as to examine a range of possible intermediate steps and models that might be adopted on the way to full Civil Gideon.²⁵ While no hard definition of the full scope of Civil Gideon has been adopted, the consensus of Bar leaders and the Task Force was to focus initially on making recommendations to expand the provision of counsel in two areas of basic need: cases involving the imminent loss of shelter and child custody.²⁶

Five working groups, including Task Force members and other knowledgeable members of the legal community, were convened to begin this process and each working group was directed to make recommendations for future action steps for the Task Force, including identifying possible pilot projects to advance Civil Gideon and outlining key strategic considerations. Each of the working groups was assigned, at a minimum, to conduct appropriate research, identify the range of relevant communications needs and issues, and to conduct a review of existing resources. The five working groups are: Legislative/Lobbying and Court Implementation Strategies Working Group ("Legislative Working Group"); Fundraising Working Group; Housing Working Group; Family Working Group; and the Bench, Bar and Community Outreach and Communications Working Groups ("Communications Working Group").

²³ See List of Task Force Members, attached as Appendix 2.

²⁴ Philadelphia Bar Association, Resolution Calling for the Provision of Legal Counsel for Indigent Persons in Civil Matters Where Basic Human Needs are at Stake, available at http://www.philadelphiabar.org/page/RESOLUTION_CALLING_FOR_THE_PROVISION_OF?appNum=2

²⁵ *Id.*

²⁶ *Id.*

Each working group was asked to provide a written report of its initial findings and preliminary recommendations for consideration by the Philadelphia Bar Association's Board of Governors by the end of 2009. The Civil Gideon Task Force is pleased to present the following preliminary reports and recommendations.

III. LEGISLATIVE/LOBBYING AND COURT IMPLEMENTATION AND FUNDRAISING WORKING GROUPS PRELIMINARY REPORT AND RECOMMENDATIONS

Introduction:

Recognition of the overall lack of representation of low income persons in categories of adversarial proceedings where basic human needs are at stake has been emerging rapidly in recent years. The sense of urgency in addressing the need for Civil Gideon has been underscored by the 2006 ABA report, the Board of Governor's April 2009 resolution, and in numerous reports outlined or referenced in this Report. For these reasons, the Legislative/Lobbying and Court Implementation Working Group ("Legislative Group") and the Fundraising Group began their work with a sense that a principled analysis, a strategic plan and practical steps were all essential to creating a path to move Philadelphia and the state closer to Civil Gideon. At the same time, members of both working groups recognized that the economic and financial crises that began in mid-2008 and have continued into 2009 pose a particular set of challenges to the effort to gain the legislative and judicial traction and financial support that is key to implementing Civil Gideon.

Findings:

The Legislative Group and the Fundraising Group began their work with a detailed review of the current financial and political situation in Harrisburg and Philadelphia. In light of the overall financial downturn and the budget impasse that caused an extensive delay in adopting the state budget in 2009, both groups concluded that the time was not ripe to seek from the state legislature and City Council a wholesale adoption of Civil Gideon, or to develop specific implementation strategies for how Civil Gideon might be achieved through legislation.

Rather, members of the Legislative Group and the Fundraising Group concluded that the most critical first step is to develop an education strategy and plan to be presented to all key constituencies, including the state legislature, City Council, the courts, the legal community as a whole and the general public. Members concluded that broad support from all potential stakeholders would be essential to implementing Civil Gideon.

Developing An Education Strategy

The Legislative and Fundraising Groups examined both the extent of the need for civil legal services among persons unable to retain legal counsel on their own and the potential societal benefits of expanded and ultimately full free legal representation in areas of basic human need, in order to conceptualize the appropriate educational strategy to be developed. This strategy would include developing a concise case for and message in support of the right to counsel in certain civil matters.

Evidence of Legal Need

Group members reviewed the ample evidence of the lack of legal representation for the majority of low income persons in adversarial proceedings in areas of basic human need, as outlined in a number of sophisticated reports referenced in this Report. Notably, the national

report of the Legal Services Corporation (LSC) entitled *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-income Americans*, originally published in 2005 and updated as of September 2009, sets forth a number of statistics outlining the breadth and depth of the problem, including such key findings as:

- The LSC surveyed 137 grantee programs, with 918 offices across the nation, to document the number of people seeking legal assistance that could not be served due to insufficient program resources, and concluded that for every client who contacted and was served by an LSC-funded program, at least one eligible person seeking help will be turned away. Based on an annualized projection from a two-month sample period in March-May 2009, LSC will be unable to serve 944,376 people in need of help in 2009.
- The inability to provide representation to substantial numbers of low income persons was remarkably consistent across the nation, as LSC learned in the process of developing nationally applicable conclusions based on its comparison of study methodologies and findings in seven different states since 2005 (Virginia, Utah, Wisconsin, Nebraska, Alabama, Georgia and New Jersey.)
- In the seven state studies reviewed by LSC, on average, low-income households experienced from 1.3 to 3 legal needs a year, and in all states, the majority of low-income persons surveyed said their legal needs were extremely important or very important. In New Jersey, for example, 58.2% of the respondents said their legal problems were “most serious.”
- Attorney-low-income population ratios were extremely high. In 2007, there were a total of 7,931 legal aid attorneys available to provide legal services in areas of basic human need for an estimated 50,876,000 persons living at or below 125% of the federal poverty guidelines.²⁷

Similarly, the 2009 report of Pennsylvania’s IOLTA (Interest on Lawyer Trust Accounts) board entitled *Results of the Pennsylvania Access to Justice Act: A Report on the Filing-Fee Surcharge Law, FY 2004-2008* demonstrates both the extensive need for legal representation among low income Pennsylvanians and the benefits of providing additional revenues to help fund legal services:

- 1.7 million Pennsylvanians live on incomes less than 125% of the federal poverty guidelines, and nearly half of that population, or 47%, experience legal problems each year, translating into 712,000 legal matters annually.
- Pennsylvania legal aid intake workers turn away one out of every two people who apply for services.

²⁷ LSC Report, *supra* note 2, at 9, 14-22.

- Only one in five low-income people who experience a legal problem is able to get help from any source.²⁸

The 2009 IOLTA report demonstrates, however, the difference additional funding, from whatever source, can make. In particular, the report reveals that:

- The Access to Justice Act (AJA) produced \$36.5 million cumulatively through 2008, accounting for 18% of total funding for legal services; the AJA funded 70,700 cases over the 2004-2008 period, directly benefitting 138,000 individuals.
- Most recently, in FY 2007-2008, AJA funded 20,300 of Pennsylvania Legal Aid Network's 94,400 cases that year.²⁹

Evidence of Societal and Economic Benefits from Funding Legal Services

In addition to considering the extent of the unmet need among low-income Pennsylvanians for legal representation in matters involving basic human needs, the members of the Legislative and Fundraising Working Groups reviewed studies that have been conducted across the nation on the larger benefits to society of providing greater, if not full, representation to low-income persons in areas of basic need such as housing, parental rights and child custody.

One notable study published this year is entitled: *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential*, and was funded by the Texas legislature.³⁰ Among its notable conclusions are:

- Currently, legal aid services lead to a sizeable stimulus to the Texas economy. The study estimates that the gain in business activity includes an annual \$457.6 million in spending, \$219.7 million in gross output and 3,171 jobs.
- For every direct dollar expended in the state for indigent civil legal services, the overall annual gains to the economy are \$7.42 in total spending, \$3.56 in gross output and \$2.20 in personal income.
- Further, this activity generates approximately \$30.5 million in yearly fiscal revenues to state and local government entities, well above the state's then-current \$4.8 million in contributions for legal services.³¹

²⁸ Pennsylvania IOLTA Board, *Results of the of the Pennsylvania Access to Justice Act: A Report on the Filing-Fee Surcharge Law, FY 2004-2008* (February 2009), p. 2, available at <http://www.paiolta.org/AJAReport/Report.pdf>.

²⁹ *Id.* at 3-5.

³⁰ The Perryman Group, *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential* (February 2009), available at <http://www.texasatj.org/FINAL%20Econ%20Impact%20Study%202002-12-09.pdf>.

In Pennsylvania, the 2009 IOLTA report on the total economic impact of legal assistance funded by the Access to Justice funding between the years 2004 -2008 included the following:

- Total economic impact was \$154 million, including \$68 million in economic activity in local communities.
- Benefits included \$37 million in direct dollar benefits for clients, \$8 million savings in emergency shelter costs; \$23 million savings in costs relating to domestic abuse and \$55 million for low-income utility customers.³²

Implementing an Education Strategy in the Short Term

The Legislative Group and Fundraising Group then identified the following specific items as short term implementation strategies that should be included in an educational plan:

- a case statement outlining the results of recent national studies that highlight the unmet need, including the absolute need for a truly accessible justice system that makes the system fair for all Pennsylvanians;
- a web page with educational resources;
- identification of legislators from around the state likely to express interest at an early stage, followed by a series of preliminary meetings with them to outline the issues, provide further details and obtain their input;
- outreach to the Chief Justice and other key judicial leaders, such as Justice Baer who has championed new pilot projects in family court matters;
- outreach to the leadership of all bar associations;
- outreach to law schools, including an exploration of how to incorporate Civil Gideon topics in the curriculum;
- identification of important events that could serve as a forum to discuss Civil Gideon issues, such as the annual Judicial Conference and Bench Bar Conference; and
- outreach to managing partners at law firms.

(continued...)

³¹ *Id.* at 3.

³² IOLTA Board Report, *supra* note 28, at 7-8.

Developing a Legislative Strategy to Follow the Education Strategy

The Legislative Group examined the key issue of the scope of the Task Force's efforts to address legislative support for Civil Gideon. In particular, the Group discussed whether legislative/lobbying and court implementation strategies should be conducted as a statewide effort, on the one hand, or whether it could be led by the Philadelphia Bar Association directly. Since the implementation of Civil Gideon will ultimately occur at a statewide level, one suggested approach was to have the Philadelphia bar lead efforts to promote a statewide approach on Civil Gideon, and to partner with every county bar association and the state bar association. Group members noted that pilot projects to provide a form of Civil Gideon, or some legal assistance short of Civil Gideon, were being conducted in various counties in the Commonwealth, and that information sharing and consensus building were invaluable.

It was noted that only 20% of Pennsylvania legislators are attorneys and that in the absence of a legal background, many legislators might not readily grasp the importance of Civil Gideon without being provided with extensive educational materials, supplemented with personal meetings and discussions. Members of the Legislative Group concluded that key legislators should be approached early in the process to inform them of the Task Force's efforts and obtain insights on strategies and input on other legislators who may be helpful to the effort. Such efforts should be conducted in conjunction with local bar associations.

The central role of the statewide judiciary in developing a system of Civil Gideon was recognized by all members of the Legislative and Fundraising Groups. Chief Justice Ronald D. Castille has demonstrated through various Court initiatives his steadfast support for legal services in Pennsylvania. It was recommended that the Chief Justice be approached early in the process to secure his leadership in developing both an educational plan and an implementation plan.

Considering a Report on Unmet Need vs. a Study of Cost-Benefit Analysis

The Legislative Group discussed at length the possibility that the Philadelphia Bar Association might take the lead in developing a study or a report, which could be incorporated into the educational plan and be used to educate legislators and the general community on the unmet legal needs.

The Group reviewed a number of studies and reports, including the recent studies on legal needs released by the Brennan Center on mortgage foreclosures, and the national report of the Legal Services Corporation (LSC) entitled *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-income Americans*, originally published in 2005 and updated as of September 2009, as well as the 2009 IOLTA Board report entitled *Results of the Pennsylvania Access to Justice Act: A Report on the Filing-Fee Surcharge Law, FY 2004-2008*, discussed above.³³

³³ See LSC Report, *supra* note 2, and IOLTA Board Report, *supra* note 28. See also *Summary of Economic Benefit Studies*, a memorandum written by Sarah Levin, University of Pennsylvania Law School, attached as

(continued...)

The Group also reviewed a number of studies examining the economic benefits of providing legal services to low-income people such as the Texas study completed in 2009. As noted, the Texas study found that every \$1 spent on indigent civil legal services led to an overall gain to the economy of \$7.50. This study concluded that legal services programs generated millions of dollars for the state, which helped convince the legislature to recently allocate approximately \$26 million in the state budget for legal services.³⁴

Ira Goldstein, Director of Policy and Information Services for The Reinvestment Fund, addressed a combined meeting of the Legislative Group and the Fundraising Group, to outline his current work on a study of the benefits of Philadelphia's Mortgage Foreclosure Diversion Project for homeowners in the project and the greater Philadelphia region. The Reinvestment Fund study has been commissioned by the Soros Open Society Institute (OSI). The possibility that one or more local foundations may be interested in funding a cost-benefit study and/or that one or more local universities may also be a resource for conducting a study or report was considered.

The working groups concluded that a report on the "urgent need" for legal representation, which may include an analysis of the costs and benefits, would help to accelerate general awareness of the need for legal services for individuals who cannot afford counsel in areas of basic need, as well as the wide-ranging benefits Civil Gideon might provide to the larger community. It was agreed that the report should be prepared by an independent and objective group. Further work is needed to determine the scope of the report, and whether the report should focus on the "urgent needs" in Philadelphia, or include other areas of Pennsylvania.

The members of both groups agreed that the report should definitely include qualitative issues and feature case studies and issues involving real people and their issues would be more persuasive and useful in developing a case for funding with legislators and other possible funding sources. It was also suggested by members that the report include both success stories, where legal representation led to good results, and stories where legal representation was not available, leading to unfavorable results. Additional research is needed to determine what type of report would be most helpful in persuading the legislature, judiciary and county and municipal governments as well as corporate partners and other potential funders that the provision of legal counsel in civil cases involving critical human needs is essential to the economic and societal well being of the city and/or state, and furthers judicial economy. The Task Force also needs to continue to explore possible partners for such a report, which may include seeking funding for the report from one or more foundations and/or utilizing the expertise of research resources that may be available at one or more local universities.

(continued...)

Appendix 3; and *Summary of Legal Needs Studies*, memorandum written by Mark C. Brown, University of Pennsylvania Law School, attached as Appendix 1.

³⁴ Texas Report, *supra* note 30, at 3.

Recommendations:

The Legislative Group and the Fundraising Group make the following preliminary recommendations:

1. Develop an educational plan for outreach to legislators, the executive branch; the judiciary; leadership of all bar associations, law schools, the larger legal community and to general public, including individuals at every level who are considering running for office or higher office.
2. Explore the possibility of commissioning an “urgent needs” report, which may include the economic and societal benefits to the community from providing low-income persons with legal representation in civil cases.
3. Consider pursuing a comprehensive cost-benefit analysis, guided by the 2009 IOLTA report on the economic benefits of the filing fee surcharge during the 2004-2008 period, the Texas study and other studies around the nation to help make a convincing case for full Civil Gideon. To accomplish this, the Task Force should continue its investigation of possible support for the study not only with the state legislature, but with foundations and the private sector as well.
4. Identify incremental steps that will result in the expansion of the provision of counsel in cases involving basic human needs, such as the development and implementation of pilot projects, which may help improve access to justice; and
5. Although no consensus was reached on the issue, the Group concluded that the Task Force also should continue to evaluate the possibility of a legal challenge in an appropriate, active court case to establish a right to counsel in an area of basic need.

IV. HOUSING WORKING GROUP PRELIMINARY REPORT AND RECOMMENDATIONS

Objective:

The Housing Working Group (Group) was charged with recommending strategies to expand the right to counsel for low-income people threatened with an imminent loss of shelter and to develop housing pilot projects or identify existing local housing projects to serve as Civil Gideon pilot/demonstration projects. In the short term, such projects would expand representation to low-income individuals facing the imminent loss of shelter while also serving as the source of data or information regarding the social and economic benefits of recognizing a Civil Gideon right in the housing area. Accordingly, the Group was also charged with developing an evaluative component for each of the selected pilot projects and identifying potential sources of funding for the staffing of the pilots as well as the completion of any evaluative studies. Finally, the Group was asked to explore the development and implementation of limited representation models ranging from advice-only clinics, court-based “help desks” and one-time or “zipper” appearances, as well as mediation and conciliation and full representation by private attorneys. The aim is to expand legal assistance to housing litigants while also promoting the recognition of a Civil Gideon right to counsel in the housing area.

Findings:

In a few short months, the Group conducted a preliminary assessment of the local unmet need for representation in the housing area; reviewed various studies, law review articles and reports; examined various strategies and models employed by different jurisdictions engaged in the Civil Gideon movement; and begun evaluating limited representation housing models as stop gap, short term solutions to meet the existing need and to improve access to the courts for low-income self-represented litigants.

Preliminary data and information collected by the Group confirms the need for the expansion of full legal representation of low-income litigants in mortgage foreclosure and eviction cases. The Group’s initial efforts to gather data have included collecting anecdotal reports from housing attorneys in Philadelphia and a preliminary survey of legal services agencies engaged in the representation of homeowners in foreclosure and/or tenants in eviction cases to ascertain the number of requests for assistance and the percentage of those requests for which the agencies are providing representation. Additional data regarding the volume of eviction filings and the disposition of cases involving unrepresented litigants was obtained directly from the Court of Common Pleas and the Municipal Court.

The Need for Legal Representation in Mortgage Foreclosure Cases

It is widely known that the nation is in the midst of a foreclosure crisis which threatens the heart of the American Dream. In a recently- released study by the Brennan Center for Justice, entitled *Foreclosures: A Crisis in Legal Representation*, it was noted that the foreclosure crisis is also a crisis in legal representation: low-income homeowners are losing their homes in foreclosure because they are not represented by attorneys in these complicated legal proceedings

and they are unaware of potential legal defenses.³⁵ Legal aid organizations are ill-equipped today to handle the increased demand for legal services due to underfunding by the Legal Services Corporation (LSC) as well as the impact of the recession, which has resulted in state and local governments and private charities cutting funding for legal services.³⁶

The Brennan Center study underscores the difference that legal representation can make in helping many low-income homeowners preserve their homes and avoid homelessness, which in turn prevents urban blight and helps stabilize property values and at-risk neighborhoods.³⁷ The study notes that providing legal representation in these cases may result in identifying violations of state and federal laws, enforcing consumer protection laws, obtaining protection through the bankruptcy laws, and raising other defenses that facilitate the renegotiation of the loans, or slow the foreclosure proceedings to provide time for the homeowner to secure alternative housing.³⁸ Recommendations in the study include the following: increased state and federal funding should be provided to foreclosure legal assistance; states should expand access to the courts and to other dispute resolution mechanisms for homeowners facing foreclosure proceedings by requiring lenders to participate in a mediation conference with homeowners before a foreclosure is permitted to proceed; and foreclosure proceedings should be deferred until the homeowner has consulted with either a trained housing counselor, or, where lending violations are suspected, a lawyer.³⁹

In Philadelphia, the decline of the overall economy and the mortgage foreclosure crisis have presented a crisis whose magnitude simply cannot be overstated.

Philadelphia, a city historically known for the availability of affordable housing for low-income homeowners, has seen a dramatic rise in the rate of foreclosures.

Unlike many of the other 10 largest cities in America, Philadelphia has a high percentage of total housing stock consisting of row homes and other single-family dwellings, as opposed to high-rise apartment buildings. Low-income residents living in those houses have many of the loans now being subject to foreclosure proceedings. Philadelphia also has the largest percentage of senior citizens among the 10 largest cities in the United States. Low-income and senior citizen homeowners often took on these loans without proper financial advice or an adequate understanding of their new obligations. Many of the foreclosures were the result of unaffordable

³⁵ See Melanca Clark and Maggie Barron, *Foreclosures: A Crisis in Legal Representation*, Brennan Center for Justice, New York University School of Law, October 6, 2009, available at <http://www.brennancenter.org/content/resource/foreclosures>. For more information about the study and the Brennan Center generally, see www.brennancenter.org.

³⁶ *Id.* at 2-3.

³⁷ *Id.* at 12-26.

³⁸ *Id.* at 2.

³⁹ *Id.* at 3.

subprime loans that were sold to unsophisticated, low-income homeowners targeted by brokers or mortgage companies.

In 2008 alone, approximately 10,000 mortgage foreclosure cases were filed in Philadelphia County, and the filings are only expected to increase in volume in the coming year.⁴⁰ Philadelphia's legal services programs are nationally known as experienced and sophisticated advocates in mortgage foreclosure and predatory lending cases. However, these legal services organizations are unable to meet this escalating demand for services due to a lack of adequate funding to support the staff needed to provide full legal representation in these cases.

In Philadelphia, the Residential Mortgage Foreclosure Diversion Program (Diversion Program)⁴¹ has alleviated some of the need for counsel for low-income homeowners facing foreclosure. The Residential Mortgage Foreclosure Diversion Pilot Program was established in April 2008 by a Joint General Court Regulation issued by the Court of Common Pleas and provides early Court intervention in residential owner occupied mortgage foreclosure cases to allow homeowners the resources and time to facilitate a loan work out or other resolution to prevent the loss of their home.⁴²

Housing counselors, legal services attorneys or *pro bono* attorneys provide representation to low-income homeowners at the Conciliation Conference stage of the Diversion Program only. Since the inception of the Diversion Program, approximately 6,300 conferences have been scheduled, resulting in approximately 1,600 homes being saved outright from Sheriff sales, and 3,000 cases are pending for future resolution as the parties continue to negotiate and await responses from lenders.⁴³ While the Diversion Program has been extremely successful in helping thousands of low-income homeowners, the legal representation of low-income homeowners afforded by the Diversion Program is limited in scope and more resources for full legal representation by legal services providers is needed to address this crisis and permit homeowners to pursue any and all viable defenses.

In Philadelphia, limited resources are available to provide legal advice and full representation for low-income homeowners through the following existing legal services providers: Community Legal Services (CLS), Philadelphia Legal Assistance (PLA), SeniorLAW Center, Legal Clinic for the Disabled, and the AIDS Law Project. VIP has recently created the Mortgage Litigation Project to recruit and train *pro bono* volunteers in foreclosure defense. The project is a joint collaboration between VIP and CLS, with CLS foreclosure attorneys serving as

⁴⁰ See *Hearing on Foreclosure Mitigation Efforts Under TARP Before the Congressional Oversight Panel*, September 24, 2009 (Testimony of Honorable Annette M. Rizzo, Court of Common Pleas, First Judicial District, Philadelphia County); and Honorable Annette M. Rizzo, White Paper on The Philadelphia Mortgage Foreclosure Diversion Pilot Project. Both may be found in the Appendices, respectively as Appendix 4 and Appendix 5.

⁴¹ *Id.*

⁴² First Judicial District of Philadelphia, Court of Common Pleas of Philadelphia County, Joint General Court Regulation No. 2008-01 (April 16, 2008), attached as Appendix 6.

⁴³ Testimony of Honorable Annette M. Rizzo, *supra* note 40, at 8.

legal resources for volunteers accepting foreclosure referrals from VIP. The expansion of the Project is contingent upon VIP's ability to staff the project with a Fellow or through other funding sources. All of these legal services providers report that the rising demand and declining resources limit representation in foreclosures to a small number of homeowners who meet the criteria and priorities set by their organizations.⁴⁴ There are fewer than 17 full-time legal service attorneys from these organizations available to handle this work in the entire city, and representing homeowners in full blown foreclosure litigation can be very time consuming.

While the data has not been studied in detail, legal services attorneys are convinced that attorney representation in litigation can make it much more likely that a homeowner remains in his or her house; the legal services lawyers drawing this conclusion have had years of successes in handling these cases. The small number of legal services attorneys underscores the critical need for increased resources for the legal services providers to provide legal representation to thousands of low-income homeowners who have underlying meritorious defenses in mortgage foreclosure cases that are unable to be resolved through the Diversion Program.

The Need for Legal Representation in Eviction Cases

Anecdotal reports from Philadelphia legal services housing attorneys who are members of the Group establish that thousands of low-income families in Philadelphia find themselves forced to live in substandard housing every year because their landlords will not comply with state and local landlord tenant law and make necessary repairs. Hundreds more find themselves wrongfully evicted because they could not present their cases adequately, due to lack of legal counsel. Families evicted from their homes often end up in homeless shelters, making it extremely difficult to retain a job or send children to school every day. Worse, families living in substandard housing can face losing custody of their children because of the inability to provide a safe and sanitary home.

Studies from other jurisdictions support the above findings and further indicate that providing legal representation for tenants in eviction cases results in preventing evictions and homelessness, and provides a substantial cost savings for the community.⁴⁵ One New York study found that when low-income tenants were provided with legal counsel, they experienced significantly more beneficial procedural outcomes than their *pro se* counterparts, and that they were much less likely to have a final judgment and order of eviction against them and more

⁴⁴ Preliminary data was obtained from a survey of these providers, which was incomplete as of the date of this report. Anecdotal reports from the providers, however, confirm the lack of sufficient legal services resources to meet the need. Further, it should be noted that some of these providers are relatively small, highly specialized programs that deliver high quality legal services in a manner that is very sensitive to the client, who is often a client with special needs. It could be misleading, however, to give the impression by including the smaller programs in the list of available legal services providers that they are able to represent anywhere near the number of clients represented by CLS and PLA, the larger legal service providers in Philadelphia. This would understate the critical need which is not being met.

⁴⁵ For a summary of studies and reports, see Raymond H. Brescia, *Sheltering Counsel: Towards A Right to a Lawyer in Eviction Proceedings*, 25 TOURO L. REV. 187 (2009), available at http://www.tourlaw.edu/lawreview/Vol25_No1_2009.html.

likely to benefit from a stipulation requiring rent abatement or repair to their apartment.⁴⁶ Moreover, this study noted that these outcomes do not appear to come at much expense in terms of the efficiency of the Court; in fact, the presence of an attorney at the tenant's side may actually enhance efficiency by reducing the number of motions, particularly post-judgment motions.⁴⁷ Another study conducted by the New York City Department of Social Services estimated that every one dollar spent on providing legal services in eviction cases saved the city four dollars in the costs associated with homelessness.⁴⁸

Data obtained from the Municipal Court indicates that approximately 97% of eviction cases in Philadelphia in 2007 and 2008 were disposed of without counsel for the tenant.⁴⁹ In 2008 alone, there were a total of 27,347 eviction cases disposed of in Municipal Court, and, of these cases, only 942 or 3% were cases in which tenants were represented by counsel.⁵⁰ Municipal Court also provided data on eviction cases initiated by the Philadelphia Housing Authority ("PHA"). In 2008, there were 2,177 eviction cases filed by PHA. Of these cases, 1,885 were disposed of in Municipal Court. Unrepresented tenants in these cases were particularly vulnerable given the fact that there is an attorney for PHA present in Municipal Court who represents PHA in all eviction cases.

As in foreclosures, full representation of low-income tenants in Philadelphia is only available through legal service programs including: CLS, the SeniorLAW Center, AIDS Law Project, Philadelphia VIP and the Legal Clinic for the Disabled, and as in foreclosures, existing legal resources are insufficient to meet the large demand for representation in eviction cases.⁵¹ There are only the equivalent of 7 full-time legal service attorneys from these organizations available to handle eviction cases in the entire city. According to anecdotal reports from Group members and preliminary data obtained from a survey of these agencies, only a small fraction of the 27,347 eviction cases disposed of in Municipal Court in 2008 were handled by the legal services providers.⁵² CLS has only the equivalent of 5 full-time attorneys available to work on public and private rental housing, eviction and tenant legal issues, and they can only represent a limited number of tenants in eviction actions since they are also responsible for training and

⁴⁶ Carroll Seron, et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419, 429 (2001).

⁴⁷ *Id.*

⁴⁸ Legal Services Project, *Funding Civil Legal Services For The Poor: Report To The Chief Judge* 7 (1998); see also Brescia, *supra* note 45, at 209.

⁴⁹ Chart containing Municipal Court data on Landlord/Tenant Cases Filed in 2007 and 2008 is attached as Appendix 7.

⁵⁰ *Id.*

⁵¹ *Supra*, note 44.

⁵² *Id.*

advising tenants, law students, and volunteer attorneys, handling appeals and working on systemic problems, including housing access issues and class action litigation.

In 2007, CLS's Housing Unit created the Tenant Representation Project in an effort to address the unmet need and expand the number of attorneys or qualified law students available to represent low-income people with private landlord tenant issues, primarily eviction. The cornerstone of the Project is to leverage the knowledge of highly skilled legal services housing attorneys by training and mentoring *pro bono* attorneys and law students to provide full legal representation in eviction cases filed in the Philadelphia Municipal Court and in the Philadelphia County Court of Common Pleas. The Tenant Representation Project makes direct referrals of cases to *pro bono* attorneys who have been extensively trained by CLS to provide legal representation for low-income tenants. *Pro bono* attorneys and law students are able to consult with CLS experts as needed and rely upon them for technical expertise on each case. In 2008, *pro bono* counsel and law students represented approximately 104 clients in landlord-tenant matters. The Project has been successful in expanding the availability of representation for low-income people in eviction matters. However, the economic downturn has made it difficult to recruit sufficient *pro bono* attorneys to meet the need. Increased representation by legal services attorneys, as well as *pro bono* attorneys and law students, is needed to help these low-income families stay in their homes and ensure that those homes meet legal standards for safety and sanitation, thus preventing homelessness and the break-up of families.

Proposed Pilot Projects:

As part of its work, the Group examined Civil Gideon models implemented in other jurisdictions, ranging from multi-stage, long term efforts to more direct legislative approaches. The models evaluated included among others: the Boston Pilot Project model, employing pilot projects in specific areas of need that are intended as sources of data collection to support the case for Civil Gideon,⁵³ and the California model that relies on legislation to create and fund Civil Gideon Pilot Projects.⁵⁴ After a close examination of pilot projects developed in other jurisdictions, the Group concluded that the Tenant Representation Project and the Residential Mortgage Foreclosure Diversion Program, the two local efforts that afford legal representation to low-income housing litigants, should serve as the Pilot Projects for the Civil Gideon Task Force and be expanded to include study components that will create a case for support of increased funding to legal services organizations to provide representation to low-income clients threatened with an imminent loss of shelter. This strategy is consistent with current political, social and economic conditions and trends in philanthropy and governance that demonstrate a preference for solutions and outcome based programs.⁵⁵

⁵³ Chart outlining model projects, prepared by Lindsay Martin, Penn Law School, is attached as Appendix 8.

⁵⁴ See California Assembly Bill 590, *supra* note 18.

⁵⁵ *Supra*, note 45, 238-246.

An evaluation of the Diversion Program is currently being conducted by The Reinvestment Fund and funded by the Open Society Institute, which will evaluate the impact of the Diversion Pilot Program on Philadelphia's foreclosure crisis, in general, as well as the impact of the program on the specific homeowners engaged by the program. This study will include a small sample of mortgage foreclosure cases in which full representation was provided by CLS and PLA. The Group discussed exploring the possibility of supplementing this study to specifically evaluate the benefits and outcomes from providing full legal representation in foreclosure cases, and the Group is prepared to explore funding options should an alternative study be necessary.

In addition, the CLS Housing Unit and its Tenant Representation Project are under consideration by NPC Research as a potential study site that would be part of a national study of economic and social benefits of providing counsel to tenants in eviction cases.⁵⁶ NPC Research is an independent research and evaluation firm based in Portland, Oregon, that has been engaged by the National Coalition of the Civil Right to Counsel to design and conduct the national study. At the July 29, 2009 meeting of the Civil Gideon Task Force, the CLS Tenant Representation Project was endorsed as a pilot project of the Task Force, and Chancellor Sayde Ladov sent a letter to NPC Research urging them to select this project as one of the research sites for the proposed study.⁵⁷ NPC is currently seeking funding for the study, which will include some funding for staff participation in the study.

The efforts currently underway to evaluate the selected demonstration projects preclude the immediate need for the Group to develop its own study and to determine how to fund such a study. However, the Group is prepared to develop and explore funding options should an alternative study of either project be necessary to further the efforts of Civil Gideon. Further work by the Group is also needed to explore strategies to obtain more funding to enable existing legal service organizations to provide increased full representation in mortgage foreclosure and eviction cases.

Recommendations:

Based upon the preliminary findings outlined above, the Housing Working Group makes the following initial recommendations:

1. Seek to increase the financial resources of existing legal services providers engaged in the full representation of low-income homeowners in foreclosure and tenants in eviction cases. Philadelphia public interest legal organizations are excellent providers of legal services on the housing front; the work these programs are now doing should serve as the "pilot projects" to be studied rather than starting new projects,

⁵⁶ A description of the NPC Research study is attached as Appendix 9. Further clarification is needed from NPC to determine if cases handled by both CLS's Tenant Representation Project and Housing Unit will be included in its study.

⁵⁷ Chancellor Sayde Ladov's letter to NPC Research, August 10, 2009, attached as Appendix 10.

2. The existing Residential Mortgage Foreclosure Diversion Project and the Tenant Representation Project should serve as Civil Gideon demonstration/ pilot projects that can be surveyed and from which data can be collected to further the efforts of the Civil Gideon Task Force to expand the provision of full legal representation to low-income people threatened with the imminent loss of shelter,

3. Data should be collected to measure the social and economic effectiveness of the provision of legal representation to homeowners facing foreclosure, and tenants facing evictions. Results from a study of these pilot projects may be used to provide a foundation for seeking significant funding from the federal government, and local and state legislatures, as well as other funding sources, to support the expansion of legal services for low- income people facing the imminent loss of shelter,

4. The Fundraising Working Group should work with the Housing Working Group to identify a source of potential funding for evaluations of the pilot projects if the Housing Working Group is unable to meet its data collection and analysis needs through the study efforts currently in progress,

5. The Philadelphia Bar Association should assist in the recruitment of *pro bono* resources for the Tenant Representation Project and VIP's Mortgage Litigation Project, and

6. The Housing Working Group should continue to evaluate and explore the viability of limited representation projects in foreclosure and eviction cases to implement in the short term.⁵⁸

⁵⁸ The legal community has been investigating ways to provide some form of legal assistance, short of representation, in areas for which the availability of counsel is extremely limited, and the prospect of full representation in the short term is unlikely. For example, this fall, the Philadelphia Court of Common Pleas, in cooperation with the Philadelphia Bar Association and volunteer lawyers, will launch an initiative aimed at mediating and resolving legal disputes between landlords and tenants. The mediation, to be provided by trained *pro bono* settlement masters under the Court's supervision, will take place in the time between the filing of a statutory appeal from judgment entered in Municipal Court and the trial date in the Court of Common Pleas. Both parties, with counsel if represented, will be mandated by the Court to meet with a settlement master in an effort to reach a mutually beneficial agreement prior to the trial. See also a memorandum describing the New York City Volunteer Lawyer for a Day Project, written by John Caddell, law student at the University of Pennsylvania Law School, attached as Appendix 11.

V. FAMILY LAW WORKING GROUP PRELIMINARY REPORT AND RECOMMENDATIONS

Objective:

The Civil Gideon Task Force has acknowledged that the loss of access to one's child through severely curtailed physical custody or visitation can be as devastating as the complete termination of a parent's rights. The Task Force thus decided that the initial efforts of the Family Working Group should include examining approaches to provide legal representation to indigent parents seeking to establish or maintain their parental custodial rights. The Family Law Working Group was also charged with developing or identifying existing pilot projects that would provide expand legal representation to parents in these types of custody cases, and making recommendations on how to implement such projects.

Findings:

The Need for Legal Representation in Custody Cases

The Family Law Working Group ("Group") conducted an informal study to assess the extent to which the need for representation in custody cases is being met in Philadelphia. The Group surveyed various legal services organizations to determine how many requests for representation in custody matters were received in the 2008 calendar year, and how many clients were provided with direct representation.⁵⁹ The Group also surveyed Family Court to ascertain what percentage of custody filings (initial complaints for custody, petitions to modify, and petitions for contempt) were filed by attorneys.⁶⁰ While the statistical analysis used in this informal survey admittedly is not sophisticated,⁶¹ the Group determined that in Philadelphia, approximately 90% of litigants in custody cases are unrepresented by legal counsel. These findings were consistent with a prior report issued by the Women's Law Project in 2003.⁶²

The Group survey reported almost 17,000 child custody cases were filed directly with Family Court in 2008. Of that number, only 1,805 were filed by attorneys. Therefore, without considering those cases in which a legal service agency is involved, more than eighty-nine percent (89%) of child custody cases that proceeded through Family Court in 2008 did not involve attorneys.

⁵⁹ A Chart outlining the results of this survey is attached as Appendix 12.

⁶⁰ *Id.*

⁶¹ The data collected by the survey of legal service providers may include some duplication as it is possible that some clients approached more than one of the organizations surveyed. In addition, while legal services organizations have become adept at tracking cases, tracking methodologies may vary from organization to organization.

⁶² Women's Law Project, *Justice in the Domestic Relations Division of Philadelphia Family Court: A Report to the Community* (April 2003), available at http://www.womenslawproject.org/resources/WLP_FamilyCourt.pdf

Considering the Need In the Family Law Context

The Group acknowledged that family law is an area in which an adult's legal rights and obligations (and violations of them) directly impact the security of the lives of others, perhaps to a greater extent than any other area of law. That impact may explain why child custody is the category with the greatest number of existing civil right-to-counsel statutes.⁶³ Federal law requires that states receiving federal child abuse prevention and treatment funding appoint a representative for children involved in abuse or neglect proceedings, so virtually all states, including Pennsylvania, have statutes guaranteeing either the right to an attorney or the right to a guardian *ad litem* for children in abuse and neglect cases.⁶⁴ Correspondingly, many, though not all, states also guarantee counsel to parents in state-initiated termination-of-parental-rights proceedings and/or abuse and neglect proceedings. In Pennsylvania, state law provides for the appointment of counsel for a child and for a parent when a parent's rights are threatened with involuntary termination.⁶⁵ There is also authority for a court to order appointment of an attorney to represent a child in a custody proceeding.⁶⁶ However, there is no corresponding right to counsel for a parent in a custody proceeding.

Family law is a complex system for unrepresented litigants to navigate, particularly if they have limited education and minimal resources, yet what is at stake is of the greatest importance. The right to see and raise one's own child is no less a basic human need than the oft-cited duo of shelter and sustenance both for parents *and* for children, who are dependent upon adults for their well-being. It is the recognized policy of this Commonwealth to assure reasonable and continuing contact of the child with both parents when such is in the best interests of the child.⁶⁷

The outcomes of custody disputes between private parties can vary greatly depending on whether or not counsel is involved. For example, parents represented by counsel are more likely to request and retain joint custody arrangements,⁶⁸ shared decision making arrangements⁶⁹ and reasonable visitation arrangements than parents who proceed *pro se*.⁷⁰ These more cooperative

⁶³ Laura K. Abel and Judge Lora J. Livingston, *The Existing Civil Right to Counsel Infrastructure*, JUDGE'S JOURNAL, Fall 2008, at 24, 25. Available at http://brennan.3cdn.net/070f13df803e4174cd_jrm6bhgvp.pdf

⁶⁴ See, e.g., 42 PA. CONS. STAT. ANN. § 6311 (2001).

⁶⁵ See, e.g., 23 PA. CONS. STAT. ANN. § 2313 (2001).

⁶⁶ Pa.R.C.P. 1915.11

⁶⁷ 23 PA. CONS. STAT. ANN. § 5301 (2001).

⁶⁸ ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 108-13, 300 (Harvard Univ. Press 1992).

⁶⁹ Jane Ellis, *Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals*, 24 U. MICH. J.L. REFORM 65, 114, 132 (1990).

⁷⁰ *Id.* at 132-33.

outcomes are often more sustainable and agreeable to both parties and consequently both positively impact the minor children involved and minimize further dependence on the courts. This in turn saves the courts' time and preserves precious financial resources.

If one party is represented by counsel and the other is not, perhaps due to indigency, the case is more likely to be prolonged, and absorb increasingly more resources. Further, such situations can have gender-based implications. Because men are already likely to have greater financial assets than women, the likelihood of mothers proceeding *pro se* against fathers represented by counsel is increased. Domestic violence is also a pervasive problem in many cases in which custody is contested.

Limits of Pro Bono/Limited Representation Models

Custody cases are not always complicated, but many attorneys are reluctant to provide *pro bono* legal assistance in custody matters because these cases are often highly emotionally-charged and acrimonious. Also, custody cases are rarely "settled" in a single proceeding. The reality that custody fights can be litigated continuously throughout a child's minority contributes to the reluctance of many private attorneys to handle *pro bono* custody cases.

These fears are not entirely without merit. Family law is a field that *is* often highly emotionally-charged, and there are procedural barriers that make an attorney's swift exit from a custody case difficult. Once an attorney has entered an appearance for a custody client, he or she is legally obligated to appear or act in each successive proceeding unless another attorney enters an appearance. Often, it is highly unlikely that another *pro bono* can be found given the high level of demand. If the volunteer attorney petitions for leave to withdraw, the likelihood that the petition will be granted is further restricted by the right of the client to object, or by an objection from the other party.

Yet these challenges need not be dispositive. A variety of mechanisms have been proposed, and in some cases implemented, in other jurisdictions to address the fears of volunteer attorneys that they may be trapped in interminable custody proceedings. For example, Philadelphia could adopt and implement a procedure to allow volunteer attorneys to enter their appearance for a single proceeding. Other jurisdictions such as Allegheny County allow attorneys to volunteer in child custody cases for a finite proceeding. However, the Group recognizes the difficulty with providing direct representation to low-income clients in custody cases for a single hearing. If the case does not resolve at that proceeding and if the attorney's representation is limited to that single court event, the client is then left with trying to prepare for subsequent hearings before a judge without the assistance of legal counsel. Any benefit gained by providing the limited representation may well be lost.

Another proposal, to create a staffed custody "help desk", was considered. The Group recognized the appeal of this low-commitment model among volunteer attorneys, and further that providing legal information via the help desk may enable some cases to resolve without legal representation, theoretically freeing up attorneys to provide direct representation for others. However, the Group recognizes that providing legal information without legal representation does not directly comport with Civil Gideon. Members of the Group noted that, nevertheless,

such a program might serve as a stepping stone toward the ultimate goal of direct representation in child custody cases.

The Group also acknowledges that judicial support is essential for any legal advice, mediation or other legal assistance program that is less than full representation, and that the development of any such program would require support of the administration of the Domestic Relations Branch of Family Court. Further investigation and discussion with the leadership of Family Court will be needed to determine whether a model can be created to allow for finite representation that assists individuals who cannot afford to retain counsel for full representation while meshing with the overall priorities of the Family Court.

Recommendations:

The Family Working Group makes the following preliminary recommendations to expand the provision of legal counsel to low-income litigants in custody cases:

1. *Increase the financial resources for existing legal services agencies to provide expanded legal representation in custody cases.*

The Group remains convinced that legal services agencies are best able to serve indigent clients, based on their extensive level of expertise combined with an excellent track record of providing high quality legal services in these sometimes difficult cases. Efforts should be made to increase the financial resources of the legal service providers to expand legal representation in custody cases. However, given the challenges of this approach in the current economic crisis, the Group also recommends consideration and implementation of the alternative pilot projects described below in the short term.

2. *Increase direct representation through the formation of a new pro bono appointment program.*

The Group recommends that the Philadelphia Bar Association propose, and the First Judicial District approve, a pilot project which would provide for the appointment of *pro bono* counsel for low-income litigants for a “Judge’s List.” In cases that meet the income and case-specific requirements of the model, a volunteer attorney would be assigned the case from a list maintained by the Supervising Judge of the Domestic Relations Branch of the Family Court Division. If a Master or Judge determines that a particular case meets the criteria, the Supervising Judge will assign a volunteer attorney to the case. In situations where clients have already approached a legal services agency first and the organization cannot accommodate the request for representation, the organization could contact the Supervising Judge, who would then assign a volunteer attorney from the list.

The Group recommends the following criteria for a case to be eligible for inclusion in the pilot program: the custody dispute must involve allegations of physical and/or mental abuse, drug addiction or other factors that would hinder a parent's ability to nurture a child, as well as cases where there are serious concerns for the safety of the child.

While this model would address the most difficult factual and legal circumstances, and thus may discourage some *pro bono* volunteers, the Group anticipates that a

number of well-qualified attorneys will accept them because a judge of the First Judicial District is requesting the assistance.

In addition to the case criteria outlined above, participation by *pro bono* attorneys would be qualified as well: The list would be limited to seasoned attorneys with at least five (5) years of experience handling child custody cases and who are members of the Philadelphia Bar Association's Family Law Section or other similar professional organization that meets regularly to discuss family law issues. The selectivity of the list would in turn attract more high-quality attorneys to these *pro bono* cases.

While this pilot project appears to be relatively simple from an administrative perspective because it can be implemented by the Supervising Judge and his or her staff alone, a system or procedure nonetheless would need to be created to provide oversight and appropriate follow-up to ensure that the program is proceeding efficiently and effectively. A successful pilot project of this type also will require ongoing recruiting efforts; the program will only be as successful as the efforts and commitment of its participants to devote the resources necessary for it to function.

3. *Develop an attorney rotation “wheel” project.*

The Group also recommends that the Bar Association and the First Judicial District adopt and implement a “wheel” project that parallels the court appointed counsel system used in Dependency Court in the Juvenile Branch of Family Court. In this model, a client would go to court to file, where court personnel would identify them as being eligible for a court appointed attorney and assign the next available attorney to that client. The identification could be done through the use of a checklist or other rubric that could be submitted with the client’s IFP forms and would be part of a newly instituted general uniform screening process that would be used by family court and legal services agencies.

Attorneys who want a place on the wheel must have completed a Philadelphia VIP training or an equivalent program through a public service agency, and have either three years of experience with family court cases or have handled a VIP referral to completion. The attorney would also be required to maintain membership in the Philadelphia Bar Association's Family Law Section or other similar professional organization that meets regularly to discuss family law issues.

An oversight component should be developed through which clients could file grievances through the same unit or program of the Court that places lawyers on the “wheel” and who evaluates clients for eligibility. Based on experience in other projects, the Group recommends that one or more sources of funding be developed to ensure that lawyers in this project are paid a minimum of \$50 per hour, which should increase proportionally with the fees paid to attorneys on the dependency court wheel. Further research would be necessary to determine whether the Domestic Relations Branch of Family Court has the resources to undertake, administer and fund such a program.

Additional Recommendations and Future Steps:

- *Training and Mentoring:* Many attorneys with experience in pilot programs elsewhere have cited frustration with poorly trained volunteer attorneys. Training programs would need to be developed for the above models. It has been observed that many volunteer attorneys do not stay committed because they are intimidated or feel unsupported. A mentoring or “coaching” program for volunteer attorneys should be considered for the above models.
- *Scope:* The scope of the custody pilot project must be further clarified and the priorities of custody cases to be included in any pilot project should be delineated. Other jurisdictions have approached the issue incrementally, such as first assisting people for whom English is not their first language, victims of domestic violence, cases where only one side has representation, people with disabilities, etc. Clarification is also needed on when the right to counsel attaches in the legal proceeding. The Group recommends that it should attach at least at the Master's level, but ideally at the time of filing, as parties often run into serious problems during the conference stage.
- *Funding:* Possible sources of funding for the wheel model need to be identified by the Fundraising Working Group. Funding may be available in particular issue areas, such as domestic violence, disability or health, and may be available from the city, federal or private sources. The Family Working Group suggests that consideration be given to accessing funding from private sources through use of a “formula” that would determine the “cost” of a custody case by multiplying the \$50/hour proposed fee by the average number of hours needed to see a case through to completion. Data from legal services agencies could be used to help determine this average. This strategy would help to quantify the need by identifying it in monetary terms. This approach is used by many non-profit organizations, essentially outlining the value of a donation in a certain dollar amount in terms of the number of persons in need of legal services who will be represented in child custody cases as a result of the financial support provide.

VI. OUTREACH TO BENCH, BAR AND COMMUNITY AND COMMUNICATIONS WORKING GROUP PRELIMINARY REPORT AND RECOMMENDATIONS

Objective:

The Communications Working Group was charged with leading the efforts to develop an education plan, which would include a communications plan and outreach strategy to educate the public at large, judiciary, legislature, private bar, and other key stakeholders about the case for Civil Gideon. These tasks include both interim and long-term strategies, and will incorporate the findings and recommendations from the other Task Force Working Groups as approved by the Board of Governors.

While it is anticipated that this Group's principal efforts will begin after adoption of this preliminary report and recommendations by the Board of Governors, this Group recently accomplished an important initial step in introducing Civil Gideon to the wider community.

On October 23, 2009, a member of the Working Group, on behalf of the Task Force, made a presentation concerning the need for Civil Gideon and the activities of the Task Force at the October Quarterly Meeting of the Philadelphia Bar Association at the Bench Bar and Annual Conference in Atlantic City. That meeting was attended by over 400 members of the bench and bar, and was also attended by four members of the City Council of Philadelphia. This provided an early opportunity to tee-up the initiatives to a wider bench, bar and community audience. The message was well received.

Recommendations for Future Strategies:

Following the presentation of the Task Force Report to the Board of Governors, and if the Report is adopted, the Working Group will develop, in conjunction with other Task Force working groups, a comprehensive education plan that can be used to make the case for Civil Gideon with the state legislature, the public at large, the judiciary, City Council, the private bar and larger legal community and other key constituencies. The education plan will incorporate the recommendations made by the Legislative Working Group in Section III, p.17 of this Report, as well as the following specific components:

1. The development of educational materials, including "case statements" to present to various stakeholders, which will highlight aspects of the unmet need, the benefits of representation and other qualitative issues, as well as case studies and results involving real people and their issues to foster the most persuasive arguments in support of funding and general support.
2. The development of a communications plan, which may include a series of articles and op-ed pieces promoting the Task Force initiatives and the case for Civil Gideon to be submitted to various publications, such as the *Philadelphia Inquirer* and *The Legal Intelligencer*.
3. The development of strategies to promote awareness of Civil Gideon to a wider audience through public service announcements and appearances on various local television and radio shows, and ultimately expanding the Civil Gideon discussion to all

forms of media in which members of the community regularly address issues of public importance.

4. Identification of other venues and forums in which to present focused outreach to specific stakeholders through communications that address the specific concerns and goals of those stakeholders and build momentum for Civil Gideon initiatives.

The Philadelphia Bar Association will be instrumental in assisting in the dissemination of the educational materials and providing ongoing support for the execution of the education plan and communications and outreach strategies developed by the Task Force.