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

2010 REPORT TO THE BOARD OF GOVERNORS

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Joseph A. Sullivan and Catherine C. Carr, Co-Chairs, Civil Gideon Task Force.

I. BACKGROUND AND MISSION OF THE TASK FORCE

In 2009, Chancellor Sayde Ladov formed the Philadelphia Bar Association's Civil Gideon Task Force. The mission of the Task Force is to investigate and consider all aspects of an effective system of Civil Gideon (hereafter "Civil Gideon") in Philadelphia, including the development of concrete and practicable proposals to advance the implementation of a civil right to counsel for low-income individuals in those areas of adversarial civil proceedings where basic human needs are at stake. In a Resolution adopted by the Board of Governors in April 2009, the Task Force was charged with examining Civil Gideon efforts underway in other states, developing strategies for implementing Civil Gideon in Philadelphia and making recommendations in two areas of basic need: cases involving the potential loss of shelter and child custody.

On November 19, 2009, the Philadelphia Bar Association's Board of Governors adopted the Task Force's Preliminary Report, Findings and Recommendations, which endorsed the development of pilot projects in eviction and mortgage foreclosure defense and custody cases as well as the development of an education and communications plan to inform the legal and public community about the critical need to expand the right to counsel for low-income people faced with the threatened loss of these basic needs. The Board of Governors also endorsed a resolution in November 2009, authorizing the work of the Task Force through the calendar year of 2010.

In 2010, Chancellor Scott Cooper has offered his enthusiastic support for our efforts, including sponsoring a special Chancellor's Forum on Civil Gideon, as has our Chancellor-Elect Rudy Garcia and Vice Chancellor John Savoth.

II. OVERVIEW OF STRATEGY AND ACTIVITIES IN 2010

The economic downturn, including the continued high unemployment rates and an ongoing reduction in funding from IOLTA and other sources for public interest legal organizations, has created a "perfect storm" leading to increases in the unmet civil legal needs of low-income people during 2010. According to the newest U.S. census figures, Philadelphia is the nation's most impoverished big city of the country's ten largest cities. In Philadelphia, the poverty rate rose to 25 percent in 2009, from nearly 24 percent when the recession began in 2007. The number of households receiving food stamps in the city also increased from 82,085 in 2007 to 108,235 in 2009.

Recognizing that the current economic climate, related political pressures and the lack of knowledge and education on the underlying issues make the wholesale adoption of Civil Gideon by the state legislature and City Council unlikely at this time, the Task Force determined that it would focus its efforts during this challenging time on developing and implementing an education strategy to inform the legal community, public and all key constituencies about the critical need to expand the right to civil

counsel for low income persons faced with the threatened loss of custody or shelter.

The Task Force also decided to continue its 2009 efforts to develop and implement pilot projects in these areas that would not divert funding and other resources from the current stream that supports legal services or result in a significant increase in operational costs for the courts and other key stakeholders. While pilot projects are not Civil Gideon per se, they can be important vehicles for exploring and expanding the scope of legal services delivery while moving towards Civil Gideon itself.

The Task Force also decided to focus on projects and initiatives that would improve access to justice in the housing and child custody areas, with the goal of building the foundation for implementation of full Civil Gideon in those cases where the imbalance of power and risks of injustice are the greatest. The Task Force recognizes that its mission is a long term, multi-year effort that will be accomplished through incremental steps designed to promote Civil Gideon in the long term and improve access to justice in the short term. In 2011, the Task Force plans to continue to work closely with the judiciary in exploring ways to improve access to justice for low-income people and to pursue implementation strategies and pilot projects in these areas as well as continuing its focus on educating the legal community and public about the critical need to expand the right to civil counsel. The Task Force recognizes that its approach will encompass steps to assist parties access the courts which are far short of full representation, and thus, in contrast with the term “Civil Gideon”; it has decided to include such intermediary measures in its work while always recognizing the importance of striving for full representation of counsel where possible.

In this Report, the Task Force is proud to detail a number of accomplishments that were achieved during this difficult year and to share its vision and its plans for the coming year. In 2010, the full Task Force met six times and formed the three working groups to develop and implement strategies to expand the right to counsel and improve access to justice. Several special meetings of the Task Force’s co-chairs were also held. Throughout the year, the Task Force closely monitored Civil Gideon efforts on a national basis. At one meeting, John Pollock, the ABA Section of Litigation Civil Right to Counsel Fellow who is working for the Public Justice Center, National Coalition for a Civil Right to Counsel, presented an overview of recent developments in efforts nationwide to establish a right to counsel in various civil cases where critical human needs are at stake. Despite budgetary constraints, John Pollock reported there have been some significant incremental steps taken by bar associations and Access to Justice Commissions in some states, especially in California and Massachusetts.

In 2010, the Task Force also participated in national advocacy efforts. A small working group was formed to review the American Bar Association’s Proposed Model Access Act and Basic Principles of a Right to Counsel in Civil Legal Proceedings Model Act, which the ABA had circulated nationwide for comments prior to formal consideration at the August 2010 ABA meeting. The Model Access Act is intended to

serve as a guide for states for future legislation, while also providing states with the discretion to change any provisions based on local needs.

The Task Force discussed some of the concerns about the Model Access Act raised by legal services advocates locally and nationwide, including the concern that this effort should not compete with existing funding streams for legal services or interfere with case priorities established by legal services organizations. After revisions were made to the ABA proposed Model Access Act reflecting the national discussion, the Task Force recommended that the Philadelphia Bar Association take a leadership role in the national Civil Gideon debate by serving as a co-sponsor of the Model Access Act and Basic Principles, and the Association's Board of Governors adopted a Resolution to that effect on May 25, 2010. The ABA House of Delegates subsequently adopted the Model Act and Basic Principles in August 2010.

Throughout the year, the Task Force has also served in an advisory capacity for its three working groups: the Communications and Education Working Group, Housing Working Group, and the Family Working Group. The working groups held numerous meetings, independent of the full Task Force; several groups met on a monthly basis. The Task Force is pleased to provide the following reports from its working groups summarizing their key accomplishments in 2010 and some of their plans for 2011.

III. COMMUNICATIONS AND EDUCATION WORKING GROUP REPORT

During 2010, the Task Force's Communications and Education Working Group developed and executed a plan designed to educate the legal community and public about the need for Civil Gideon. These activities include the presentation of several educational programs, the publication of several news articles, and the launching of a web based resource highlighting the work of the Task Force as well as national efforts to expand the civil right to counsel.

A. Chancellor's Forum on Civil Gideon.

As part of this process, the Task Force held a Chancellor's Forum on Civil Gideon designed by the Communications and Education Working Group on July 7, 2010. A "standing room only" crowd gathered to hear the keynote presentation by Russell Engler, Professor of Law and Director of Clinical Programs at New England Law/Boston and national expert on Civil Gideon. Professor Engler serves on the Massachusetts Access to Justice Commission and the Boston Bar Association's Task Force on Expanding the Civil Right to Counsel and has published numerous law review articles and other papers on the subject.

Pennsylvania Supreme Court Chief Justice Ronald D. Castile participated, offering direct comments on the role of the judiciary and the public interest bar and, with

the other panelists, posing questions specific to Pennsylvania and Philadelphia. President Judge Pamela P. Dembe, Judge Annette Rizzo, and many other members of the judiciary attended the program as did law students, private attorneys and other key stakeholders. Prior to the Forum, Professor Engler participated in a special meeting of the Task Force to brainstorm specific strategies for Philadelphia and offer advice and guidance on the efforts of the Task Force's working groups.

At the Forum, Professor Engler discussed strategies to expand the civil right to counsel and access to justice in a time of economic crisis. As noted in an article written about the Forum by Albert Dandridge, published in the August 2010 edition of the *Philadelphia Bar Reporter*, which is available at http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/chancellors_forum_civil_gideon_2010.pdf, Professor Engler suggested the following three pronged approach to pursue Civil Gideon as a component of an overarching access to justice strategy: (1) revising the roles of the key players, such as the judges, mediators and clerks to become more active rather than passive in dealing with unrepresented litigants; providing further guidance to judges on ethical conduct and useful courtroom techniques in cases involving self represented litigants; and changing the operations of certain courts, which may decrease the need for counsel where possible; (2) using a variety of limited assistance programs, such as telephone hotlines, self-help centers, advice only clinics and limited representation projects, and evaluating the effectiveness of these assistance programs to determine when full representation is needed; and (3) expanding access to full representation where basic human needs are at stake and lesser forms of assistance are not sufficient. Professor Engler also suggested a seven-step approach for working through the process of identifying which cases were most important and how to expand representation in these cases, which is outlined in more detail in the upcoming article written by Professor Engler, *Pursuing Access to Justice and Civil Right to Counsel in a Time of Economic Crisis* 15 Roger Williams Law Review 472 (forthcoming 2010).

B. Civil Gideon Corner – Web Pages On Bar Association Site.

This fall, the Communications and Education Working Group launched the *Civil Gideon Corner*, an online resource developed to educate the legal community and public about the need for Civil Gideon. A link to the *Civil Gideon Corner* is featured prominently on the Bar Association's home page. The web pages provide an overview of the activities of the Task Force and its working groups as well as links to studies, national news articles, reports, local articles about the task force, a podcast of the July 7 Chancellor's Forum, and information and resources about other nationwide efforts. The *Civil Gideon Corner* is available at <http://www.philadelphiabar.org/page/CivilGideon>.

C. Additional Presentations.

During 2010, members of the Task Force and its working groups participated in several

additional educational and training programs that highlighted issues involved with Civil Gideon and access to justice. Molly Callahan and Michael Viola, co-chairs of the Family Working Group, chaired a presentation on Civil Gideon at the October Family Law Section meeting. At the annual Bench Bar Conference in October, Task Force member Judge Annette Rizzo participated in a CLE session presented by the Real Property Section, “Mortgage Foreclosure Diversion Program Litigation,” with Michael T. McKeever and moderator Rachel Gallegos, member of the Housing Working Group. Richard L. Vanderslice, a member of the Housing Working Group, was the course planner and a panelist. During the year, Judge Rizzo also testified before the United States Senate Judiciary Committee and the Congressional Oversight Committee about the Mortgage Foreclosure Diversion Project and spoke at various consumer and lender conferences.

In addition, at the December 9 Public Interest Law Day Annual CLE program, Louis Rulli, co-chair of the Communications and Education Working Group, and Karen Buck, co-chair of the Housing Working Group, will present an ethics session on “Hot Ethics Topics for Public Interest Attorneys,” which includes a number of themes with implications for Civil Gideon. These include ethics rules changes intended to increase access to justice for *pro se* litigants, the judiciary’s role in ensuring access to justice, the perceived and actual limitations imposed by requirements of judicial ethics, and national innovations in this area.

In the coming year, the Communications and Education Working Group will continue to plan and present educational programs and engage in other activities that inform the legal community and public about the need for Civil Gideon. The *Civil Gideon Corner* will be enhanced on an ongoing basis with the latest local and national developments. Additional articles will be written about the subject, including an article, written by Louis Rulli and Michael Carroll, entitled, “Filling Gideon’s Empty Chair,” which is scheduled to appear in the upcoming winter edition of the *Philadelphia Lawyer Magazine*. Members of the Task Force also plan to participate in training programs, community presentations and other forums in an effort to highlight Civil Gideon and access to justice issues.

On February 25, 2011, Task Force co-chair Joseph Sullivan will participate in a panel presentation at the Pennsylvania State Conference of Trial Judges, which will highlight Civil Gideon and access to justice issues for self represented litigants. Judge Rizzo is also scheduled to speak about the Mortgage Foreclosure Diversion Project at an event scheduled during the Law and Society Week in February/March 2011, to be held at Philadelphia Community College.

IV. HOUSING WORKING GROUP REPORT

In 2010, the Housing Working Group has taken a cue from Professor Engler in determining that it would focus on developing a multi-pronged approach to advancing

Civil Gideon and access to justice issues. During the year, the working group launched a number of initiatives and made substantial progress in developing the framework for the implementation of several pilot projects over the next several months.

A. The Elderly and Housing Issues.

Based on research data focusing on need and demographics, the Housing Working Group has decided to focus its efforts preliminarily on the vulnerable population of elder tenants and homeowners, and is exploring the development of a pilot project(s) to address the needs of unrepresented elders in eviction and mortgage foreclosure cases. The group decided that it would collect existing data and conduct an assessment about the housing needs of the elderly to determine what gaps exist in the system and the unique needs of elders. The statistics show that Philadelphia has the highest proportion of persons aged 60 and older among the ten largest cities in the United States (17%). There are approximately 251,000 elderly residents in the city. The number of households in Philadelphia headed by a person sixty-five or older is 65,571 of 563,837 total households in the city, or 11.6% of all households.¹ The percentage of households almost quadruples to roughly 40% of all Philadelphia households when the threshold age for the elderly is lowered to fifty-five.² Among the sixty-five and older population is approximately 20% or 36,629 Philadelphians making less than \$10,830 annually for one person.³ In 2005, 28.2% of those seventy-five to eighty-four were below 150% of the poverty line, and this number increases to 36.8% for those eighty-five and older.⁴

New York City currently has a bill pending before city council that would provide legal representation to elderly in eviction and mortgage foreclosure cases, and has successfully implemented several incremental projects in the courts that provide legal assistance to the elderly in housing matters. The Housing Working Group is exploring these initiatives and others in order to develop an appropriate project serving the housing-related legal needs of seniors.

B. Documenting the Housing and Legal Needs of the Elderly.

Over the last year, members of the Working Group and law student interns at public interest legal organizations gathered existing data and drafted a white paper highlighting the needs of elderly homeowners and tenants in Philadelphia. Attorneys and law students met with the Philadelphia Corporation for the Aging (PCA) and other agencies to gather

¹ Selected Social Characteristics in the United States: 2006-2008, U.S. Census Bureau, U.S. Dept. of Com.

² The Elderly and Housing in Pennsylvania, *Supra* n. 1.

³ Selected Economic Characteristics: 2006-2008, U.S. Census Bureau, U.S. Dept. of Com.

⁴ *Id.*

demographic and housing data for seniors. Data was also collected from the legal services providers regarding the number of elderly involved in eviction and foreclosure proceedings. As a result of insufficient data, at the request of the Housing Work Group Municipal Court began tracking the number of elderly involved in eviction cases. The white paper will be finalized in the next month and will be posted on the *Civil Gideon Corner* by year end to help educate the legal community and public about the housing needs of elderly in Philadelphia. The information contained in the white paper will also be used to design and seek funding of the pilot project(s). The group is currently evaluating other holistic pilot projects serving the elderly that would serve as a model for pilot projects developed in Philadelphia in both eviction and mortgage foreclosure cases and which would include a limited or full representation component.

C. Operational Changes in Municipal Court

During the year, representatives from this group also worked closely with President Judge Marsha Neifield, a member of the Task Force, to adopt and implement several operational changes relating to Municipal Court landlord tenant proceedings that will improve access to justice for self represented litigants. One of these changes is the implementation of a change in the Notice of Complaint form filed in landlord tenant matters to incorporate referral information for SeniorLAW Center, CLS and LRIS. As part of this process, CLS and SeniorLAW Center will track any increase in intake as a result of this change. The group and Judge Neifield have also discussed methods of ensuring that information about L & I violations will be available to all Municipal Court judges, as such violations may serve as a defense to an eviction.

D. Landlord Tenant Help Desk and Pilot Projects

The Housing Working Group is also currently working on a proposal for a Help Desk providing limited representation, advice, counsel and information in Municipal Court. A detailed proposal will be presented to the Court for discussion before the end of 2010.

The Help Desk would be coupled with a limited or full representation pilot project for Municipal Court that would address the unmet need and expand the number of attorneys or qualified law students available to represent low-income litigants in eviction proceedings. The group will then consider whether the limited or full scope project will stand alone or will be a component of the existing Tenant Representation Project of CLS.

E. Monitoring of Pending or Current Housing Studies

This year the Housing Working Group also continued to monitor studies that are currently underway on the benefits of providing legal counsel in eviction and mortgage foreclosure cases. Ira Goldstein, Director of Research at The Reinvestment Fund,

attended meetings of this group to discuss the status of the study that The Reinvestment Fund is conducting on the Mortgage Foreclosure Diversion Project, which is expected to examine the outcomes of providing counsel through the Diversion Project as well as providing full legal representation in adversarial mortgage foreclosure proceedings. A preliminary report on this study is anticipated in the near future.

The Task Force was recently advised that NPC Research was unable to secure funding to conduct a national study of the economic and societal benefits of providing counsel to tenants in eviction cases. Philadelphia and Tacoma, Washington, were selected by NPC Research last year to serve as research sites for this study. NPC recently advised the working group that that funding for the study will need to be secured by the local sites selected to participate. The Task Force will consider the feasibility of applying for funding to support such a study in the coming year or whether a different approach should be explored in light of the current economic climate.

V. FAMILY WORKING GROUP REPORT

Following Professor Engler's recommendation, the Family Working Group has also pursued a multi-prong approach to advancing Civil Gideon and addressing access to justice issues. During the year, the group researched and explored a number of different projects implemented in other jurisdictions. The group examined materials relating to custody-related limited representation programs in Allegheny and Chester Counties as well as other jurisdictions.

A. Examination of Full Representation/Limited Demographic Model.

After examination of numerous models in other jurisdictions, the Family Working Group is currently considering a narrow-scope full representation pro bono pilot project to focus specifically on those cases where there has been an adjudication of domestic abuse and the other side is represented by an attorney.

The Working Group is consulting the judiciary, court administrators, bar association committees and full-time family law practitioners to define the precise parameters of the project.

B. Other Models Under Active Consideration.

The Family Working Group also has under consideration several other models that have worked in other jurisdictions to determine whether they would be suitable to Philadelphia's specific needs. These include a possible custody conciliation project; a

limited scope representation project at the master's level; and a court based education/information desk project. Representatives from the working group have met with Judge Murphy, Supervising Judge of the Domestic Relations Branch of the Family Court Division, to review the specifics of these proposals and it is anticipated that the details of these projects will be finalized in the coming months.

The group is also working with Family Court on determining what data is needed to support any pilot projects that may be adopted and to develop an evaluation component for purposes of evaluation after the projects are up and running.