



## **Testimony of the Pennsylvania Bar Association Before the Senate Judiciary Committee Regarding Access to Justice**

Good morning, Committee members and staff. I am Thomas G. Wilkinson Jr., Pennsylvania Bar Association President, representing the 28,000 members of the Association. Thank you for inviting us to testify concerning issues regarding access to justice for Pennsylvania's residents.

Listening to the clients and legal services professionals telling their compelling stories here today, there is a need for action to make access to justice for all a reality. There has been a lot of discussion at the local, state and national bar levels about access to legal services to those in need, and a number of innovative ideas have been put forward. Examples include expanded clinical programs at law schools. New York recently enacted requirement that all new lawyers provide 50 hours of pro bono service before being admitted to the state bar and New Jersey appears to be poised to adopt a similar rule. Various county courts, in partnership with local bars, are establishing self-representation resources in courthouses, as well as encouraging pro bono limited representation programs, particularly in the family law and mortgage foreclosure contexts.

One initiative that has been under discussion for some time is the adoption of a statewide "Civil Gideon" effort providing representation to the indigent who are facing crisis situations in critical areas, such as the loss of housing or the loss of custody of a child.

On March 18, 2013, we marked the 50th anniversary of *Gideon v. Wainwright*, the Supreme Court's landmark 1963 ruling granting a right to counsel for indigent criminal defendants. Although we have not fully realized the promise of criminal Gideon, the questions posed by the proponents of a civil Gideon initiative are whether there should be a right to appointed counsel in a more narrow scope of civil cases where basic human needs are at stake, such as shelter, sustenance, safety, health or child custody, and if no such right is guaranteed, can such a right be granted by state legislation?

The American Bar Association House of Delegates passed a resolution in 2006 urging states to provide free legal counsel to poor civil litigants when these basic human needs are in jeopardy, and some pilot programs are underway in other states. Access to justice has been promoted by the PBA since its first Task Force on the Delivery of Legal Services to the Needy in 1989, and in November 2007 the PBA House of Delegates formalized that support:

*RESOLVED, That the Pennsylvania Bar Association urges the Commonwealth of Pennsylvania to provide legal counsel as a matter of right 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.*<sup>1</sup>

In 2008, the PBA formed an Access to Justice Task Force whose mission was to implement the resolution:

*The Access to Justice Task Force is charged to develop broad implementation strategies for the right to civil counsel that was passed at the Nov. 30, 2007, PBA House of Delegates meeting, including strategies to fund a right to civil counsel as well as strategies to maximize private bar efforts in that regard in support of court and other efforts to improve access to the justice system.*

That Task Force became the current PBA Access to Justice Committee, which met regularly through 2010. In 2009, the Philadelphia Bar Association created a Civil Gideon and

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<sup>1</sup> For the full resolution, see <http://www.pabar.org/public/committees/lspublic/resolutions/right%20to%20counsel%20resl%20boardapprovdoc.pdf>.

Access to Justice Task Force. The task force's mission was to investigate and consider all aspects of an effective system of civil Gideon in Philadelphia, including the development of concrete proposals to advance the implementation of a civil right to counsel in those areas of adversarial civil proceedings where basic human needs were at stake. The Philadelphia 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 loss of shelter and child custody. In 2012, the Philadelphia Task Force began to explore statewide strategies to improve access to justice. A statewide coalition was formed early this year and the PBA became a partner with the Philadelphia Bar Association and other key statewide stakeholders in developing a statewide initiative, which includes helping to plan statewide hearings to examine the current state of the civil justice gap in Pennsylvania.

Thanks to the leadership of Senator Stewart Greenleaf and Pennsylvania Supreme Court Chief Justice Ronald Castille, we are here today to kick off the first statewide hearing exploring civil legal representation of the indigent and asking the important question: "Have we achieved equal access to justice?"

There are now civil-Gideon working groups in Pennsylvania, and there have been a number of educational programs that have explored strategies to narrow the civil justice gap. From their work, we know that many citizens are being turned away today from civil legal aid agencies due to reductions in funding, staff layoffs and a sharp increase in the number of people who have fallen into the poverty ranks due to the economy and now financially qualify for free legal assistance.

A commentator recently observed that we provide appointed counsel for those facing potential confinement for months or years, while we do not do so for those facing eviction and

homelessness for months or years, or even for victims of domestic violence seeking court protection.

Here are several stark statistics conveying how access to justice is rationed in our state and nation. A national Legal Services Corporation (LSC) study found that for each eligible client represented by a legal aid program, there was another person in need of and eligible for assistance, and who asked for help, who had to be turned away due to the lack of legal aid resources. This 50 percent under-service rate holds true in Pennsylvania. In fact, the need for legal aid was shown to be more acute in rural parts of the Commonwealth.

Other studies have shown that only about 20 percent of the legal needs of low-income individuals are being met. This can be contrasted with the results of a recent study by the Pennsylvania Interest on Lawyers Trust Account Board (IOLTA) documenting the benefits generated by legal aid. The study found that for every dollar spent on civil legal aid in Pennsylvania, there is a more than 10-fold return on investment in dollars generated to benefit the client and in savings on things such as shelter costs.

But while the pressing need for some form of civil Gideon may be clear, serious questions have been posed about its implementation, chief among these being where adequate funding will come from when state and local governments' budgets are strapped and contributions to legal aid agencies are stagnant at best. We hope that these hearings will produce some recommendations on possible solutions that may improve access to justice.

In any event, the 50th anniversary of the *Gideon* decision is an appropriate time for the legal profession, the judiciary, the legislature and the community to focus on what steps can and should be taken to help close the civil justice gap. As the late U.S. Supreme Court Justice Lewis F. Powell Jr. observed, "Equal justice under law is not merely a caption on the facade of the

Supreme Court building; it is perhaps the most inspiring ideal of our society. ... [I]t is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

The ongoing discussions concerning adequate access to counsel in civil cases and helping self-represented litigants navigate the justice system go hand-in-hand with the PBA’s efforts this year to highlight in our publications and on the website those “Lawyers Making a Difference” who are providing extraordinary pro bono service. I have had the pleasure of participating in many local bar events where lawyers, legal aid agencies and bar foundations have been recognized for outstanding service to the community and to individual clients facing crisis situations, such as abuse and the need for assistance with housing and benefits following floods or mortgage foreclosure. It has been exciting to hear about what proactive local county bars are doing to launch programs in conjunction with their local court administration to assist self-represented litigants. There is movement on this front from York to Monroe, from Pike to Centre, from Erie to Lancaster, and in other counties as well.

Lawyers are doing their part. As the Chief Justice just noted in his April 2013 letter to the legal profession calling for increased pro bono service and legal aid contributions, every lawyer in the Commonwealth contributes \$35 to legal aid through the IOLTA portion of our annual licensing fee. The Pennsylvania Supreme Court has led the way in supporting civil legal aid in a variety of manners, from providing new avenues for funding to setting up a loan forgiveness program for legal services practitioners.

The Pennsylvania Legal Aid Network (PLAN), in partnership with our regional legal aid providers and a network of specialty legal aid programs, helps provide the framework and structure for legal assistance for the poor. Pro bono volunteers, encouraged by the Pennsylvania

Bar Association and local bars, provide time and financial contributions to help fuel the important work of representing those clients who have critical needs but cannot afford to retain private counsel. Our law schools inculcate the values of pro bono service in the next generation of Pennsylvania lawyers.

It is important that we continue to expand pro bono participation well beyond the core group of lawyers who always can be counted upon to represent another client in need. The public image of lawyers does not always account for the many who are giving generously of their time and expertise to make a difference in people's daily lives. Those PBA members who have devoted many hours to leading the effort to narrow the justice gap and expand access to civil legal representation are to be commended.

But lawyers cannot do this alone and increased pro bono will not close the gap without more. Going forward we need to continue to urge that all the key players, including the judiciary, civil legal aid organizations, the organized bar, the legislature and community groups, actively participate and resolve to bridge the civil justice gap.

Thank you again for the opportunity to present remarks on behalf of the Pennsylvania Bar Association and we appreciate the Committee's willingness to address this important topic.