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

**2011 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. Since its inception, the Task Force has acknowledged that the achievement of its mission will require 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.

On November 19, 2009, the Philadelphia Bar Association's Board of Governors adopted a Resolution authorizing the continued work of the Task Force in 2010 as well as 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. On November 18, 2010, the Board of Governors also adopted a Report from the Task Force and a Resolution authorizing the continued work of the Task Force on these initiatives in 2011 and going forward.

In 2011, Chancellor Rudy Garcia has remained an active and enthusiastic participant of the Task Force and has demonstrated his commitment to the issues by promoting the need to expand resources for civil legal services in a number of ways, as described below in further detail. Chancellor-Elect John Savoth and Vice Chancellor Kathleen Wilkinson are members of the Task Force and have also actively supported the Task Force this year.

## II. OVERVIEW OF ACTIVITIES IN 2011 AND PLANS FOR 2012

In this Report, the Task Force is proud to detail a number of accomplishments that were achieved during this difficult year and to share the strategic direction taken this year as well as its vision and plans for the coming year. As reflected in the below report, the members of the Task Force and its working groups contributed countless hours and

tireless energy to advancing both the ideals behind the Civil Gideon concept and several creative and practical proposals to advance access to justice.

In 2011, the Civil Gideon Task Force met in plenary session five times and there were many meetings held independent of the full Task Force by the Communications and Education Working Group, Housing Working Group, and the Family Working Group. The Task Force also held several special meetings of the co-chairs of the three working groups, including a special meeting in June 2011 with representatives from the Department of Justice's Access to Justice Initiative to provide input on the DOJ's agenda and priorities as well as to explore possible resources and assistance available from the federal government to support the Task Force's efforts.

The economic downturn coupled with the reduction in funding from IOLTA and other sources for public interest legal organizations and budgetary cuts for the judiciary have created a crisis in the courts and have significantly hindered the capacity of local legal services organizations to address the widening justice gap and meet the escalating unmet civil legal needs of low-income people in Philadelphia. According to the newest U.S. census figures, Philadelphia is the nation's most impoverished big city of the country's ten largest cities. The poverty rate rose to 26.7% in 2010, from nearly 24% when the recession began in 2007, jumping nearly two percentage points from 2009 to 2010, according to the 2010 American Community Survey Single Year Estimate, conducted by the U.S. Census Bureau. The unemployment rate as of September 2011 is 10.8 percent, compared with 9.8 percent nationally, and is the second-highest unemployment rate recorded in Philadelphia since 1970, when such statistics were first kept. The number of households in the city receiving food stamps also increased dramatically, from 82,085 in 2007 to 108,235 in 2009.

Acknowledging that the Great Recession will impede any immediate overall progress in establishing a comprehensive civil right to counsel, the Task Force embarked on a strategic planning process in 2011 to map out a realistic approach to achieve its mission and to identify specific practical goals that may be accomplished during this challenging economic period as well as to set aspirational goals for the future. As part of this process the Task Force closely monitored Civil Gideon developments on a national basis to determine if some of those efforts were well-suited to Pennsylvania and could be realistically pursued in Philadelphia or through a coordinated statewide initiative. Despite budgetary constraints, there have been some significant broad actions as well as incremental steps taken by task forces, bar associations, Access to Justice Commissions, and various coalitions in some other states. These efforts will be more closely analyzed by a new working group that will be formed in 2012 to evaluate and recommend how to pursue a statewide strategy for the Task Force. Efforts in New York, Wisconsin and other states have been scrutinized closely. See for example, [the New York Task Force to Expand Access to Civil Legal Services in New York](#), November 2010, and [the Wisconsin Civil Gideon Petition to Amend a Supreme Court Rule](#) to authorize appointment of counsel at public expense in certain civil matters.

Another major influence on the strategic direction of the Task Force this year was the recent U.S. Supreme Court decision in *Turner v. Rogers*, 564 U.S. \_\_\_\_ (2011), which held that although a state is under no obligation to automatically provide free counsel to all indigent defendants in child support civil contempt hearings, due process does require that trial courts provide alternative procedural safeguards to ensure fundamental fairness and a fair determination of the questions at hand.

While the impact of *Turner v. Rogers* on the civil right to counsel movement is still being debated, there seems to be a consensus among legal commentators and access to justice advocates that the decision places an increased emphasis on the obligation of trial judges and courts to assure fundamental fairness in the treatment of unrepresented parties in adversarial civil proceedings. This decision has had an impact on the scope of the Task Force's work, as described below, and will continue to be a major consideration in the work of the Task Force in 2012.

While the specific components of the strategic plan are still being finalized by the various working groups, the Task Force determined that it would focus its efforts during 2012 to develop and implement strategies to accomplish the following overarching short, intermediate and long-term goals:

- Strengthen the partnership and collaboration with the judiciary to improve access to justice for unrepresented low-income people in Philadelphia involved in adversarial custody and housing proceedings. In light of *Turner v. Rogers*, these efforts are especially timely and may include assisting the judiciary in revising procedures and expanding the roles of the court systems' key players, such as judges, court-connected mediators and clerks, to assist unrepresented litigants as necessary to insure fundamental fairness and due process and prevent the forfeiture of important rights as well as assisting in developing and implementing various limited representation programs;
- Narrow the justice gap and expand access to civil legal representation through existing legal services organizations for low-income people involved in adversarial civil proceedings by advocating for increased funding for such legal services programs, and educating the public. A major element of this focuses on building community support for the concept that there is an ethical and moral obligation to provide legal representation and demonstrating that there are fiscal/economic and societal benefits to doing this. These efforts will include further exploration of partnerships with the judiciary and other key stakeholders and the development of a statewide strategy.
- Sharpen efforts to create a civil right to counsel for low-income people involved in adversarial civil proceedings involving basic human needs where the expansion of the roles of the key players and limited assistance programs do not provide the necessary help to vulnerable litigants.

During the early months of 2012, the Task Force and its working groups will continue to identify concrete steps to address the above goals and finalize its strategic plan. The following summary provides a snapshot of some of the 2012 goals of the Task Force's working groups as well as a description of key accomplishments in 2011.

### III. COMMUNICATIONS AND EDUCATION ACTIVITIES

During 2011, Chancellor Rudy Garcia and other members of the Task Force and its Communications and Education Working Group engaged in a number of projects and programs designed to educate the legal community and public about the need for Civil Gideon. These activities include highlighting the need to expand the civil right to counsel at major bar association events, planning and presenting numerous educational programs for the judiciary and legal community, and publishing a number of articles on the topic.

#### A. Keynote Address at the June Quarterly Luncheon and Meeting-- New York Chief Judge Jonathan Lippman

The spotlight on Civil Gideon was elevated this year by featuring the topic at the bar wide June 27 Quarterly Luncheon and Meeting. New York Chief Judge Jonathan Lippman presented the keynote remarks about the efforts of the New York Task Force to Expand Access to Civil Legal Services at this major event. Following the program, the Task Force co-chairs and leadership of the bar met with Judge Lippman to further discuss the strategies developed and implemented in New York to increase funding for civil legal services. Judge Lippman's approach included, among other activities, conducting hearings across New York state on the need for legal representation in key areas of civil litigation, developing a budget and funding under the auspices of the judiciary, and exploring the need for greater collaboration by all those with a stake in expanding access to justice. Judge Lippman's keynote remarks and a pod cast of the presentation are available on the [Civil Gideon Corner](#), an online resource that was launched last year on the Philadelphia Bar Association's web site to highlight the efforts of the Task Force, and to provide links to information about national developments in the civil right to counsel movement.

#### B. Increased Educational Programs for the Judiciary and Legal Community.

Through close collaboration with the judiciary, this year Task Force members increased their participation in planning and presenting Civil Gideon educational programs for the judiciary. In February 2011, Task Force co-chair Joseph Sullivan participated in a panel presentation at the Pennsylvania State Conference of Trial Judges in Pittsburgh on Civil Gideon and access to justice interventions for self-represented litigants. Joseph Sullivan also participated in a similar program for the Pennsylvania Conference of President Judges and Court Administrators in April at State College. Both programs were planned by Task Force member Judge Rosalyn Robinson, who is a member of the Pennsylvania Supreme Court Education Committee. In September, 2011,

Task Force members Judge Dembe, Judge Rizzo, Sayde Ladov, Joseph Sullivan and Cathy Carr also participated in a program on Civil Gideon and dealing with self-represented litigants at the National Judicial College Conference in Philadelphia. Another program, entitled *What is Civil Gideon and Why Do We Need It*, was presented at the October 2011 Philadelphia Bar Association Bench Bar Conference, and featured as panelists Judge Pamela Dembe, Judge Lisa Rau, Judge Anne Lazarus, Karen Buck and Lou Rulli.

During 2011, members of the Task Force and its working groups also planned and participated in several educational programs designed for legal services attorneys, private practitioners and others interested in Civil Gideon and access to justice issues. In April, Task Force co-chair Cathy Carr participated in a program for the Texas legal services community that addressed the differences of working toward creating a civil right to counsel and efforts to improve access to justice through the implementation of various interventions, such as help desks and limited representation projects.

On December 1, 2011, the Public Interest Law Day Annual CLE program will feature a Civil Gideon program, entitled *Updates on Innovative Access to Justice Projects and the Civil Right to Counsel Movement*, as the closing plenary. Planned by Louis Rulli, co-chair of the Communications and Education Working Group, and Karen Buck, co-chair of the Housing Working Group, this session will cover new developments in the civil right to counsel movement and highlight some innovative access to justice projects that have been implemented by the judiciary with legal services and other partners. The program will further explore the role of the courts in improving access to justice. Panelists include Judge Pamela Dembe, Judge Annette Rizzo, Karen Buck, Louis Rulli and John Pollock, ABA Section of Litigation, Civil Right to Counsel Fellow. Cathy Carr participated on the planning committee for a national Civil Right to Counsel Conference, which will be held on December 7 in Washington D.C. in connection with the National Legal Aid and Defender Association's annual conference.

In the coming year, the Communications and Education Working Group anticipates continued close collaboration with the judiciary to plan and participate in educational programs for the judiciary and court staff. It is also anticipated that this working group will develop and participate in additional education programs designed to inform the legal community and public about the need for Civil Gideon and highlight access to justice issues. The group will also serve as a resource for any new initiatives launched by the Task Force in 2012.

#### C. Communications and Publicity Efforts

Chancellor Rudy Garcia and other members of the Task Force published a number of articles this year on Civil Gideon issues. Chancellor Garcia's column in the May 2011 edition of the Philadelphia Bar Reporter, entitled "Equal Justice for All is

Goal with Bar’s Support of Civil Gideon,” outlines the strategy of the New York Task Force to Expand Access to Civil Legal Services as discussed by Chief Judge Lippman at the June Quarterly Meeting and Luncheon. This article also highlights the work of the Civil Gideon Task Force and puts focus on the economic benefit studies conducted in New York and Texas that conclude that there are significant cost savings and economic benefits for local and state governments that result from funding civil legal services. Click [here](#) to read this article. Articles about the topic and Judge Lippman’s keynote remarks were also published in the [Main Line Times](#) and [The Legal Intelligencer](#).

Albert S. Dandridge, III, co-chair of the Communications and Education Working Group, wrote an article, entitled “Supreme Court Spotlight: The Positive Aspects of *Turner v. Rogers*,” that was published in *Upon Further Review* on July 6, 2011, which is available [here](#). An article, written by Professor Louis Rulli, co-chair of the Communication and Education Working Group, and Michael Carroll, member of the Housing Working Group, entitled, [“Filling Gideon’s Empty Chair.”](#) appeared in Winter 2011 edition of the *Philadelphia Lawyer Magazine*. An article written by Professor Rulli was also published in 2011 by the Brooklyn Law School Journal of Law and Policy, entitled *On the Road to Civil Gideon: Five Lessons From the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 J.L. & Pol’y 683 (2011).

The Brennan Center for Justice recently released a multimedia video series, *Fighting Foreclosure: Why Legal Assistance Matters*, which underscores the critical need for homeowners to have attorneys in these cases, and features remarks by Judge Annette Rizzo. It also includes interviews with homeowners (some of who had counsel for their foreclosure proceedings and some of whom did not), attorneys, housing counselors, and others involved in the foreclosure process. The videos were produced by the Brennan Center and an independent film producer in collaboration with the National Coalition for Civil Right to Counsel staff and are available [here](#).

In the coming year, the Communications and Education Working Group will continue to work on additional articles and other forms of publicity to highlight the widening justice gap and need for increased funding for legal services as well as to inform the legal community and public about the need for Civil Gideon. The [Civil Gideon Corner](#) will also be routinely updated to provide current information about local and national developments in the civil right to counsel movement.

#### IV. HOUSING WORKING GROUP REPORT

In 2011, the Housing Working Group made substantial progress in implementing a groundbreaking new initiative in the coming year and in developing a multi-pronged approach to advancing Civil Gideon and addressing access to justice issues in housing cases.

### A. Launching of a Tenant Help Desk in Municipal Court

The Housing Working Group is pleased to report that in 2012 SeniorLAW Center will coordinate the launching of a Help Desk in Municipal Court to provide limited representation, advice, and information to assist unrepresented low-income tenants in Philadelphia facing eviction. This milestone is the result of collaborative year-long efforts of legal services organizations, pro bono leaders, and the courts. Through the leadership of Jerry McHugh, the American College of Trial Lawyers recently announced that it would contribute seed funding to SeniorLAW Center to hire a part-time coordinator/attorney to develop, implement, and administer the Help Desk. The Desk will have both an on-site presence in the court and a “virtual” Helpline component to enhance access for vulnerable populations who have mobility, disability, transportation, and other needs. While operational details are still being finalized, it is anticipated that the Help Desk will be staffed during designated court hours by a part-time attorney experienced in landlord/tenant law. The attorney will oversee the operations, recruit and train volunteer attorneys and law students to bolster capacity, and act as a liaison with the Court and other stakeholders. The scope of available services will include providing information about court proceedings as well as legal advice on defenses, trial strategies, settlement coaching, and assistance in preparing forms and pleadings as appropriate. Clients will be required to execute a simple retainer form clarifying the scope of the services as limited representation. Services will be available to all unrepresented low-income tenants of Philadelphia County, with incomes up to 200% of the federal poverty levels.

Other implementation components of the Help Desk project will include developing written materials and forms that will be available in hard copy and online; designing a web site that contains educational materials, forms and links to other helpful information; creating strategies to conduct outreach and notification to litigants; drafting protocols with other legal service providers and LRIS; and an evaluation component. Eventually, the goal is to augment the Help Desk services with a limited or full representation project that would address the unmet need through the availability of pro bono attorneys or qualified law students to represent low-income litigants in eviction proceedings.

Key participants in developing this project include diverse working group members, the Municipal Court leadership, and other representatives of the First Judicial District; the project reflects extensive research on best practices and numerous brainstorming sessions. Housing Working Group members also conducted a joint site visit made with members of the Family Working Group to observe the help desk operated by the court in Wilmington, Delaware. In the coming year, the Housing Working Group will assist SeniorLAW Center in developing an evaluation component for the Help Desk as well as explore the expansion of the scope of services available to include a full or limited scope representation project.

## B. The Housing and Legal Needs of the Elderly

Philadelphia has the highest percentage of elderly residents in the ten largest cities in the United States. The Housing Working Group has continued to gather data and information needed to finalize a white paper highlighting the needs of elderly homeowners and tenants in Philadelphia. The white paper will be finalized in the coming months and will be posted on the Civil Gideon Corner to help educate the legal community and public about the housing needs of elderly in Philadelphia. The group will continue to evaluate other holistic pilot projects serving the elderly that may serve as a model for a pilot project developed in Philadelphia in both eviction and mortgage foreclosure cases and which would include a limited or full representation component.

## C. Due Process and Operational Changes in Municipal Court

In light of *Turner v. Rogers*, the group plans to work closely with Municipal Court to identify and recommend possible changes in court practice, procedures and policies that will improve access to justice and fundamental fairness for self-represented litigants in landlord-tenant cases.

## D. Monitoring of Pending or Current Housing Studies

This year the Housing Working Group also continued to monitor studies that are pending or currently underway on the benefits of providing legal counsel in eviction and mortgage foreclosure cases. In June 2011, The Reinvestment Fund released the results of an eighteen month study of the operation of the Philadelphia Mortgage Foreclosure Diversion Program. The results of the study establish that Philadelphia's three-year-old foreclosure-diversion program has significantly improved the chances for homeowners in default to remain in the properties. In September, a study conducted by Regional Housing Legal Services, entitled "No Place Like Home: Study of Philadelphia's Approach to Foreclosure Prevention," was released.

In 2011, the Housing Working Group obtained copies of a final Civil Right to Counsel Social Science Study Design Report and Needs Assessment as well as a Cost Elements Report commissioned from NPC Research by the National Coalition for a Civil Right to Counsel (NCCRC). These reports were used by NPC in an effort 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 to serve as research sites for this study. Efforts by NPC to secure funding for the study thus far have been unsuccessful, but NPC recently advised the Task Force that it was considering revising the proposal and reducing the projected amount of funding needed for the study. In the coming year, the Task Force will consider the feasibility of pursuing this partnership or whether a different approach should be explored in light of the current economic climate.

## V. FAMILY WORKING GROUP REPORT

The Family Working Group is also pursuing a multi-prong approach to advancing Civil Gideon and addressing access to justice issues. In 2011, the group researched and explored a number of different projects implemented in other jurisdictions. The working group decided not to pursue certain models that would involve pro bono attorneys because of a concern that the project would divert pro bono resources from existing legal services organizations. In the coming year, the working group will explore implementation of the following models, which would engage new resources and build on the existing legal services programs.

### A. Study on the Impact of Legal Counsel In Custody Cases

During 2011, the Family Working Group researched and reviewed various studies conducted in other jurisdictions on the impact of providing legal counsel in various family law proceedings and considered low cost methods for designing and conducting a study in custody cases handled by an existing legal services program. The group consulted with Dr. Susan Sorenson, a social sciences researcher at University of Pennsylvania, on the design elements and components of a possible study. Ultimately the working group concluded that it would be appropriate for one of the local legal service organizations to consider applying for a legal research fellow who would design and conduct a one to three year study on the outcomes of providing legal representation in custody cases. The working group will provide any necessary support

### B. Help Desk

In the coming year, this group plans to explore designing and recommending a court based education/ information desk in Family Court that would tap a new pool of volunteers who are not currently engaged in routinely providing pro bono representation in custody cases. The project may also draw resources from existing partnerships with local law schools to supplement the staffing of a help desk. Two new partnerships to be explored involve recent law school graduates who participated as interns with Women Against Abuse (WAA) or volunteers with the Custody and Support Assistance Clinic (CASAC), an independent, nonprofit pro bono project that is a partnership with the University of Pennsylvania Law School and Philadelphia Legal Services (PLA). Many recent law school graduates who volunteered with WAA or with the CASAC clinic have entered private practice in Philadelphia and preliminary discussions suggest that they may be interested in volunteering to staff a help desk. The Family Working Group will further explore the feasibility of drawing new volunteers from this pool in the coming year.

### C. Due Process and Operational Changes in Family Court

In light of *Turner v. Rogers*, the Family Law Working Group also has decided to review current practices and procedures in Family Court proceedings to determine if there are any recommendations that should be made to improve access to justice and insure fundamental fairness and due process for unrepresented low-income people. This group plans to obtain input on possible recommendations from the public interest family law practitioners in the coming year.

### D. Examination of Other Models

The Family Working Group also has considered several other models that have worked in other jurisdictions, including certain counties in Pennsylvania, 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 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. Implementation of any of these models would depend on recruiting a new pool of pro bono volunteers and/or securing funding to cover costs associated with administration and a study component. Consideration will also be given to whether these models have potential statewide application.

## CONCLUSION

The Civil Gideon Task Force is pleased to provide this report on its 2011 activities to the Board of Governors and welcomes any input from the Board on its current and future work.