

Should Hawaii Adopt a

“Civil Gideon” Requirement?

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We are all familiar with *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (“*Gideon*”), where the United States Supreme Court held that the United States Constitution requires that an attorney be provided in criminal cases at public expense if the defendant is indigent. *Gideon* and subsequent cases have been instrumental in creating federal and state public defender systems for criminal cases. An exciting new access to justice development is the “Civil *Gideon*,” which expands the concepts of *Gideon* to require provision of free legal counsel to indigents in selected civil law areas where basic human needs are at stake.

In August, 2006 the ABA House of

Delegates unanimously endorsed the “Civil *Gideon*” by adopting Resolution 112A which urges “federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.” See <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf>

In 2006, the Hawaii Justice Foundation and the HSBA partnered with the “Access to Justice Hui” to undertake a major study of unmet civil legal needs in Hawaii. The result was the publication in November, 2007, of the Community Wide Action Plan, which included specific

recommendations for action in its “10 Steps by 2010.” Step 4 of the “10 Steps” recommends that Hawaii implement the “Civil

Gideon.”

Currently the issue of the “Civil *Gideon*” is one of the many issues before the Access to Justice Commission. Major issues for consideration involve: which areas of law should be included, what would be the economic cost of providing free legal services in these select areas, who should provide these legal services, how these legal services could be funded, and what degree of legal representation should be provided.

History has shown that *Gideon* has proven essential to providing due process rights to indigent defendants in the criminal law arena. Proponents of civil access to justice believe that similar fairness could be achieved through adoption of the “Civil *Gideon*.”

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