

NO. 57831-6-1

79978-4

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

In re the Marriage of: MICHAEL STEPHEN KING,  
Respondent,

v.

BRENDA LEONE KING,  
Appellant,

STATE OF WASHINGTON,  
Involved Party.

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STATE OF WASHINGTON  
DIVISION I  
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BRIEF OF AMICUS CURIAE  
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## **I. Statement of Identity and Interest of National Coalition**

The National Coalition for a Civil Right to Counsel (NCCRC) is a broad-based association of 150 individuals and organizations from over thirty-five states committed to ensuring meaningful access to the courts for all. Its mission is to encourage, support and coordinate advocacy to expand recognition and implementation of a right to counsel in civil cases. The NCCRC began in January 2004, and its participants include legal aid advocates and supporters from the public interest and private bars, academy, state and local bar associations, national organizations and others. The NCCRC supports litigation and legislative advocacy strategies seeking a civil right to counsel, including amicus briefing where appropriate. NCCRC participants worked closely with the American Bar Association (“ABA”) Presidential Task Force on Access to Justice on its effort to craft the ABA Resolution described below, which urges recognition of the civil right to counsel in cases such as this one.

## **II. Introduction**

Brenda King was an indigent stay-at-home mother with little formal education, who had been the primary caretaker of the parties’ children. She was forced to represent herself in a five-day custody trial in which her ex-husband was represented by an attorney. Legally unsophisticated, she unsurprisingly failed to follow the rules of evidence,

lost opportunities to introduce relevant evidence and object to inadmissible evidence, irritated the judge, and ultimately lost primary parenting authority for her children. Appellant's opening brief at pages 5-15 catalogs the myriad ways in which a lawyer representing Ms. King might have changed the outcome, a conclusion supported by the observations of the trial judge.<sup>1</sup>

In her appeal, Ms. King argues that the appointment of counsel is required by Article I, Sections 3, 10, 12, and 32, and Article IV, Sections 1 and 30, of the Washington Constitution, as well as by the federal due process and equal protection clauses. In response, defendants argue almost exclusively that counsel is not required under *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), or any applicable statute. Yet neither *Lassiter* nor the absence of a statute can answer the questions of first impression before this Court regarding the requirements of the Washington Constitution. Furthermore, *amicus curiae* respectfully urges this Court to consider recent responses to *Lassiter*'s structural defects that urge a different approach.

### **III. Statement of the Case**

*Amicus* adopts Appellant's Statement of the Case.

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<sup>1</sup> See Appellant's Brief at 5-15 (citing RP. Feb. 27, 2006 at 2:1-3:2 (trial judge comments on Ms. King's inability to object properly, to introduce relevant evidence, and to secure testimony of witnesses)).

#### IV. Argument

##### A. This Court Should Look to a Broad Range of Relevant Authority in Addressing This Issue of First Impression.

Washington's courts regularly look to a broad range of relevant authority for interpretive guidance. This is not only a tradition of the courts, but it is also responsive to the mandate of article I, section 32 that "[a] frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government."<sup>2</sup> Relevant sources of guidance have included, among others, American Bar Association standards, academic writing, and other critical commentary, including extrajudicial statements of judges.<sup>3</sup>

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<sup>2</sup> See Brian Snure, *A Frequent Recurrence to Fundamental Principles: Individual Rights, Free Government, and the Washington State Constitution*, 67 Wash. L. Rev. 669, 677-78 (1992); Deborah Perluss, *Washington's Constitutional Right to Counsel in Civil Cases: Access to Justice v. Fundamental Interest*, 2 Seattle J. for Soc. Just. 571, 584-85 (2004) ("[W]hile not unconditionally endorsing the view, the Washington Supreme Court acknowledged that Brian Snure has argued 'persuasively' that the phrase 'frequent recurrence to fundamental principles' 'suggests that framers retained the notion that natural rights should be considered when protecting individual rights.'") (citing *State v. Seely*, 132 Wn.2d 776, 809-10, 940 P.2d 604 (1997)). See, e.g., *In re Parentage of L.B.*, 155 Wn.2d 679, 694-95, 711-712, 122 P.3d 161 (2005) (citing four law review articles).  
<sup>3</sup> See, e.g., *State v. Holm*, 91 Wn. App. 429, 439, 957 P.2d 1278, (1998) (ABA's Standards for Criminal Justice); *In re Disciplinary Proceeding Against Greenlee*, 158 Wn.2d 259, 273, 143 P.3d 807 (2006) (ABA's Standards for Imposing Lawyer Sanctions); *State v. Earl*, 97 Wn. App. 408, 415, 984 P.2d 427 (1999) (noting continuing adherence to Standard 2.2 of the ABA's Standards Relating to Speedy Trial); *Absher Constr. Co. v. Kent Sch. Dist. No. 415*, 79 Wn. App. 841, 844, 905 P.2d 1229 (definitions provided by American Bar Association Standing Committee on Legal Assistants); *In re Parentage of L.B.*, 155 Wn.2d at 694-95, 711-712, 122 P.3d 161 (citing four law review articles).

In an act of “historic” dimension, the ABA has taken the lead in urging the recognition of a limited right to counsel in civil proceedings.<sup>4</sup> In so doing, the ABA has fundamentally rejected the approach taken by the U.S. Supreme Court in *Lassiter* as a viable framework for ensuring access to justice in civil proceedings for indigent persons.

**B. The ABA Has Declared That the Right to Counsel is Required to Ensure Access to Justice in a Limited Range of Civil Proceedings.**

On August 7, 2006, then-ABA-President Michael Greco called on the House of Delegates to address one of the most pressing contemporary problems facing the justice system in this country:

[W]hen litigants cannot effectively navigate the legal system, they are denied access to fair and impartial dispute resolution, the adversarial process itself breaks down and the courts cannot properly perform their role of delivering a just result.<sup>5</sup>

The House of Delegates unanimously answered this call by resolving that:

The American Bar Association 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,

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<sup>4</sup> James Podgers, *A Civil Law Gideon: ABA House of Delegates Calls on Government to Recognize Right to Legal Counsel in Key Civil Cases*, ABA Journal, Annual Meeting Daily Report: Day 6 (Honolulu Aug. 8, 2006).

<sup>5</sup> ABA Report to the House of Delegates No. 112A at 10, unanimously approved August 2006, 10, available at <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf> (“ABA Report” or “ABA Resolution”).

sustenance, safety, health or child custody, as determined by each jurisdiction.

*Id.* at 1.

The ABA Report supporting the Resolution traced the history of legal aid and outlined legal and policy principles supporting a right to counsel. *Id.* at 3-6. The Report notes that the right to counsel for indigent civil litigants is a fundamental principle that extends back centuries before the United States existed, and that European and other countries have long recognized a right to counsel in civil matters. *Id.* at 6-7. The ABA Report delves into federal and state constitutional arguments for a right to counsel, citing decisions in the high courts of Alaska, Maine, Oregon, and California.<sup>6</sup>

Although the ABA Report recognizes the status of federal law under *Lassiter*, it also examines sources relying on language equivalent to the concepts contained in Washington's Constitution, including "equality before the law" and "fair administration of justice" to provide for a right to counsel. *Id.* at 9.

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<sup>6</sup> *Id.* at 8 (citing *Flores v. Flores*, 598 P.2d 893 (Alaska 1979) (when one party is provided free representation in child custody proceeding, and unrepresented party is indigent, counsel must be appointed at public expense); *State v. Jamison*, 444 P.2d 15 (Or. 1968) (due process required state governments to provide free counsel to parents in dependency/neglect cases); *Danforth v. State Dep't. of Health & Welfare*, 303 A.2d 794 (Me. 1973) (same); *Salas v. Cortez*, 593 P.2d 226 (Cal.) (due process right to counsel for defendants in paternity cases), *cert. den.*, 444 U.S. 900 (1979); *Payne v. Superior Court*, 553 P.2d 565 (Cal. 1976) (equal protection right for prisoners involved in civil litigation)).

The ABA Resolution was carefully crafted to limit its reach to the areas that have the greatest impact on individual rights and basic needs. As such, the ABA's recommendations are helpful in understanding where current jurisprudence falls short of ensuring the fundamental fairness of the adversary system and what directions the law should take in order to preserve basic principles of justice for all.

**i. Under the ABA Resolution, a Limited Right to Counsel Attaches Only in Adversarial Civil Proceedings**

Recognizing that a universal right is neither desirable nor feasible in today's legal environment, the ABA focused its attention strictly on adversarial proceedings as the place where lack of lawyer representation for indigent persons poses the greatest concern. *Id.* at 13.

Similarly, this Court has recognized the fundamental nature of the adversarial process with respect to complexity and the judicial function. The non-adversarial nature of the proceeding was a pivotal factor on which the Court ruled that counsel was not required for the family of the decedent in a civil inquest case. *Miranda v. Sims*, 98 Wn. App. 898, 906, 991 P.2d 681 (2000).

Importantly, *Miranda* did not foreclose the possibility of a right to counsel in adversarial civil proceedings under the circumstances urged by the ABA. *Id.* The ABA Resolution limits its scope to adversarial

proceedings because, as is clear from this case, the American adversarial system of justice is inherently complex.<sup>7</sup> The ABA Report emphasizes the level of training and professionalism required of attorneys and states that “[w]ith rare exceptions non-lawyers lack the knowledge, specialized expertise and skills to perform these tasks and are destined to have limited success no matter how valid their position.” ABA Report at 9-10.

The ABA expressly excludes from its formulation those proceedings that, while judicial, affirmatively do not invoke the adversarial nature of the judicial process. In addition to excluding those proceedings in which the court functions in an inquisitorial manner, the ABA report also excludes the *pro se* processes, created by some states, through “which litigants can quickly and effectively access legal rights and protections without the need for representation by an attorney, for example in simple uncontested divorces.” ABA Report at 13.

The analytical connection between the adversarial nature of a proceeding and the necessity to provide counsel is not a new one.<sup>8</sup> In fact, it mirrors the analysis of several state courts in ruling for the provision of

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<sup>7</sup> ABA Report at 9. *Cf. In re Guardianship of K.M.*, 62 Wn. App. 811, 818, 816 P.2d 71 (1991) (even when a statutory scheme provided for counsel, considerations of “the fundamental right at issue here and the lack of adversarial testing of the relevant considerations to be weighed” are important in holding “the trial court erred by failing to appoint independent counsel for K.M.”).

<sup>8</sup> *See, e.g., Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792, 796, 9 L. Ed. 2d 799 (1963) (“[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is appointed for him.”).

counsel. For example, the highest court in Texas reiterated in 1996 that “a court has the duty to ensure that judicial proceedings remain truly adversary in nature,” and that hence “in some exceptional cases, the public and private interests at stake are such that the administration of justice may best be served by appointing a lawyer to represent an indigent civil litigant.” *Travelers Indem. Co. of Conn. v. Mayfield*, 923 S.W.2d 590, 594 (Tex. 1996) (internal quotation marks and citation omitted). Likewise, Wisconsin’s highest court held unconstitutional a state statute barring the appointment of counsel for parents in neglect proceedings because it infringed upon the inherent power of the court to appoint counsel “in furtherance of the court’s need for the orderly and fair presentation of a case.” *Joni B. v. State*, 549 N.W.2d 411, 414 (Wis. 1996).

**ii. Under the ABA Resolution, the Limited Right to Counsel Attaches Only When Basic Human Needs, Including Parenting Proceedings, Are at Stake.**

A parent’s right to an unfettered relationship with her child has been called “far more precious . . . than property rights”<sup>9</sup> and even “more precious . . . than the right of life itself.”<sup>10</sup> This is because the bond of

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<sup>9</sup> *May v. Anderson*, 345 U.S. 528, 533, 73 S. Ct. 840, 97 L. Ed. 1221 (1953) (referring to custody).

<sup>10</sup> *In re Welfare of Myricks*, 85 Wn.2d 252, 254, 533 P.2d 841 (1975) (citing *In re Gibson*, 4 Wn. App. 372, 379, 483 P.2d 131 (1971)).

parent and child is the “most basic of human relationships.”<sup>11</sup> In recognition of this “sacred” right,<sup>12</sup> the ABA includes private parenting proceedings within its call for a right to counsel. The Report defines child custody unconditionally as “*proceedings where the custody of a child is determined* or the termination of parental rights is threatened.” ABA Report at 13 (emphasis added). The ABA refers to the interest as “so fundamental and important as to require governments to supply low income persons with effective access to justice as a matter of right.” *Id.*

Indeed, private parenting proceedings, like the one at issue here, are among the most adversarial and complex proceedings courts handle. One academic commentator asserts that “civil litigants are arguably at a greater disadvantage without counsel than are criminal defendants without counsel.”<sup>13</sup> The State of Washington does not disagree, asserting in its brief that “dissolution cases involving children are completely different, require different skills, and are, in many ways, more complex” than criminal cases. Brief of Involved Party State of Washington at 30.

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<sup>11</sup> *Petition of C.E.H.*, 391 A.2d 1370 (D.C. 1978); *In re Guardianship of A.A.M.*, 634 A.2d 116, 123 (N.J. Super. Ct. App. Div. 1993).

<sup>12</sup> *In re Welfare of Luscier*, 84 Wn.2d 135, 137, 524 P.2d 906 (1974) (citing *In re Hudson*, 13 Wn.2d 673, 678, 685, 126 P.2d 765 (1942)).

<sup>13</sup> Joan Grace Ritchey, *Limits on Justice: The United States' Failure to Recognize a Right to Counsel in Civil Litigation*, 79 Wash. U. L.Q. 317, 336 (2001) (calling doctrines of *Gideon* and *Lassiter* “irreconcilable”).

These cases utilize the machinery of the state, the courts, to alter the familial relationship. The purportedly private nature of these disputes is rendered less and less significant where trial courts access their own experts to conduct evaluations and studies of the parties, appoint guardians ad litem or counsel for the children, participate in questioning during trial, etc. An indigent *pro se* parent, such as Brenda King, can easily face an array of resources and adversaries every bit as formidable as might exist in a parental rights termination proceeding. Further, the consequences of the judicial process are highly invasive and the impacts of potential decisional error reach not only the parent, but the future lives of young children. The notion that a loss of primary residential parenting and decision-making authority is not a permanent and severe intrusion into the parent-child relationship does not withstand scrutiny. Circumstances under which a parent can move for modification of a custody decree are entirely outside that parent's control and may never occur. For these reasons, the ABA Resolution focuses on the loss of parenting privileges, rather than the untenable distinctions between the direct loss at the hands of the state in a termination of parental rights decision and the loss through a parenting proceeding involving private parties.

**iii. The ABA Recognizes the Need for Each  
Jurisdiction to Define for Itself the Scope of the  
Right to Counsel.**

The ABA calls on all governments at all levels, including courts, to implement the right to counsel in civil cases. *See, e.g.*, ABA Report at 16. Acknowledging the fact that the right to counsel primarily arises and attaches in adversarial state court proceedings, the ABA recognizes the need for and value of independent state definition of the right.<sup>14</sup> The ABA Resolution is addressed to “each jurisdiction,” underscoring the need for each state to forge an independent path meeting the needs of litigants in its jurisdiction. ABA Resolution at 1.

Similar to Washington court rulings in *Myricks* and *Luscier*, the Wisconsin Supreme Court, in finding a statute denying counsel in neglect proceedings unconstitutional, ruled that a court has inherent authority to “find a compelling judicial need for appointment of an attorney for a party even though that party may have neither a constitutional nor a statutory

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<sup>14</sup> Analysis and application of such state principles is particularly appropriate in family law and domestic relations cases, “an area that has long been regarded as a virtually exclusive province of the States.” *Sosna v. Iowa*, 419 U.S. 393, 404, 95 S. Ct. 553, 42 L. Ed. 2d 532 (1975); *see also Ankenbrandt v. Richards*, 504 U.S. 689, 694-95, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992) (affirming domestic relations exception to diversity jurisdiction based upon “understood rule that has been recognized for nearly a century and a half” that domestic relations are matters of exclusive state sovereignty); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12, 124 S. Ct. 2301, 159 L. Ed. 2d 98 (2004) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.” (internal quotation marks and citation omitted)); *Santosky v. Kramer*, 455 U.S. 745, 770, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (family law “has been left to the States from time immemorial, and not without good reason”) (Rehnquist, J., dissenting).

right to counsel.” *Joni B.*, 549 N.W.2d at 411. In so doing, the court observed:

[C]ourts sometimes face very special problems with unrepresented parents. These parents are often poorly educated, frightened and unable to fully understand and participate in the judicial process, thus sometimes creating exceptional problems for the trial court. When a parent obviously needs assistance of counsel to ensure the integrity of the [neglect] proceeding, the court cannot be legislatively denied the right to appoint counsel . . . .

*Id.* at 414-15.<sup>15</sup>

**iv. However the Jurisdiction Defines the Scope of the Right, the ABA Urges That It Apply Categorically to Cases Involving Similar Proceedings and Circumstances.**

Appellant in this case poses a four-prong test for trial courts to use in determining when to appoint counsel. Brief of Appellant at 25. This approach is consistent with the ABA Resolution’s call for the scope of the right to be determined by each jurisdiction. The ABA Report also provides a basis for the Court to consider the desirability of applying the right categorically to similar cases, recognizing a fundamental weakness of a case-by-case approach:

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<sup>15</sup> The ABA Report at 7 underscores this concern:

On a regular basis, the judiciary witnesses the helplessness of unrepresented parties appearing in their courtroom and the unequal contest when those litigants confront well-counseled opponents. Judges deeply committed to reaching just decisions too often must worry whether they delivered justice in such cases because what they heard was a one-sided version of the law and facts.

It is to be hoped that the U.S. Supreme Court will eventually reconsider the cumbersome *Lassiter* balancing test and the unreasonable presumption that renders that test irrelevant for almost all civil litigants.

ABA Report at 6. The ABA explains the concept it urges as part of its limited and incremental approach to the recognition of the right and emphasizes the focus on court determined needs. Significantly, the report reads:

The right proposed in this resolution . . . represents an incremental approach, limited to those cases where the most basic of human needs are at stake. The categories contained in this resolution are considered to involve interests so fundamental and critical as to require governments to supply lawyers to low income persons who otherwise cannot obtain counsel.

ABA Report at 12.

A categorical right to counsel avoids the paradox of providing counsel to only those pro se parties who are fortunate or sophisticated enough to be able to articulate the nature of their rights and their need for counsel well enough to meet the relevant test.<sup>16</sup> The ABA approach reflects Justice Blackmun's dissent in *Lassiter*, where he articulated,

The flexibility of due process, the Court has held, requires case-by-case consideration of different decisionmaking contexts, not of different *litigants* within a given context. In analyzing the nature of the private and governmental interests at stake, along with the risk of error, the Court in

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<sup>16</sup> See Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 Loy. U. Chi. L.J. 363, 380 n.83 (2005).

the past has not limited itself to the particular case at hand. Instead, after addressing the three factors as generic elements in the context raised by the particular case, the Court then has formulated a rule that has general application to similarly situated cases.

*Lassiter*, 452 U.S. at 49 (emphasis in original).

The provision of a categorical right to counsel as defined by the Court also promotes judicial efficiency by obviating the need for appellate review of individual cases based on distorted and misleading records. As Justice Blackmun wrote in his *Lassiter* dissent, “it is difficult, if not impossible, to conclude that the typical case has been adequately presented.” *Id.* at 51.

Alaska’s highest court used similar rationale to extend a right to counsel to parents defending against privately initiated proceedings to terminate parental rights. *In re K.L.J.*, 813 P.2d 276, 282 n.6 (Alaska 1991). The court wrote that it “reject[s] the case-by-case approach set out by the Supreme Court in *Lassiter*.” *Id.* The court reasoned that “loss of custody is often recognized as punishment more severe than many criminal sanctions.” *Id.* at 283 (internal quotation marks and citations omitted). Likewise, a Pennsylvania court found that indigent defendants in civil paternity suits had a categorical right to counsel. *Corra v. Coll*, 451 A.2d 480, 482-83 (Pa. Super. Ct. 1982). The *Corra* court reasoned that it is inadequate to judge the fairness of a proceeding by an after-the-

fact evaluation of a record created without the guidance of counsel. *Id.* at 488. This analysis echoes the trial court's observation in this case. RP Feb. 27, 2006 at 2:1-3.2.

**C. The American Bar Association Is Far From Alone in Recognizing the Need for a Civil Right to Counsel.**

Several bar organizations have joined the ABA's clarion call for recognition of a civil right to counsel. The Washington State Bar Association was itself a co-sponsor of the ABA Resolution. Likewise, the Conference of Delegates of the California Bar Associations passed its own resolution last year, calling for free legal representation in cases dealing with sustenance, shelter, safety, health, and parenting proceedings for people unable to afford to pay for counsel.<sup>17</sup>

Washington judges are not alone in urging the court to recognize a constitutional right to civil counsel.<sup>18</sup> Many judicial commentators have voiced their support for recognition of a civil right to counsel. In 1998, Judge Robert Sweet, of the United States District Court for the Southern District of New York, opined, "we need . . . an expanded constitutional right to counsel in civil matters."<sup>19</sup> Judge Sweet followed this declaration by discussing how and why publicly financed counsel should be available

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<sup>17</sup> Conference of Delegates of California Bar Associations, *Resolution 1-06-2006*, at <http://www.cdcb.org/pdfs/R2006/01-06-06.pdf>

<sup>18</sup> See Brief of *Amicus Curiae* Retired Trial Court Judges.

<sup>19</sup> The Honorable Robert W. Sweet, *Civil Gideon and Confidence in a Just Society*, 17 *Yale L. & Pol'y Rev.* 503, 503 (1998).

as a matter of right in civil cases, the possible scope of such a right, and how it could be financed. *Id.*

Justice Earl Johnson, Jr. of the California Court of Appeals insisted in 2000 that “[i]t is time—long past time—for the United States to join the growing international consensus that . . . for those unable to afford counsel, the right to equal justice must include the right to a lawyer supplied by government.”<sup>20</sup> This echoed a theme that Justice Johnson has pressed for over thirty years.<sup>21</sup>

In 2003, in the concurrence to an opinion failing by a single vote to reach the question of the right to counsel in a private parenting proceeding, Judge Dale Cathell of Maryland’s highest court would have recognized the right to counsel, stating:

To me, the right to fully parent one’s children, without improper interference by third parties or the State, is too important and fundamental a right for the issue before us to be avoided. Also important is that the hearing and trial judges and masters need guidance in respect to this issue involving representation . . . .

We should also be realistic. We can decline to address many problems. But, unlike many cases of a lesser nature, this issue will not go away.<sup>[22]</sup>

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<sup>20</sup> Justice Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *Fordham Int’l L.J.* 83, 110 (2000).

<sup>21</sup> See, e.g., Earl Johnson, Jr. & Elizabeth Schwartz, *Beyond Payne: The Case for a Legally Enforceable Right to Representation for Indigent California Litigants*, 11 *Loy. of L.A. L. Rev.* 249 (1978).

<sup>22</sup> *Frase v. Barnhart*, 840 A.2d 114, 141 (Md. 2003) (Cathell, J., concurring).

Justice Howard H. Dana, Jr. of the Maine Supreme Judicial Court, who chaired the ABA Presidential Taskforce which produced the historic Resolution discussed above, has likewise asserted that “[t]he resolution asks for basic fairness in making sure that everyone can use the legal system.”<sup>23</sup> As Justice Dana later explained, he was influenced by studies showing that poor people’s civil legal problems are unaddressed, denying them the opportunity to obtain basic fairness in a system purportedly based on the rule of law. *Id.* at 502-03.

The Honorable Ronald George, Chief Justice of the California Supreme Court, urged the state to provide attorneys for low-income people in high-stakes civil cases, such as private parenting proceedings and eviction cases.<sup>24</sup> Associate Justice Denise Johnson of the Vermont Supreme Court appealed to her state to recognize such a right in response to the ABA Resolution. Observing that the gap between need and delivery of legal services continues to grow, she wrote, “How do we bridge the gap? First, as judges, we must recognize that some cases should not

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<sup>23</sup> Justice Howard H. Dana, Jr., *Introduction: ABA 2006 Resolution on Civil Right to Counsel*, 15 Temp. Pol. & Civil Rts. L. Rev. 501, 502 (2006).

<sup>24</sup> Chief Justice Ronald M. George, *State of the Judiciary Address Delivered to a Joint Session of the Legislature, Sacramento, California* (Feb. 26, 2007) available at <http://www.courtinfo.ca.gov/reference/soj022607.htm> (last visited March 13, 2007). See also Bob Egelko, *Chief Justice Seeks Lawyers for Poor in Civil Cases*, The S.F. Chron., Dec. 20, 2006, at C5.

proceed without legal counsel.”<sup>25</sup> She called on her fellow adjudicators to support this effort, noting that “[a]s judges, we know better than anyone else that the judicial system’s salient feature is that it is built for experts, and that the successful use of the adversary system to determine the facts depends on the equality of the contestants.” *Id.*

This Court should add its voice to the call and take this important opportunity to respond to the urgent need that must be addressed.

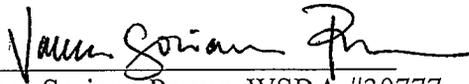
## **V. Conclusion**

For the reasons set forth in this brief, the National Coalition for a Civil Right to Counsel urges this Court to recognize a right to counsel in categories of adversarial civil proceedings involving child custody and other basic human needs, including the case now before it.

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<sup>25</sup> Judge Denise Johnson, *Chair’s Column: Bridging the Gap*, Appellate Judges News, 11 (summer 2006) available at <http://www.atjsupport.org/DMS/Documents/1153943359.86/Denise%20Johnson%20Column-1.pdf> (last visited Mar. 22, 2007).

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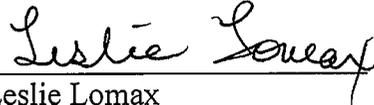
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