

**RESOLUTION CALLING FOR THE PROVISION OF
LEGAL COUNSEL FOR INDIGENT PERSONS IN CIVIL MATTERS
WHERE BASIC HUMAN NEEDS ARE AT STAKE**

WHEREAS, the Philadelphia Bar Association has a long history of action promoting access to justice for all, without regard to ability to pay for legal counsel; and

WHEREAS, the Philadelphia Bar Association's efforts over many decades to expand access to justice in areas of basic human need to those who cannot afford counsel have been broad in scope and extensive in reach, and have included but not been limited to:

- Incubating and promoting public interest law centers focused on substantive legal areas involving basic human needs such as shelter, health care, sustenance, safety, parental rights and child custody, among others;
- Establishing and supporting Association sections and committees devoted to promoting collaborations between the private bar and legal services organizations to provide legal services involving basic human needs;
- Encouraging and facilitating pro bono legal services in areas of basic human needs through training, mentoring and organizational support;
- Creating educational programs and forums to highlight the fundamental legal needs of the poor in areas such as shelter, sustenance and parental rights; and
- Collaborating with the judiciary, the legislature and the private sector to expand opportunities for all sectors of the legal community to render legal services to the disadvantaged in areas of basic need.

WHEREAS, despite these efforts, studies by the American Bar Association, state and local bar associations, universities, government agencies and others estimate that at most 20% of disadvantaged persons who require legal services in areas of basic need are able to obtain such services at no cost; and

WHEREAS, the provision of legal services in areas of basic human need to all persons without regard to ability to pay is a matter of fundamental fairness of our justice system; and

WHEREAS, notwithstanding the provisions of the Sixth Amendment to the United States Constitution declaring that in all criminal prosecutions, the accused shall have the right to assistance of counsel in his defense without regard to ability to pay, it was not until the landmark ruling of the United States Supreme Court in 1963 in *Gideon vs. Wainwright* that such a right to counsel was fully recognized and implementation of that right initiated; and

WHEREAS, the provision of counsel in matters of basic human need for those unable to pay for such services, or "Civil Gideon", will require that members of the legal community educate the

larger community about the fundamental importance of Civil Gideon to the fair administration of the law; and

WHEREAS, bar associations and other groups of lawyers acting in concert will need to use educational efforts, which lawyers are uniquely qualified to advance, to build understanding, support and consensus in the larger community as to the importance of Civil Gideon as a matter of fundamental fairness; and

WHEREAS, developing a meaningful Civil Gideon right will also require building partnerships that go beyond the legal community, and include the involvement of government, universities, other institutions and the community as a whole; and

WHEREAS, the development and implementation of Civil Gideon likely will also require political, legislative and judicial involvement and support; and

WHEREAS, in 2005-2006, American Bar Association President Michael Greco formed the ABA Presidential Task Force on Access to Justice in Civil Cases (“ABA Task Force”) to study and recommend whether a proposed resolution should be introduced to support the provision of counsel as a matter of right at public expense to low income persons in certain adversarial proceedings where basic human needs are at stake; and

WHEREAS, in Spring 2006, the ABA Task Force recommended that the ABA House of Delegates approve a proposed resolution, as follows:

RESOLVED: That the American Bar Association urges state, territorial and federal jurisdictions to provide 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; and

WHEREAS, in May 2006, the Philadelphia Bar Association approved a resolution in support of the ABA Task Force resolution and recommendation; and

WHEREAS, the Civil Gideon right was comprehensively evaluated at the University of Pennsylvania Law School’s Edward R. Sparer Symposium held in May 2006 in conjunction with the 2006 Equal Justice Conference co-sponsored by the ABA and the National Legal Aid and Defender Association in Philadelphia, at which overwhelming support for Civil Gideon was expressed; and

WHEREAS, the ABA Task Force resolution was adopted by the ABA House of Delegates in August 2006; and

WHEREAS, in September 2007, the Pennsylvania Bar Association adopted a resolution urging 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; and

WHEREAS, the September 2007 Pennsylvania Bar Association resolution cited an extensive list of states and the most common substantive areas where some level of right to counsel has been identified by statute, as well as the status of Civil Gideon activities in selected states; and

WHEREAS, the Philadelphia Bar Association and the Pennsylvania Bar Association convened a Civil right to Counsel Discussion in April 2008 held in Philadelphia discussing the implications of recognizing a Civil Gideon right and implementing that right; and

WHEREAS, the recent substantial economic downturn in the Philadelphia region and across the United States have underscored the sense of urgency in developing a system of Civil Gideon as a matter of fundamental fairness to low income persons in those categories of adversarial proceedings where basic human needs are at stake; and

WHEREAS, the Chancellor of the Philadelphia Bar Association has appointed a Task Force on Civil Gideon (“Task Force”) to investigate and consider all aspects of implementing an effective system of Civil Gideon in Philadelphia; and

WHEREAS, the investigation and consideration of all aspects of implementing an effective system of Civil Gideon in Philadelphia may require the evaluation of intermediate steps, collaborative models, pilot projects and other exploratory vehicles.

NOW, THEREFORE, BE IT RESOLVED that the Philadelphia Bar Association believes and therefore declares that representation by counsel in certain civil cases should exist as a matter of right and at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those enumerated in the 2006 ABA Resolution; and

BE IT FURTHER RESOLVED that the Philadelphia Bar Association Task Force shall investigate and consider all aspects of an effective system of Civil Gideon, including the development of concrete and practicable proposals to advance the implementation of Civil Gideon beginning with those areas of adversarial proceedings where basic human needs are most at stake in Philadelphia, including termination of parental rights or complete loss of custodial rights and proceedings involving housing and otherwise placing basic sustenance at risk; and

BE IT FURTHER RESOLVED that upon completion of its investigation and consideration of all such issues, the Chancellor’s Task Force shall prepare and submit a report and recommendations to the Board of Governors, which may include the adoption of such intermediate steps, collaborative models, legislative initiatives, funding proposals, pilot projects and other exploratory vehicles as the Task Force shall deem appropriate in furtherance of the goals set forth in the 2006 ABA Resolution and in this Resolution; and

BE IT FURTHER RESOLVED that the Chancellor of the Philadelphia Bar Association may take any and all appropriate steps in furtherance of this Resolution as the Chancellor, as a matter of discretion, may deem proper.

**PHILADELPHIA BAR ASSOCIATION
BOARD OF GOVERNORS
ADOPTED: April 30, 2009**