Right to Counsel in Civil Cases: A Movement on the Rise

Opinion: You can lose your kids, home and freedom without ever seeing a lawyer. It’s a profound injustice.

About the NCCRC

- [http://www.civilrighttocounsel.org](http://www.civilrighttocounsel.org)
- 600 participants and partners in 41 states
- California: Fresno, Long Beach, Los Angeles, San Francisco, San Jose, Santa Monica, Statewide
- Our work:
  - Provide support to litigation, legislative efforts, research projects
  - Coordinate efforts
  - Raise public awareness
  - Serve as information clearinghouse

RTC Status

- Supreme Court: no RTC for termination of parental rights, civil incarceration
- RTC in majority of states for:
  - Parents and/or children in abuse/neglect
  - Civil commitment
  - Quarantine
  - Judicial bypass
  - Guardianship
  - Civil contempt
- RTC in many states for:
  - Adult protective proceedings: statutory
  - Nonconsensual adoption
  - SDP/SVP
- RTC in few or no states for:
  - Housing
  - Custody
  - Public benefits
Where this leaves us

- Three-quarters of all civil cases involve one unrepresented party (in VA, 99%)
- Housing cases: “81%/3%” (i.e., 81% of landlords represented vs. 3% of tenants)
- Eighty percent of the civil legal needs of the poor go unmet
- VA plaintiff success rates affected by presence of counsel:
  - Only plaintiff represented: 60 percent
  - Both sides represented: 20 percent

Source: National Center for State Courts, Legal Services Corporation

What drives the CRTC movement?

- Basic human needs at stake
- Difference that full representation makes in outcomes
- Providing equity and faith in proceedings, esp. where other side is represented
- Financial benefits of providing counsel
- Absence of counsel has spillover effect on strained indigent defense system
- Disproportionate impact on communities of color

Baltimore study
Specific cost savings examples

- NYC report: $320 million net savings if RTC for evictions (shelters, affordable housing, unsheltered homelessness)
- Philadelphia report: $3.5 million investment yields $45 million in savings
- MA legal aid program new money to state: $5.1 million in retroactive federal disability benefits, $2.9 million in ongoing monthly benefits, $390,000 in benefit restorations ($15 for every $1 spent)
- Medical-legal partnership: $16 in hospital billings revenue (via insurance benefits) per $1 spent on legal aid

Popularity of RTC: Voices for Civil Justice messaging focus group results

<table>
<thead>
<tr>
<th>Do you favor or oppose ensuring the following services are provided in your state?</th>
<th>Strongly favor</th>
<th>Total Favor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure every person has the right to a lawyer when needed in civil legal matters</td>
<td>62</td>
<td>88</td>
</tr>
<tr>
<td>Ensure every person has the right to a lawyer when needed in civil legal matters, just like the Miranda rights ensure for people charged with crimes</td>
<td>56</td>
<td>84</td>
</tr>
<tr>
<td>Provide legal representation to those who need but who cannot afford it</td>
<td>56</td>
<td>85</td>
</tr>
<tr>
<td>Allow cases to be resolved outside the civil court system through impartial mediation if all participants agree</td>
<td>55</td>
<td>88</td>
</tr>
<tr>
<td>Have legal aid lawyers provide legal representation to those who cannot afford it</td>
<td>53</td>
<td>88</td>
</tr>
</tbody>
</table>

Public support for RTC

Would you support or oppose establishing a right to counsel, meaning someone will always be represented by a lawyer, during eviction proceedings?

Topical: STRONGLY SUPPORT | SUPPORT | NEITHER SUPPORT NOR OPPOSE | STRONGLY OPPOSE | OPPOSE

Democrats: 48% | 33% | 10% | 7% | 4%

Independents: 42% | 31% | 14% | 10% | 3%

Republicans: 37% | 33% | 6% | 15% | 8%

All data for PROGRESS
Popularity of RTC: Vera focus groups

People in the United States overwhelmingly support publicly funded attorneys for people in immigration court:

87% of people in the United States support publicly funded attorneys for people in immigration court.

Source: Vera Institute of Justice/CJ

Right to counsel as a race equity matter

BLACK FEMALE RENTERS WERE FILED AGAINST FOR EVICTION AT DOUBLE THE RATE OF WHITE RENTERS OR HIGHER IN 17 OF 36 STATES

Data source: The Eviction Lab. Counties excluded due to few or no evictions. States where 5 or more counties where excluded are shown in white with a grey border. Photocopy Delaware, Florida, Rhode Island, and Vermont that white where not included in states with 5 or more counties where excluded by states. Rents were included in the previous table.

What’s happening to move right to counsel forward?
2019-2022 non-eviction legislation

- Child welfare/termination of parental rights:
  - Children: AZ (child welfare)*, CO (child welfare, extended foster care)*, ND (child welfare)*, NM (extended foster care)*, WA (child welfare)*, WV (parents in child welfare cases)*, VA (extended foster care)
  - Parents: AR (adoptions)*, HI (child welfare cases), IA (private child guardianships)*, MD (deleting adoption RTC), NC (when children placed in DSS custody due to delinquency)*, ND (private child guardianships)*, WA (private child guardianships)*, WV (parents in child welfare cases)*
- Domestic violence: IL (discretionary for minor petitioners), NJ (task force), NM (minor respondents)*
- Guardianship: CA*, HI, MA (for guardians), ME, MS (discretionary)*, NC, NY, VA
- Civil forfeiture: AZ
- Immigration: IL (task force)

* = enacted legislation
Red text = NCCRC involvement

Litigation

- Custody:
  - Child guardianship: MA**
  - Child welfare/TPR: HI (parents)*, IN (dependency class action for kids), NJ (parents in admin proceedings)**, OH (adoption)**, PA (child in TPR)**
- Driver’s licenses: NJ**
- Health: CA (nursing homes), NY (guardianship)
- Debtor’s prison: MA*, MO*, NJ**, NV (child support), PA*
- Guardianships: MD*
- Immigration: federal

* = pending
** = successful resolution

Daily Journal

Litigation

Spears conservatorship shows need for stronger right to counsel
The pop singer’s conservatorship case is a perfect example of why laws that “protect” the right to counsel have too many loopholes. These laws need to be strengthened.

THOMAS F. COLEMAN
Legal Director, Spectrum Institute
177 E. Vista Chino A3/384
Palm Springs, CA 92262

COLUMNS

Law Practice, Civil Rights
Jul 1, 2021

Rebuttal

0 Comments
As Rents Rise, Cities Strengthen Tenants’ Ability to Fight Eviction

A half-dozen cities across the U.S. promise the right to an attorney, a costly response to increasing homelessness

Eviction RTC: nationwide status

- **State bills introduced in 2021/2022**: Delaware*, Hawaii*, Illinois, Indiana, Kentucky, Massachusetts*, Minnesota*, Nebraska*, New Jersey, New York, Ohio, South Carolina
- **Ballot initiatives in 2022**: Denver, Los Angeles, Multnomah County (OR)
  * = had hearing

Sampling of other cities/states exploring eviction RTC

- Albany County NY
- Chicago
- Cincinnati
- Columbus OH
- Cuyahoga County (OH)
- Douglas County (KS)
- Fresno
- Miami
- Milwaukee County
- New Orleans
- Omaha
- Pennsylvania
- Philadelphia
- San Jose
- Santa Monica
- St. Louis
The rise of RTC organizing

Enacted RTC metrics of success

- **NYC:**
  - 84% of represented tenants remain in their homes
  - Filings down 30%
  - Defaults down 34%

- **San Francisco:**
  - Filing rate decreased by 10% from 2018 to 2019
  - 59% of tenants w/full rep able to stay in their homes

- **Cleveland:**
  - 93% of clients avoided eviction judgment or involuntary move
  - Of 21% of clients who were unaware of rental assistance at the time they contacted Legal Aid, 81% got it
  - 92% of clients who wanted additional time to move, and 97% who sought monetary relief, were able to get it

Contact

John Pollock
Coordinator, NCCRC
jpollock@publicjustice.org
(410) 400-6954