


**Right to Civil Counsel in  
Minnesota:**

Task Forces, Ideals and Practicalities

Perry Wilson




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**2001 State Court Task Force**

[STUDY OF SYSTEM FOR FUNDING AND ADMINISTRATION OF COURT-APPOINTED ATTORNEYS.]  
Subdivision 1. [TASK FORCE; GOALS.] The supreme court is requested to establish a task force to study and make recommendations regarding a system for funding and administering court-appointed attorney functions in civil cases, including attorneys and related personnel for civil commitments and proceedings under Minnesota Statutes, chapter 253B, child protection cases, paternity cases, guardianship or conservatorship cases, and other civil proceedings where indigent persons are entitled to court-appointed counsel. The goal of the task force is to design a system that is independent from court and county administration and funding and that promotes equal access to justice and equal representation for indigent persons across the state.

1999 MN Laws Chptr 216, Article 7, Sec.42




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**Scope of 2001 Task Force  
Mandate**

- (a) The task force shall consider options that address the goals in subdivision 1, including: (1) creation of an independent court-appointed attorney board to manage civil court-appointed attorney functions; and (2) other options identified by the task force. (b) The supreme court is requested to report to the legislature by January 15, 2001, with the report and recommendations of the task force. The supreme court is requested to disband the task force January 15, 2001.




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**2001 Task Force  
Recommendations**

- Establish Uniform Eligibility Standards
- Continue Providing Counsel in Indigent Paternity Cases and Advise of this Right
- Provide Counsel in Indigent Civil Contempt Cases
- Public Defender to Serve as Counsel in Juvenile Protection cases



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**2001 Task Force  
Recommendations (cont)**

- Continue Providing Counsel in Civil Commitment Cases
- Where Right to Counsel Exists at Trial Level Appellate Counsel Should be Provided
- Funding Options (no consensus reached):
  - Establish State Office
  - County/Public Defender



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**2007 MSBA Task Force**

- Appointed December 2007
- Report delivered December 2011
- Extensive work and study of the issue
- Concluded that the unmet legal needs of the poor and disadvantaged are significant and increasing
- Development of sustainable right to civil counsel should be pursued



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### Aspirational Legal Principles

- “Minnesota possesses a long tradition of affording persons on the periphery of society a greater measure of government protection and support than may be available elsewhere. This tradition is evident in legislative actions on behalf of the poor . . . . This court, too, has acted to establish that tradition during other times when the nation was divided on an important issue.”
  - *Women of the State v. Gomez*, 542 N.W.2d 17, 30 (Minn. 1995).




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### Minnesota Courts

Historically progressive in protecting individual rights by applying state constitutional doctrines  
 Departed from federal constitutional law  
 Read the state’s Bill of Rights as more rights-protective than federal equivalent  
 (*Jarvis v. Levine*, 418 N.W. 2d 139, 147 (Minn. 1988))




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### Minnesota Constitution

Rights and Remedies Provision, Art. I, §8  
 Due Process Provision, Art. I, §7  
 Separation of Powers, Art. III and the Court’s Supervisory Power




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### Minn. Constitution Art. I Sect. 8

#### Redress of injuries or wrongs.

- Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.




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### Rights and Remedies Provision

Art. I, §8 of the Minnesota Constitution

- o Preserves remedies recognized under common law
- o Probably not a vehicle to create substantive rights and relief
- o Rarely used, then narrowly, but possibilities?
- o No federal constitutional counterpart
- o *Davis v. Pierse*, 1862 WL 1242 (Minn. 1862) "*Why should simple justice, as against another, be denied to any citizen, however fallen, degraded or guilty he may be?*"




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### Due Process Provision

Article I, §7 of the Minnesota Constitution

No person shall...be deprived of life, liberty or property without due process of law."

Mirrors U.S. Constitution's 14<sup>th</sup> Amendment.

Minnesota must follow U.S. Supreme Court's decisions regarding what conduct is prohibited by the 14<sup>th</sup> Amendment.

Minnesota Supreme Court COULD be more rights-protective.




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**Separation of Powers**

Article III of the Minnesota Constitution

Expressly required, not implicit as in U.S. Constitution

Interpreted to include the grant of strong supervisory powers to Minnesota Supreme Court

- Fundamental functions: the administration of justice, and the protection of rights guaranteed by the constitution
- Has both responsibility and power to make reasonable orders, rules and regulations

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**Separation of Powers (continued)**

**Expanding Right to Counsel**

Right to counsel for indigent defendants in paternity suits

- o *Hepfel v. Bashaw*, 279 N.W. 2d 342 (Minn. 1979)

"In no way affects the rights of indigent defendants in other civil actions to court-appointed counsel"


Case-by-case decisions may focus on:

- Importance of interests involved,
- The lack of statutory or constitutional remedies, and
- The adversarial nature of the civil proceeding.

Right to Counsel for misdemeanors

- *State v. Borst*, 154 N.W. 2d 888 (Minn. 1967)

"We choose not to guess at what [the Supreme Court] may eventually hold by basing our decision on the Federal Constitution or even on our state Constitution."

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**So Who is Going to Pay for This?**

- Public Defender Funding Cuts Lead to CHIPs Representation Cuts in 2008
- In the Matter of the Welfare of S.L.J., 782 N.W.2d 549 (Minn. 2010)
  - County Commencing Child Protection Case required to pay parents fees by ICWA and Minn. Stat. 260C.331
  - The Hot Potato -Rice County Commissioners Appeal to Supreme Court From Order to pay \$4000 to court-appointed counsel

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### Pros

- Minnesota Supreme Court:  
Has interpreted state constitution to aggressively protect individual rights  
Has expanded right to counsel into civil matters, using:
  - Separation of powers clause
  - Inherent supervising powers



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### Cons

- There are at least 18 Minnesota statutory provisions permitting court-appointed counsel
- A civil right to counsel on a large scale, even if limited to those proceedings involving basic human needs, will be very expensive
- Timing is terrible



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### The Practical Problem

- Providing Legal Services Costs Money
- Even Where the Right to Counsel in Civil Cases is Clearly Provided by Existing Law Funding Causes Disputes
- Any Serious Effort to Provide Counsel in Civil Cases in Minnesota Must Provide a Funding Source for the Services—the California model



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### Potential Sources of Funds

- Court Filing Fees
  - California Assembly Bill No. 590
- Attorney Registration Fees
  - Minnesota Legal Services Planning Committee Petition increase fee by \$25.00



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### Somebody Should do Something

- Hennepin County Civil Gideon Coalition
  - Volunteer Lawyers Network
  - Mid-Minnesota Legal Aid
  - Minneapolis Law Firms
  - Call for Justice
  - Tubman



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### Civil Gideon Coalition Is Doing Something

- In consultation with the Judges of the Hennepin County:
- Providing counsel to pro se indigent litigants that are party to an appeal from Conciliation Court
- Providing counsel to pro se indigent litigants referred by the judges
- Increasing the staffing of the existing Housing Court Project



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### Civil Gideon Coalition

- Next Steps:
- Orders for Protection
- And then Family Law?
  - Area identified by the Judges as largest volume of cases with biggest need for legal advice/representation



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### Where Are We Now?

- “Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning. “

Winston Churchill



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