

Wiley Rein Authors *Amicus* Brief on Behalf of the American Bar Association Regarding Civil Right to Counsel Issue

November 4, 2015

In *Olson v. Olson*, a child custody action current pending on appeal before the Supreme Court of Alaska, Wiley Rein LLP has prepared and submitted an *amicus curiae* brief on behalf of the American Bar Association (ABA). The brief sets forth the ABA's position, consistent with its long-established policy, that in light of the appellant's indigent status and the fact that his former spouse was represented by counsel, the trial court violated his rights to due process of law, and equal protection of the laws under the State of Alaska Constitution, when it failed to appoint counsel on the appellant's behalf.

The Alaska high court had previously determined, in a 1979 decision, that the due process guarantees afforded by the Alaska Constitution required the appointment of counsel to represent an indigent party to a child custody case in which his former spouse and adversary, also indigent, had secured counsel through a quasi-public agency. The court held that this result was necessary in order to prevent a wholly unbalanced and unfair proceeding in favor of the former spouse represented by counsel in litigation involving the right to parent, previously recognized as "fundamental" by both the Alaska and federal courts. In *Olson v. Olson*, the appellant seeks to extend the court's prior ruling to encompass the circumstances of an indigent party to a custody dispute in which the adversary is represented by private counsel.

The ABA brief cites a policy resolution adopted unanimously by its House of Delegates in 2006, which calls for recognition of a civil right to counsel on behalf of the poor "in those categories of adversarial proceedings [in which] basic human needs are at stake such as those

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Theodore A. Howard
Partner
202.719.7120
thoward@wiley.law

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involving shelter, sustenance, safety, health or child custody.” In accordance with that resolution, the ABA contends in its *amicus* brief that, under Alaska due process principles, there is no valid distinction between an unrepresented indigent party contesting child custody against a former spouse represented by a public-sector attorney and a similarly-situated indigent party whose adversary has the wherewithal to obtain private counsel. The indigent litigant should be entitled to appointed counsel in both situations. Likewise, from an equal protection standpoint, the ABA *amicus* brief asserts that “there is no compelling state interest that might justify denying an indigent parent [in a custody dispute] a right to counsel where the adversary parent is represented by a private attorney, while granting that right to another indigent parent whose adversary is represented by a public sector attorney.”

The ABA *amicus* brief was authored by Wiley Rein Pro Bono Partner Theodore A. Howard, who recently commenced a three-year term as a member of the ABA Standing Committee on Legal Aid and Indigent Defendants. It appears likely that Mr. Howard will participate in the oral argument of the case, in support of the appellant, on December 16, 2015.

For more information, please contact Mr. Howard at thoward@wiley.law.