For this assignment, you asked me to research the current state of the law regarding a civil right to counsel in North Carolina. In this memo, I have summarized my research on the constitutional, statutory, and case law provisions that emphasize the principles of fairness, justice, and equality and that describe considerations that North Carolina courts take into account in right-to-counsel cases. I have also included my research on the amount of unmet legal need in North Carolina and nationally. Furthermore, I have explored proposals by legal scholars and current judicial practices to increase access to justice for indigent individuals.

I am still in the process of exploring how legal need is met in practice. I am meeting with judges, attorneys, and advocates who deal with indigent individuals on a daily basis to understand the methods that are currently employed to provide these individuals with representation. Further research on alternative solutions to meet legal need is still required.

North Carolina Constitution

North Carolina does not guarantee a civil right to counsel. However, the state constitution does include several sections that express the same principles of fairness, justice, and equality underlying a civil right to counsel. Four provisions, in particular, are important to establish a civil right to counsel in North Carolina: Article I, §1 (the equality and rights of

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1 The constitution does provide a criminal right to counsel. N.C. CONST. art. I, §23.
Article I, §18 (courts shall be open); Article I, §19 (law of the land; equal protection of laws); and Article I, §35 (recurrence to fundamental principles).

Article 1, §1 is based on the Declaration of Independence and grants similar rights of equality, life, and liberty. The importance of this provision is that it provides examples of rights rather than an exhaustive list and that it expresses the importance of equal access to justice (for which it can be argued that the right to counsel is essential). There have been few cases litigated on this provision because the rights expressed here also appear elsewhere in the constitution, but my research has not revealed any cases that might address or provide information about a civil right to counsel within this section of the constitution.

Article 1, §18 is based on the Magna Carta and provides a right for every individual to access the courts for redresses to injuries. Furthermore, the provision seeks to ensure quick, fair, and equal justice for all individuals. This section appears to be a strong provision to establish a civil right to counsel because the heart of the provision is to provide equal access to justice by ensuring that the courts are accessible to civil litigants. In fact, Petrou v. Hale used this

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2 N.C. CONST. art. I, §1. We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

3 N.C. CONST. art. I, §18. All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

4 N.C. CONST. art. I, §19. No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

5 N.C. CONST. art. I, §35. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.


7 N.C. CONST. art. I, §1.


provision to describe how “sound public policy dictates that private litigants have free access to
courts as a means of settling private claims or disputes.” The N.C. Court of Appeals implied
that individuals should not be deterred from seeking redress to claims just because they are
unable to pay. However, the statement was made in dictum and has not received strong support
in later case law. In another example, Bolick v. American Barmag Corp., the Court of Appeals
determined that anyone who suffers an injury has a right to seek redress in the courts. Any law
that prevents an individual from seeking redress violates this provision. While Bolick focused on
how a statute of limitations prevented someone from seeking redress, the case makes clear that
the inability to seek redress violates the constitutional provision. I believe that a similar argument
can be made where the ability to seek redress means a meaningful opportunity to do so. If one is
unable to afford counsel in a case where counsel is necessary to navigate through the court, then
one lacks a meaningful right to redress.

Article 1, §19 is equivalent to the federal due process, supremacy, and equal protection
clauses. It has been used to ensure proper procedure in criminal and property cases. This
provision, along with its federal equivalent, has been used to litigate the majority of cases involving a civil-right-to-counsel dispute. Those cases typically argue that a civil right to counsel
is required for due process. Case law makes clear that this provision does not differentiate
between a right to counsel based on the type of legal action, but rather counsel is appointed if an
indigent defendant will likely face imprisonment or comparable confinement regardless of

16 All cases in North Carolina have been litigated on these provisions.
17 See Section on North Carolina Case Law for more examples.
whether the case can be labeled as criminal or civil.\textsuperscript{18} Furthermore, a right to counsel requires effective assistance\textsuperscript{19} and is not "simply an empty formality."\textsuperscript{20}

Article 1, §35 is a firm reminder of the importance of the constitution’s fundamental principles. Its purpose is to make sure that each generation “rethink for themselves the implications of the fundamental principles of self-government that animated the revolutionary generation.”\textsuperscript{21} There are not any cases on point for this provision, but it seems clear that the principles of equality, justice, and liberty are important to uphold.

**North Carolina General Statutes**

While North Carolina does not have a constitutional right to counsel in civil cases, the state does grant counsel in select civil actions by statute.\textsuperscript{22} N.C. Gen. Stat. §7A-451 provides a list of seventeen types of cases for which counsel is required for indigent individuals.\textsuperscript{23} The most relevant types of cases for our purposes include: 1) hearings for probation and parole revocation, 2) hearings for extradition, 3) sterilization petitions, 4) protective services, 5) abused, neglected, or dependent juveniles,\textsuperscript{24} 5) hearings to find a person incompetent, 6) parental rights terminations,\textsuperscript{25} and 7) abortion consent for unemancipated minors. The statute also requires counsel to be provided as soon as the proceedings begin or the indigent is taken into custody and must continue through “any critical stage of the action or proceedings.”\textsuperscript{26} Furthermore, appointment of counsel for indigents based on this statute must comply with the rules set by the

\textsuperscript{18} *Wake County ex rel. Carrington v. Townes*, 306 N.C. 333, 293 S.E. 2d 95 (1982).
\textsuperscript{22} Section 7A, Article 36, Subchapter 9 describes the representation of indigent individuals in general.
\textsuperscript{23} For a complete list of all cases for which §7A-451 grants counsel, see attached.
Office of Indigent Defense Services. While §7A-451 expands the right to counsel beyond criminal cases where an individual may face imprisonment, the expansion is limited to the specific types of cases listed. On the civil side, from my own observations, cases where an attorney is provided by statute also tend to be those cases where the indigent faces another difficulty (i.e. the individual is a minor, abused, or incompetent).

Outside of §7A-451, North Carolina does not statutorily grant counsel in civil cases. Instead North Carolina (along with the federal government) helps fund legal services for indigent individuals. N.C. Gen. Stat. §7A-474 (2009) provides the funding for select categories listed in the statute. The purpose of the Access to Civil Justice Act is to provide indigent individuals with access to counsel in civil cases. The state believes that funding established legal services programs is the most “efficient, effective, and economic manner” to provide civil legal services. Cases for which the funds can be used include: family violence, Social Security benefits for disabled individuals, benefits for human trafficking victims, farm foreclosures, individuals over the age of 60 in select matters, employment, individuals under the age of 21 (or their families if they are also affected), predatory lending, home foreclosure, and loan services abuses. Furthermore, funds may not be used for some

27 See Section on Office of Indigent Defense Services for more information.
29 For a complete list of all cases for which §7A-474 funds can be used, see attached.
30 The act only provides representation of “eligible clients,” which are defined as “a resident of North Carolina financially eligible for representation under the Legal Services Corporation Act, regulations, and interpretations adopted thereunder, or a person entitled to State benefits or services pursuant to N.C. Gen. Stat. §14-43.11(d). N.C. Gen. Stat. §7A-474.2 (2009).
33 Those matters include: wills and estates, housing, pension and retirement, Social Security and Medicare, health care, food, and transportation.
34 Those matters include: financial support, custody, child care, abuse or neglect, housing, food, and health care.
35 The General Assembly also provides funds for victims of domestic violence to obtain civil services, such as restraining orders. N.C. Gen. Stat. §7A-474 (2009).
categories of cases.\textsuperscript{36} N.C. Gen. Stat. §1-110 gives the court discretion to appoint counsel for indigent inmates who file certain types of claims.\textsuperscript{37} In addition, N.C. Gen. Stat. §15A-1421 grants indigent defendants the right to counsel during appeals\textsuperscript{38} (for those cases for which they had a right to counsel at the trial stage).

Statutory law demonstrates North Carolina’s interest in providing legal services to indigent individuals. For some cases, those listed in §7A-451, the right to counsel appears to be important enough for the state to automatically grant counsel. In other cases, such as those with §1-110 inmates, the state gives the trial court discretion to appoint counsel. However, the state’s preferred method for providing legal representation for indigent individuals is by funding legal services organizations. If a constitutional right to counsel is established, §15A-1421 would be helpful in determining where such a right would apply and in controlling the flood gates.

**North Carolina Case Law**

North Carolina has a select set of cases that examine a civil right to counsel. These cases are narrowly focused on family law and carve a limited right to counsel.\textsuperscript{39} With *Lassiter v. Department of Social Services*,\textsuperscript{40} the U.S. Supreme Court set up the framework for analysis regarding due process right-to-counsel cases.\textsuperscript{41} North Carolina courts adopted the *Lassiter* framework, and it is the method of analysis still used by the courts today.

\textsuperscript{36} Those cases include: certain types of abortion, criminal proceedings, agricultural employees or migrant farmworkers (cases related to employment and housing conditions), and terms of incarceration or commitment for prisoners and mentally handicapped individuals, respectively.


\textsuperscript{39} The issues addressed by North Carolina case law are covered by statute in some form already.

\textsuperscript{40} *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S.Ct. 2153, 68 L. Ed. 2d 640 (1981).

\textsuperscript{41} The Supreme Court determined that there is a guaranteed due process right to counsel (based on 14th Amendment of the U.S. Constitution) in cases where a person’s freedom may be at stake. However, for cases where a person’s liberty is not at stake, the Court determined that there is a presumption against appointing counsel, which may be overcome by the *Mathews* test. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976). The *Mathews* test requires looking at three factors: 1) parent’s interest, 2) state’s interest, and 3) risk of error. The Court
In *Wake County ex. rel. Carrington v. Townes*, an indigent father faced a paternity suit initiated by a county on behalf of its child support enforcement agency. Following the paternity suit, the indigent father may have faced contempt proceedings. The North Carolina Supreme Court determined that the father did not have an automatic, guaranteed right-to-counsel, but a “qualified right” (based on the due process clause of the 14th Amendment of the U.S. Constitution) that must be determined on a case-by-case basis at the trial court. The court also determined that the father would not risk losing his liberty at the end of the paternity suit but in subsequent proceedings, and therefore was not guaranteed counsel on that basis either.

However, the court agreed that there are paternity cases where due process would require appointed counsel. To determine which cases required appointed counsel, the trial court should consider 1) the *Mathews* factors, 2) the degree of complexity involved in the case, and 3) the types of problems a defendant may face without legal representation. These factors must then be balanced against the *Lassiter* presumption. Ultimately, the N.C. Supreme Court remanded the case because the trial court did not carry out the appropriate analysis before denying counsel.

determined that “if the parent’s interests were at their strongest, the state’s interests were at their weakest, and the risks of error were at their peak,” then the *Mathews* factors would overcome the presumption against counsel, and due process would require appointment of counsel. Furthermore, the court determined that this due process analysis must be “answered in the first instance by the trial court, subject, of course, to appellate review.” *Lassiter v. Department of Social Services*, 452 U.S. 18, 31-32, 101 S.Ct. 2153, 2161-62, 68 L. Ed. 2d 640, 652 (1981).

42 The North Carolina Court of Appeals believed that the paternity suit threatened the indigent father’s liberty and reversed the trial court’s decision (no right to counsel). The Court of Appeals also believed that the *Mathews* factors overcame the presumption against counsel and that counsel was required to ensure fundamental fairness. Furthermore, the court determined that when the state “seeks to deprive an individual of a protected liberty or property interest,” it must follow due process by giving the individual a “meaningful opportunity to be heard.” *Wake County, ex. rel. Carrington v. Townes*, 53 N.C. App. 649, 651, 281 S.E. 2d 765, 767 (1981). The case was remanded for a new trial with appointed counsel. The case was argued based on due process clause of the 14th amendment of the U.S. Constitution and the law of the land clause of Article 1, Section 19 of the N.C. Constitution. *Wake County, ex. rel. Carrington v. Townes*, 53 N.C. App. 649, 281 S.E. 2d 765 (1981).


At first, North Carolina courts decided that for civil contempt proceedings, due process required a *Lassiter* analysis on a case-by-case basis. 46 In addition, the courts considered the complexity of the legal issues and determined that counsel would be appointed “where assistance of counsel is necessary for an adequate presentation of the merits, or to otherwise insure fundamental fairness.” 47 Cases that passed the *Lassiter* analysis but did not have complex issues of law would not require appointed counsel. 48 Furthermore, in *Daugherty v. Daugherty*, the court determined that on appeal, even though counsel could have been appointed, the trial court did not abuse its discretion by not appointing counsel because lack of counsel was not legally harmful to the defendant. 49

Later, however, the North Carolina Supreme Court determined that civil contempt proceedings automatically require appointed counsel. In *McBride v. McBride*, 50 an indigent defendant represented himself in a contempt hearing for failure to pay child support. He did not ask for counsel, and the issue was not considered by the trial court. The trial court found him in contempt and placed him in custody. 51 The N.C. Supreme Court determined that due process (14th Amendment of U.S. Constitution) requires the appointment of counsel in civil contempt proceedings because the defendant has a strong liberty interest at stake, 52 which triggers due process protection. 53

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50 This case overruled *Jolly v. Wright*, which had previously determined that due process did not require an automatic right to counsel in civil contempt cases. In *Jolly* the court also determined that N.C. Gen. Stat. §7A-451 (a) (1) applied only to criminal cases. *Jolly v. Wright*, 300 N.C. 83, 265 S.E. 2d 135 (1980).
53 Indigent defendants faced with imprisonment in civil contempt proceedings for nonpayment of child support can also avoid prison if they show that they are unable to pay child support. *Hodges v. Hodges*, 64 N.C. App. 550, 307 S.E. 2d 664 (1983).
In King v. King, the North Carolina Court of Appeals determined that there is no right to appointed counsel for a modification of child support because there is no liberty interest at stake even though without modification the defendant may not be able to pay child support and face contempt. 54

In Loren v. Jackson, an indigent inmate filed a 42 U.S. §1983 claim for damages against the individual prison guard for violating his 1st, 4th, 5th, 6th, 8th, and 14th Amendment rights. He also argued that N.C. Gen. Stat. §1-110 granted him a right to counsel in his claim. The North Carolina Court of Appeals determined that counsel was not required in a §1983 claim by an indigent inmate because the state was not a party to the proceedings and therefore due process was not triggered. The Lassiter analysis seems to come into play only when due process is triggered. In Loren, the court determines the dispute is between private parties, and not the government, so there is no right to counsel.55 However, it is unclear what would have happened if the prison was named as a party. Furthermore, the court determined that §1-110 gave discretion to appoint counsel, and the trial court did not abuse its discretion by denying counsel.

In addition to the limited expansion of counsel appointment in civil cases, another obstacle that indigent individuals in North Carolina face is the appellate review standard. Because the state has left the appointment of counsel outside of the required constitutional and statutory guidelines to the discretion of trial courts on a case-by-case basis, arguing that the trial court should have appointed counsel in a particular case becomes more difficult. The standard of review regarding appointment of counsel decisions is the abuse-of-discretion standard, which is difficult to meet.56 On appeal, litigants have typically found success only where a trial court has

54 King v. King, 144 N.C. App. 391, 396, 547 S.E. 2d 846, 849 (2001). This case is unique though because the court also found that there were questions as to whether the defendant was indigent.
not considered the appointment of counsel. In addition, arguing for appointment of counsel on the grounds of due process excludes cases between private individuals because due process analysis is only triggered when the state is a party to the case or is taking away the right.\(^{57}\) North Carolina has made clear, however, that the right to counsel in a civil case also means the right to effective counsel.\(^{58}\)

The majority of North Carolina cases involving a right to counsel were a little over 20 years ago, and they all based their argument on a violation of 14\(^{th}\) Amendment due process rights or Article 1, §19 due process rights. The issue has not directly been addressed by the North Carolina Court of Appeals or North Carolina Supreme Court, so it is unclear if the current bench is more perceptive to change. A recent case, *Smith v. Beck*, examined the issue of access to justice based on the Article 1, §18 (Open Courts provision) of the North Carolina Constitution. An inmate argued that the removal of a typewriter, photocopier, and law library from a prison violated his right to access the courts. The Court of Appeals never reached the merits on this case and instead in an unpublished opinion determined that the case was not justiciable.\(^{59}\) In general, however, right to counsel in North Carolina is limited to cases where an individual may likely face imprisonment (i.e. criminal contempt violations), or where statute requires.\(^{60}\)

**Legal Need Nationally and in North Carolina**

Outside of the constitutional, statutory, and case law requirements, North Carolina has provided legal services for indigent individuals through monetary support of legal aid organizations and pro bono services. Organizations, like Legal Aid of North Carolina, receive


\(^{60}\) *Hammock v. Bencini*, 98 N.C. App. 58, 391 S.E. 2d 210 (1990) (The Court of Appeals reviewed where right to appointed counsel was currently granted).
funding from the General Assembly and from Congress through Legal Services Corporation. Furthermore, these organizations are limited by the funds that they receive and by law from taking certain types of cases.

**Legal Services Corporation**

Legal Services Corporation (LSC) is a private, nonprofit corporation established and funded by Congress and other private donors. It is the largest provider of civil legal aid for indigents in the nation.\(^{61}\) According the LSC’s fact sheet, over 75 percent of the clients funded by LSC programs are women, which brings an interesting gender factor into consideration regarding access to justice. Furthermore, LSC reports that about 33 percent their cases are family law, 25 percent are related to housing and foreclosure, 20 percent are related to consumer issues, and 11 percent are related to income, compensation, and benefits.\(^{62}\) They estimate that they turn away over 50 percent of eligible clients for their services and that nearly 51 million people (including 17.6 million children) are eligible for their services. Eligible clients include those who are at or below 125 percent of the federal poverty level. They take around 1 million cases per year and provide other services to more than 5 million people.\(^{63}\)

In 2005, LSC published “Documenting the Justice Gap in America,”\(^{64}\) which was a comprehensive report looking at the unmet legal need of the poor in America. LSC examined the number and categories of cases that they took or were unable to take, the ratio of attorneys to

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(LSC plans to release a new report in fall of 2009.)
clients, and why people do not seek legal aid.\textsuperscript{65} The report concluded that LSC was unable to provide legal aid to over 50 percent of its eligible clients. Furthermore, LSC discovered that the number of lawyers available versus the number of lawyers who handle indigent cases differed drastically. The ratio between private attorneys to U.S. population was 1 to 525, while the ratio of legal aid attorneys to U.S. poor is 1 to 6,861.\textsuperscript{66} The study also showed that only a small percentage (less than 20 percent) of problems faced by the poor are addressed by assistance of either a private, pro bono, or legal aid attorney. Over 80 percent of those who need legal aid did not seek it. Some of the reasons mentioned by the report were that indigents did not understand that a problem had a legal dimension and potential solution and that they had a low awareness of legal aid available for civil matters.\textsuperscript{67}

\textbf{North Carolina Equal Access to Justice Commission Report}

North Carolina’s Equal Access to Justice Commission\textsuperscript{68} released a report in 2008 about the current state of legal need in North Carolina. They determined that approximately 3.2 million people (35 percent of the population) live in households that are 200 percent below federal poverty line.\textsuperscript{69} Furthermore, in 2008, North Carolina received $23 million to fund civil legal services, which equals about $7.58 per person.\textsuperscript{70} Like the national values, in North Carolina

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around 20 percent of indigents were able to obtain legal services and about 74 percent of those clients were women.\textsuperscript{71} The ratio of lawyers to people is 1 to 442, but the ratio of legal aid attorneys to poor is 1 to 15,500, which is well below the national average.\textsuperscript{72} The report also proposed several solutions to solve the legal need crisis including: 1) establishing a civil right to counsel, 2) encouraging pro bono services, 3) improving the “pro se” process, 4) increasing financial support for public interest lawyers, and 5) increasing funding for limited English proficiency clients.\textsuperscript{73}

**Center for Law and Social Policy**

In 2009, the Center for Law and Social Policy put out a report\textsuperscript{74} on civil legal aid in the United States. CLASP noted that there were only 137 legal aid programs funded and monitored by LSC. In addition to those legal aid programs, there are about 900 pro bono programs in the country. The report also calculated that on average LSC provides $9.87 in legal funds per person,\textsuperscript{75} and that since 1980, when funding was $300,000, LSC has been unable to receive enough funding just to keep up with inflation. The 2009 appropriation of $390,000,000 is 48.2 percent less (after accounting for inflation) that it received in 1980. To match the equivalent amounts, LSC should have received $752,938,299 in 2009.\textsuperscript{76} Furthermore, both LSC (and North


\textsuperscript{74} Alan Houseman, Center for Law and Social Policy, *Civil Legal Aid in the United States – An Update for 2009* (July 2009) (page 2).

\textsuperscript{75} Alan Houseman, Center for Law and Social Policy, *Civil Legal Aid in the United States – An Update for 2009* (July 2009) (page 12).

\textsuperscript{76} Alan Houseman, Center for Law and Social Policy, *Civil Legal Aid in the United States – An Update for 2009* (July 2009) (page 13).
Carolina for that matter) has limited who legal aid can serve, which leaves out important groups of peoples whose rights may be affected.\footnote{LSC cannot assist undocumented aliens, aliens seeking asylum, refugee status, conditional entrant status, tourists, or foreign students, or certain types of students. Alan Houseman, Center for Law and Social Policy, \textit{Civil Legal Aid in the United States – An Update for 2009} (July 2009) (page 7-8).}

\textbf{Clearinghouse Review Articles}

Several articles published in the \textit{Clearinghouse Review} take a closer look at how to establish a civil right to counsel and face obstacles that are blocking the right. Russell Engler, professor of law at New England School of Law, argues that the first steps to establishing a right to counsel is to reverse the \textit{Lassiter} presumption. He believes that the best areas to target are family law, housing, and immigration cases because of the underlying rights at stake.\footnote{Russell Engler, \textit{Toward a Context-Based Civil Right to Counsel Through “Access to Justice” Initiatives} (2006) (page 7). \url{http://civilrighttocounsel.org/pdfs/engler.pdf}} Furthermore, he suggests targeting subsets of broad categories and to narrow the categories by seeking cases where one party has representation and the other does not. He added that litigation in this area must emphasize complex proceedings, strong indigent interest, and high error risks.\footnote{Russell Engler, \textit{Toward a Context-Based Civil Right to Counsel Through “Access to Justice” Initiatives} (2006) (page 7). \url{http://civilrighttocounsel.org/pdfs/engler.pdf}}

Steven Schwinn, assistant professor of law at the University of Maryland School of Law, examined how to avoid the \textit{Lassiter} presumption by focusing on another case, \textit{Douglas v. California}.\footnote{\textit{Douglas v. California}, 372 U.S. 353 (1963).} He argues that “Civil Douglas”\footnote{Steven, Schwinn, \textit{Sidestepping Lassiter on the Path to Civil Gideon: Civil Douglas} (2006) (page 3-6). \url{http://civilrighttocounsel.org/pdfs/schwinn.pdf}} is the path to establish a civil right to counsel on appeal, from which a civil right to counsel at trial would logically follow. With Civil Douglas, an indigent appellant would have a categorical right to counsel, rather than going through \textit{Lassiter}. \textit{Lassiter}, he says, has required litigants to jump through hurdles by either equating their legal issues with physical liberty or overcoming a presumption by showing strong litigant interest, low
government interest, high risk of error, complex legal concepts, tremendous opponent talent or skill, and great litigant handicaps.82

**Current Practices and Conclusion**

North Carolina case law (and federal case law as well) describe areas where a trial court has discretion to appoint counsel. I wanted to get a better feel for what types of cases trial courts appoint counsel and what criteria they use to make those decisions, so I decided to speak with legal services providers, judges, and attorneys. I discovered that outside of the constitutional or statutory requirements, courts rarely, if ever, appoint counsel for an indigent client where fundamental fairness would imply counsel should be provided. Durham County Superior Court Judge James T. Hill (Family Court) described how most the time when a case comes before the court and there is an indigent individual who should be represented by counsel, the court handles situation internally. For example, either the judge will request a legal aid attorney to take the case, a public defender will step into help, or another attorney who happens to be in the courtroom at the time will step in.

Judge Hill mentioned how there were several instances where he would have liked to (and actually would have appointed counsel) for an indigent litigant, but was not able to do so because the Office of Indigent Defense Services would not pay for it. However, he added that IDS is willing to pay for legal representation if an indigent can provide a case or point to an area in the law where there is a strong basis for the appointment of counsel.

Assistant public defender Jane C. Campbell often works on the ancillary aspects of related cases for which there is no right to counsel. Ms. Campbell handles the abuse, neglect, and

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82 Steven, Schwinn, *Sidestepping Lassiter on the Path to Civil Gideon: Civil Douglas (2006) (page 3-6).*
[http://civilrighttocounsel.org/pdfs/schwinn.pdf](http://civilrighttocounsel.org/pdfs/schwinn.pdf)
dependency cases in Durham County and often helps her clients with related problems, motions, etc. for which she is not required to represent her clients. She added that most people in her line of work do the same. Also, in her experience a few judges have appointed counsel (or rather had the counsel continue to work) to handle small but related matters, such as modifying a child support payment. Assistant Director of the Office of Indigent Defense Services, Danielle Carmon, described how in her experience she had never seen a judge appoint counsel to an indigent litigant outside of when there was a statutory requirement to do so. She did, however, mention that judges do try to help indigent litigants either navigate the system or find legal representation. It seems to me that either judges are hesitant to try the limits of discretion, unaware of their discretionary power in certain cases, or the discretionary power mentioned by the courts is not to be exercised.

Based on current state of the law, the time is appropriate in North Carolina to consider an expansion of a civil right to counsel. Legal need has increased, and funding for legal services has decreased. However, there are a few obstacles that a successful litigant would have to overcome. Without deprivation of liberty or a statutory grant, there is no automatic right to counsel. Furthermore, any right based entirely on due process must overcome the hurdle of being applicable only when the state is a party and must overcome the Lassiter presumption. A significant chunk of civil cases involve parties that are not government entities. For these cases, Lassiter does not apply.

In North Carolina, the Open Courts provision bears more examination. A strong argument can be made that the inability to obtain counsel effectively limits an indigent from accessing the courts and seeking redress of grievances. The Open Courts provision is also useful because it does not have the same government entity as a party obstacle.