

Dean Alderman was quoted in a Wall Street Journal article about a new California law that gives poor residents the right to an attorney in certain civil matters.

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'Civil Gideon' Trumpets Legal Discord

By TAMARA AUDI

A new California law that gives poor residents the right to an attorney in civil matters such as child custody and foreclosure is being hailed as a model that could transform the nation's legal landscape. But critics argue that the law will result in a wave of case backlogs and could further burden court budgets.

The law, signed this month by Gov. Arnold Schwarzenegger, assures the poor legal counsel in an array of civil cases. Advocates for the change say poor people often wind up in court facing life-changing consequences -- such as eviction -- but go through the process without adequate legal advice. That can lead to mistakes and delays.

"This is a really big step forward," said Richard Alderman, associate dean and director of the Center for Consumer Law at the University of Houston. "Everyone will be watching it."

The movement to mandate legal representation for the poor in civil cases, known as "civil Gideon" -- named after the Supreme Court case more than 40 years ago that required government-provided lawyers for criminal defendants -- has been gaining support in recent years. In 2006, the American Bar Association issued a statement backing civil Gideon.

But finding the money for it, even when the economy was booming, has been difficult.

California's law will be funded by a pre-approved \$10 increase in some court fees. For now, those fees -- expected to generate about \$11 million annually -- will go into the cash-strapped court system's general operating budget. California's budget crisis has forced its courts to close every third Wednesday of the month.

Starting in 2011, the fee will be funneled toward the new law, which calls for legal-aid groups to propose methods of delivering services to the indigent. Those living at 200% above the federal poverty guidelines or less will be eligible for free legal services. For a family of four, that means an annual income of \$44,100.

Most states mandate lawyers for the poor in civil cases that could result in them being committed to a mental institution. A few states provide lawyers in some types of child-custody cases. A city-council resolution pending in New York City would provide free legal representation to the elderly in eviction cases.

But California is the first state to enact such a sweeping mandate.

It is common practice for publicly funded legal-aid groups to represent the poor in civil cases, though it generally isn't a requirement. But legal-aid lawyers around the U.S. say they are overwhelmed with cases, especially as foreclosures and evictions rise.

Julia Wilson, executive director of the Legal Aid Association of California, an association of state nonprofits that provide legal aid to the poor, said legal-aid groups in the state are forced to turn away as many as two thirds of those who come looking for free help because of a lack of resources.

Most legal-aid groups get funding from a patchwork of federal and state programs. California's Judicial Council, the policy-making body of the state's courts, says around 4 million people represent themselves in California civil matters. Many who need the help "have a valid defense, they just have no idea how to present it," said Debra Gardner, coordinator for the National Coalition for a Civil Right to Counsel.

Ted Frank, a Washington lawyer who has written about civil Gideon for the American Enterprise Institute, a conservative think tank, said he believes the new law will result in more waste in the court system.

Parents fighting over child custody, for example, will be less inclined to work out an agreement on their own and more apt to fight in court because of access to free legal services, he said.

Mr. Frank said he believes landlords will have a harder and more expensive time carrying out legitimate evictions, which may cause rents to rise.

"What is clear is that you will never have a simple eviction because every single one of them will be litigated," Mr. Frank said. "The rest of the poor will be worse off because that."