## Preface

Law Addressing Authorization or Requirement to Appoint Counsel in Specific Types of Civil Proceedings

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Preface

Important Information to Read Before Using This Directory

The ABA Directory of Law Governing Appointment of Counsel in State Civil Proceedings (Directory) is a compilation of existing statutory provisions, case law, and court rules requiring or permitting judges to appoint counsel for civil litigants. The Directory consists of 51 detailed research reports—one for each state plus D.C.—that present information organized by types of civil proceedings. Prior to using the Directory, please read the Introduction, at the Directory’s home page, for the reasons behind the development of the Directory, the various sources of authority from which judicial powers to appoint counsel in civil proceedings may derive, and the structure used to organize information within each of the research reports.

Terms of Use/Disclaimers

This Directory should not be construed as providing legal advice and the ABA makes no warranties concerning the information contained therein, which has been updated to reflect the law through mid-2017. The Directory does not seek to address all conceivable subsidiary issues in each jurisdiction, but some such issues were researched and addressed, including: notification of right to counsel; standards for waiver of right to counsel; standard of review on appeal for improper denial of counsel at trial; whether “counsel” for a child means a client-directed attorney or a “best interests” attorney/attorney ad litem; and federal court decisions finding a right to counsel. Similarly, the research did not exhaustively identify all law regarding the issue of compensation of appointed counsel in each jurisdiction, though discussion of such law does appear within some of the reports.

The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched. Users should conduct independent, jurisdiction-specific research both to confirm whether a case is published and to familiarize themselves with all rules relating to the citation and use of unpublished or unreported cases.

Acknowledgments

This Directory was a multi-year project of the ABA’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID). We are indebted to our partner in this project, the National Coalition for a Civil Right to Counsel (NCCRC), for sharing the body of research that was adapted to form the Directory’s reports. The Acknowledgments, at the Directory’s home page, details additional specific contributions of the many individuals involved in this project.
Law Addressing Authorization or Requirement to Appoint Counsel in Specific Types of Civil Proceedings

1. SHELTER

State Statutes and Court Decisions Interpreting Statutes

Iowa provides judges with the discretionary power to appoint counsel in housing discrimination cases. See Iowa Code § 216.17A(5) (“On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory practice is alleged, the district court may appoint an attorney for the person.”).

Federal Statutes and Court Decisions Interpreting Statutes

The federal Fair Housing Act, contained within Title VIII of the Civil Rights Act of 1968, provides that “[a]n aggrieved person may commence a civil action in an appropriate United States district court or State court[.]” 42 U.S.C. § 3613(a)(1)(A). Further, “[u]pon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may . . . appoint an attorney for such person[.]” 42 U.S.C. § 3613(b)(1).

2. SUSTENANCE

Federal Statutes and Court Decisions Interpreting Statutes

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination. While nearly all Title VII claims are brought in federal court, the U.S. Supreme Court has specified that state courts have concurrent jurisdiction with federal courts for Title VII claims. Yellow Freight Sys., Inc. v. Donnelly, 494 U.S. 820, 826 (1990).

Title VII provides that “[u]pon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant[.]” 42 U.S.C. § 2000e-5(f)(1). In Poindexter v. FBI, the D.C. Circuit observed:

Title VII’s provision for attorney appointment was not included simply as an afterthought; it is an important part of Title VII’s remedial scheme, and therefore courts have an obligation to consider requests for appointment with care. In acting on such requests, courts must remain mindful that appointment of an attorney may be essential for a plaintiff to fulfill “the role of ‘a private attorney general,’ vindicating a policy ‘of the highest priority.’ . . . Once the plaintiff has triggered the attorney appointment
provision, “courts must give serious consideration” to the plaintiff’s request. . . “such discretionary choices are not left to a court’s ‘inclination, but to its judgment; and its judgment is to be guided by sound legal principles.” . . . Furthermore, in exercising this discretion, the court should clearly indicate its disposition of the request for appointment and its basis for that disposition.


3. SAFETY AND/OR HEALTH

A. Domestic Violence Protection Order Proceedings

No law could be located regarding the appointment of counsel for indigent litigants in domestic violence protection order proceedings.

B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings

State Statutes and Court Decisions Interpreting Statutes

In guardianship establishment proceedings, “if the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation,” and “[u]pon filing of the petition, the court shall appoint an attorney to represent the proposed ward.” Iowa Code § 633.561(1)(a).1 Additionally, if the ward is a “minor or an adult under a standby petition” and “the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward.” § 633.561(1)(b). The statute does not explain how the court is supposed to determine whether the minor ward is “entitled to representation,” although it says in a later provision that “[i]f the court determines that it would be in the ward’s best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward’s estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.” § 633.561(6). A nearly identical statutory scheme provides for appointment of counsel in conservatorship proceedings. See § 633.575(1). Iowa also provides a right to counsel in

1 In Estate of Leonard, ex rel., Palmer v. Swift, the court describes at length the role of an attorney appointed in conservatorship establishment proceedings. See 656 N.W.2d 132, 141-42 (Iowa 2003). It is not clear whether an attorney is appointed for subsequent proceedings (like guardianship review/termination), as the relevant statute is silent on this subject. See Iowa Code § 633.675. But see Iowa Legal Aid, How to Set Up a Guardianship or Conservatorship 3 (2013), available at http://www.iowalegalaid.org/resource/how-to-set-up-a-guardianship-or-conservatorship (“After a guardianship or conservatorship is created, the court may again appoint an attorney to represent the ward in any other proceedings in the case. The court does this if it is in the ward’s best interest to have legal representation.”).
dependent adult proceedings involving elder abuse allegations. See § 235B.3(9)(c) (“In every case involving abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings.”).

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Iowa provides a civil right to counsel at public expense for cases where a mentally ill individual is involuntarily hospitalized. See Iowa Code § 229.8(1) (before a court determines whether a mentally ill person should be involuntarily hospitalized, “the court shall if necessary allow the respondent to select, or shall assign to the respondent, an attorney,” and “[i]f the respondent is financially unable to pay an attorney, the attorney shall be compensated by the county”); Iowa Ct. R. 12.3(3)(a) (respondent “shall” be informed of “immediate right to counsel, at county expense if necessary”). Additionally, where a parent or guardian seeks to voluntarily hospitalize a mentally ill minor, “the juvenile court shall determine whether the minor has an attorney to represent the minor in the hospitalization proceeding, and if not, the court shall assign to the minor an attorney” and compensate the attorney if the minor is indigent. Iowa Code § 229.2(1)(b)(3).

Indigent respondents to a petition for involuntary commitment or involuntary treatment for chronic substance abuse are entitled to counsel at public expense. See Iowa Code § 125.78(1) (“the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent,” and “[i]f the respondent is financially unable to pay an attorney, the county shall compensate the attorney at an hourly rate”); Iowa Ct. R. 13.3(3)(a) (respondent to involuntary commitment petition for chronic substance abuse shall be informed of “immediate right to counsel, at public expense if necessary”).

D. Sex Offender Proceedings

State Statutes and Court Decisions Interpreting Statutes

Individuals charged with a sexually violent offense but found incompetent to stand criminal trial, or against whom a petition is filed seeking their civil commitment post-incarceration, are entitled to the assistance of counsel. See Iowa Code §§ 229A.6(1) 2

However, as a statutory matter, the parents of a minor being subjected to involuntary commitment are not entitled to counsel, even if the parents did not initiate the petition for commitment. See Matter of R.L.D., 456 N.W.2d 919, 920-21 (Iowa 1990) (declining to rule on constitutional issues not raised in trial court).

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2 However, as a statutory matter, the parents of a minor being subjected to involuntary commitment are not entitled to counsel, even if the parents did not initiate the petition for commitment. See Matter of R.L.D., 456 N.W.2d 919, 920-21 (Iowa 1990) (declining to rule on constitutional issues not raised in trial court).
(respondent to petition “shall be entitled to the assistance of counsel . . . at state expense”), 229A.7(1) (person charged with sexually violent offense shall receive “all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent”); Iowa Const. art. I, § 10 (“In all criminal prosecutions, . . . the accused shall . . . have the assistance of counsel.”).

E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings

No law could be located regarding the appointment of counsel for indigent litigants in civil proceedings involving involuntary quarantine, inoculation, or sterilization.

4. CHILD CUSTODY

A. Appointment of Counsel for Parent—State Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

When an allegation of child abuse is made and a child in need of assistance petition is initiated, “the parent, guardian, or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings,” and “[i]f that person desires but is financially unable to employ counsel, the court shall appoint counsel.” Iowa Code § 232.89(1). The same right applies to family in need of state assistance proceedings where there has been a breakdown in the relationship between a child and parent: “The court shall appoint counsel for the parent, guardian or custodian if that person desires but is financially unable to employ counsel.” § 232.126. However, the availability of court-appointed counsel becomes discretionary for indigent parents seeking to voluntarily place their children into foster care. In that circumstance, if the “child’s parent, guardian, or custodian desires counsel but cannot pay the counsel’s expenses, the court may appoint counsel.” § 232.179 (emphasis added).

The Iowa legislature has also provided a civil right to counsel at public expense for indigent parents facing involuntary termination of their parental rights by the state. See Iowa

3 In Interest of H.H., 871 N.W.2d 705 (Iowa App. 2015), the court held it was not an abuse of discretion for the trial court to fail to appoint counsel at the adjudication hearing pursuant to the statute where “[t]he father failed to file a request for court-appointed counsel until approximately one hour before the start of the hearing. The father was able to cross-examine the witnesses. Further, the adjudicatory hearing had been scheduled at ninety days from the date of the pre-adjudication hearing for good cause shown instead of the sixty days required by statute. . . . The father was represented by private counsel prior to the adjudicatory hearing and was represented by court-appointed counsel at the dispositional hearing. . . . we find it was in the child’s best interests to proceed with the adjudication and the father did not suffer an injustice[].”
Code § 232.113(1) ("Upon the filing of a petition the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If the parent desires but is financially unable to employ counsel, the court shall appoint counsel."); In re E.J.C., 731 N.W.2d 402, 404 (Iowa Ct. App. 2007) (statutory right to counsel cannot be denied to indigent parent facing involuntary termination proceedings, even where request for counsel is made on eve of hearing). However, intervening grandparents do not have a statutory right to counsel in such proceedings. See State Pub. Def. v. Iowa Dist. Court for Linn Cty., 728 N.W.2d 817, 820 (Iowa 2007).

In In Interest of Chambers, an indigent mother whose parental rights had been involuntarily terminated sought to appeal the decree. 152 N.W.2d 818, 819 (Iowa 1967). State statutes afforded indigent parents a right to counsel at public expense in the termination proceedings and a right to appeal, but were silent as to the right to counsel at public expense for the appeal. id. at 820. The court stated that the fact that the action was not criminal was no bar to recognizing a constitutional right to counsel, as such “rights should not depend on the type of action involved.” id. (citing In re Gault, 387 U.S. 1, 49-50 (1967)). The court’s determination, though, was primarily one of statutory construction, as it noted that “the legislature intended to afford all persons coming before the juvenile court a full and complete review on appeal” and that “[i]t must be assumed that this right of appeal . . . was not intended to be limited to those cases in which the . . . parents were financially able to afford such appeal.” id. at 821. The court also noted that the statute at issue did not provide that the appointment of counsel would terminate when the juvenile court hearing was concluded, and as such held that the appointment “should continue through all stages of the proceedings including an appeal as authorized by statute.” id. The court did not expressly invoke the equal protection clause of either the state or federal constitution, relying instead primarily on analysis of the statutory language conferring a right of appeal and of the presumed legislative intent underlying that statute. See id. at 820-21. However, the court did state that “[o]nce the right to appeal has been granted . . . it must apply equally to all,” and cited to the case of Waldon v. Dist. Court of Lee Cty. id. at 820 (citing 130 N.W.2d 728, 731 (Iowa 1964) (conducting federal equal protection analysis)).

Federal Statutes and Court Decisions Interpreting Statutes

The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court, provides:

While the ICWA does not appear to have a definitive statement about jurisdiction, 25 U.S.C. § 1912(b) contemplates that state law may not provide for appointment of counsel. Additionally, subsection (b) states: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested,
In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. . . . Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to [25 U.S.C. §] 13.


B. Appointment of Counsel for Parent—Privately-Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

At one point, Iowa statutory law required appointment of counsel in state-initiated termination of parental rights cases, but was silent as to such a right in privately-initiated termination proceedings such as adoptions. Then, in 2004, the Iowa Supreme Court held that this statutory framework violated the Iowa Equal Protection Clause, and, to remedy this violation, ordered that counsel must be provided at state expense in all involuntary termination of parental rights proceedings, regardless of whether a private individual or the state initiates the petition. In re S.A.J.B., 679 N.W.2d 645, 650-51 (Iowa 2004). In response to S.A.J.B., the legislature amended Iowa Code § 600A.6A(2) to permit appointment of counsel on a case-by-case basis in adoption cases.5 However, in Crowell v. State Pub. Def., the court held that this legislative change did not affect its constitutional ruling in S.A.J.B. that parents are also entitled to appointed counsel in private termination proceedings. 845 N.W.2d 676, 690-91 (Iowa 2014). The court rejected the state’s call to overrule S.A.J.B. or find that the statute satisfied constitutional requirements, reasoning that S.A.J.B. had:

applied categorical equal protection principles in holding that a distinction between chapter 232 proceedings and chapter 600A proceedings for purposes of providing counsel to indigents could not be sustained. While due process principles under the United States Constitution may involve highly fact-specific analyses and balancing tests,
...S.A.J.B. applied categorical equal protection principles and did not employ the case-by-case approach embraced by the Lassiter majority.

Id. at 690-91 (citing Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18, 30-31 (1981)). One month after Crowell was decided, the Legislature amended § 600A.6A(2) again such that now it states: “If the parent against whom the petition is filed desires but is financially unable to employ counsel, the court shall appoint counsel for the person if the person requests appointment of counsel and the court determines that the person is indigent.”

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In S.A.J.B., the Iowa Supreme Court considered a constitutional challenge to the failure to provide counsel at state expense in all involuntary termination of parental rights proceedings. 679 N.W.2d at 646-47. Under chapter 232 of the Iowa Code, indigent parents were guaranteed counsel at public expense in state-initiated termination proceedings. Id. at 647 (citing Iowa Code § 232.113(1)). Chapter 600A of the Iowa Code provided an alternative procedure whereby a “parent or prospective parent” could initiate termination proceedings, and at the time did not contain any guarantee of a right to counsel for an indigent parent whose rights were in jeopardy. Id. at 648 (citing Iowa Code § 600A.5(1)). The court held that the inequitable provision of a right to counsel in the two chapters violated the Iowa Constitution’s equal protection clause. Id. at 650. The court noted that the issue before it “remain[ed] open under the federal constitution,” and as such looked to the state equal protection clause first. Id. at 648. The court described its analytic framework as “independently apply[ing] federal principles,” and expressly noted that “independent application might result in a dissimilar outcome from that reached by the [United States] Supreme Court in considering the federal constitutional claim.” Id. (quotations omitted).

The S.A.J.B. court stated that under Iowa law “parental rights are fundamental rights,” and as such “the infringement on parental liberty interests implicated by the statute” had to be reviewed via strict scrutiny. Id. (citations and quotations omitted). Under this standard of review, the court found the legislative framework to be “unconstitutionally underinclusive” because it provided for counsel to some indigent parents facing involuntary termination proceedings but not to others. Id. at 651. The court held that the proffered state interest in “conserving fiscal resources” was insufficient because it would suggest “no reason to provide counsel at public expense in any termination case,” id. at 650 (emphasis in original), which would contravene the U.S. Supreme Court’s pronouncement in Lassiter that the “automatic denial of counsel in all termination proceedings would deny due process.” Id. (citing Lassiter, 487 U.S. at 31-32). The court also rejected a purported distinction between state-initiated chapter 232 termination proceedings and private party-initiated chapter 600A termination proceedings based on the “vast resources of the state” with which the party must contend in
the former. S.A.J.B., 679 N.W.2d at 650 (quotation omitted). In so holding, the court found state action by emphasizing that “the state is an integral part of the process in a 600A termination” as well because, even though the state does not initiate this type of termination proceeding, it is ultimately asked to use its unique power to issue an order terminating the resisting individual’s parental rights. Id.

The S.A.J.B. court did, however, suggest that its holding was limited to extending a right to counsel to indigent parents facing 600A termination proceedings that were involuntary, pointing out an earlier holding that “it was appropriate for the legislature to distinguish between voluntary and involuntary terminations and to provide for counsel at public expense only where the proceedings are involuntary.” Id. at 649 (quoting In Interest of J.L.L., 414 N.W.2d 133, 134 (Iowa 1987)).

C. Appointment of Counsel for Child—State-Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

With regard to the child’s right to counsel in abuse/neglect proceedings, Iowa Code § 232.89(2) specifies that the court must appoint both counsel and a guardian ad litem (GAL), but subsection (4) adds that “[t]he same person may serve both as the child’s counsel and as guardian ad litem.” In In re A.T., the court weighed the propriety of appointing the same person to serve as both GAL and attorney and commented: “It would appear that the older, more intelligent, and mature the child is, the more impact the child’s wishes should have, and a child of sufficient maturity should be entitled to have the attorney advocate for the result the child desires.” 744 N.W.2d 657, 663 (Iowa Ct. App. 2007) (citation omitted). The court found that the 12-year-old child in the case was very mature and had opposed the termination of parental rights, and that the trial court abused its discretion by failing to appoint a separate attorney, given that the GAL advocated in favor of termination. Id. at 660, 665. Conversely, in In re D.F., the court found that the child, who had turned 11 during the termination proceeding, was not sufficiently mature and had not unambiguously communicated a desire to remain with his parents, thus the juvenile court did not abuse its discretion in declining to appoint separate counsel. 2015 WL 7075822, at *6 (Iowa Ct. App. Nov. 12, 2015) (unpublished).

Minors are appointed counsel at public expense during termination proceedings. See Iowa Code § 232.113(2) (“Upon the filing of a petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings.”).

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6 Subsequent to the S.A.J.B. decision, the Iowa legislature enacted a statutory right to counsel in private-party initiated involuntary termination proceedings. See 2005 Iowa Adv. Legis. Serv. 107 (codified at Iowa Code § 600A.6A).
Federal Statutes and Court Decisions Interpreting Statutes

The ICWA provides the following with regard to any removal, placement, or termination of parental rights proceeding:

The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to [25 U.S.C. §] 13.


The federal Child Abuse Prevention and Treatment Act provides:

A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including . . . an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes . . . provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings.


D. Appointment of Counsel for Child—Privately-Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

Iowa Code § 600A.6(2), which governs adoptions, states:

a. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or if the interests of the guardian conflict with the interests of the child.
Such guardian ad litem shall be a necessary party under subsection 1 of this section.
b. A person who is appointed as a guardian ad litem for a minor child shall not also be the attorney for any party other than the minor child in any proceeding involving the minor child. The guardian ad litem may make an independent investigation of the interest of the child and may cause witnesses to appear before the court to provide testimony relevant to the best interest of the minor child.

Under § 600A.2(9), a “guardian ad litem” as defined within chapter 600A is required to be a practicing attorney appointed to represent a minor child in a legal action.

Children may be provided counsel in guardianship proceedings under chapter 633. Section 633.561(1)(b) states:

If the proposed ward is either a minor or an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward.

There is no language explaining how the court must make its determination. However, subsection (6) of the statute states: “If the court determines that it would be in the ward’s best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward[.]” § 633.561(6).

The Iowa legislature gives courts some limited discretion to appoint counsel at public expense for indigent children during divorce proceedings. During dissolution of marriage or domestic relations proceedings, the court may appoint a GAL to represent the child’s best interests and such GAL must be a practicing attorney. See § 598.12(1). Additionally, the court may appoint a separate attorney for the child to represent the child’s legal interests. § 598.12A(1). Both statutes specify that the same person cannot fulfill both of these roles. See §§ 598.12(2), 598.12A(2). Also, with regard to indigent Native American children, “[t]he child shall [] have the right to court-appointed counsel in any removal, placement, termination of parental rights, or other permanency proceedings.” § 232B.5(16). This provision goes beyond that of the ICWA, which makes appointment discretionary. See 25 U.S.C. § 1912(b) (“The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child.”).
5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In McNabb v. Osmundson, for example, the court held that the state was required to appoint counsel at public expense for an indigent defendant in a nonsupport civil contempt proceeding. 315 N.W.2d 9, 11, 14 (Iowa 1982). The court analyzed federal due process requirements only,7 “mak[ing] no attempt to arrive at [its] own independent interpretation of the United States Constitution, but follow[ing] the federal decisions as [the court] under[stood] them.” Id. at 13. Because the defendant faced the prospect of incarceration, the court reasoned that “[t]he potential sentence justifies our position that the nebulous distinctions between civil and criminal contempts are of no consequence in this jurisdiction.” Id. at 11 (citation omitted). The court distinguished Lassiter on the grounds that it had “addressed the question whether counsel must be provided in actions for termination of parental rights, a situation not involving deprivation of physical liberty.” Id. at 14. The court also held that the defendant was entitled to counsel on appeal, noting that “[a]n indigent’s right to counsel at the district court would be of limited value if he or she were not permitted counsel to review and correct district court errors.” Id. at 15. Thus, even without legislative authorization to provide counsel for the appeal at state expense, “[t]he constitution may mandate the appointment of counsel with the concomitant obligation on the part of the public fisc to pay fees in the first instance when, as here, the state is the initiating party.” Id. at 16. See also Kula v. Iowa Dist. Court for Linn Cty., 462 N.W.2d 721, 722 (Iowa Ct. App. 1990) (trial court determined after hearing that defendant not entitled to appointed counsel because not indigent; appellate court holds that “[t]he post-hearing finding of non-indigency does not satisfy the requirements of McNabb”).

In Spitz v. Iowa Dist. Court for Mitchell Cty., the court held that a parent had no right to counsel in a contempt proceeding regarding child visitation, finding that the trial court had provided all of the “procedural safeguards” outlined in Turner v. Rogers, 564 U.S. 431 (2011), namely notice of the central issue in the case, an opportunity to present evidence, and specific findings on the record. 881 N.W.2d 456, 466-67 (Iowa 2016). However, like Turner, the plaintiff in Spitz was the other parent, not the government, id. at 459, and like McNabb, the Spitz court limited its ruling to the requirements of the Fourteenth Amendment; it did not evaluate the

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7 The court noted: “Nor does this petition raise the question of this indigent’s rights under the unique language of the Iowa Constitution, article I, section 10, ‘In all criminal prosecutions, and in cases involving the ... liberty of an individual the accused shall have a right ... to have the assistance of counsel[.]’” Id. at 13.
state constitution’s due process conclusion. Id. at 464 n.4. Thus, it is unclear as to Turner’s effect on McNabb as to government-initiated contempt proceedings.

B. Paternity Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In State ex rel Hamilton v. Snodgrass, the Iowa Supreme Court held that an indigent paternity defendant had no right to the appointment of counsel at public expense on constitutional due process or equal protection grounds. 325 N.W.2d 740, 744 (Iowa 1982). Although the defendant raised both state and federal constitutional claims, the court spent most of its time analyzing the defendant’s federal right to counsel under Lassiter. See id. at 742-44. The court noted emphatically that “[t]he trial court was wrong in rejecting [defendant’s] application on the basis of a distinction between criminal and civil proceedings,” as “[s]ome proceedings which are called civil require appointment of counsel” where “a person’s stake in the proceeding and the practical effect of the outcome” so dictate. Id. at 742 (citing Lassiter, 452 U.S. at 24).8

However, the Snodgrass court then applied the Lassiter analysis to the federal constitution and held that a paternity defendant’s interest in the proceedings is less than that of a parent in a termination proceeding, noting that although “one ramification of a finding of paternity would be possible incarceration in a later contempt proceeding for failure to make support payments,” the defendant’s “interest here does not differ significantly from that of an indigent defendant in a myriad of other civil proceedings.” Id. The court also cautioned that “[a] requirement of appointed counsel in paternity proceedings would inevitably lead to a requirement of appointed counsel for indigent defendants in other actions which might one day form the basis of a contempt proceeding,” implicitly arguing that such a broad application of a right to counsel would be unjustified or untenable. Id. at 743. The court noted that the state’s interest against providing counsel in all paternity proceedings and in all termination proceedings was roughly the same (i.e., “[t]he cost to the State would be vast”), but that in

8 Note, however, that Iowa courts still occasionally rely on the formulaic distinction between “civil” and “criminal” proceedings. In State v. Alspach, a defendant convicted of kidnapping requested counsel at a subsequent hearing to determine the amount of victim restitution he owed. 554 N.W.2d 882, 882-83 (Iowa 1996). The trial court denied the request for counsel, finding that “the amount of restitution was a civil matter” and as such no appointment of counsel was constitutionally required. Id. at 883. The court ultimately found that the restitution hearing was a critical stage of the criminal proceeding, and therefore found a right to appointed counsel. Id. at 883-84. The court did note, however, that while it was requiring the appointment of counsel in this case, it did “not mean to suggest . . . that a defendant is entitled under all circumstances to court-appointed counsel when challenging restitution orders,” and that a later action that sought to modify or extend the restitution payment schedule would be “civil in nature” and “[t]he offender would ordinarily have no right to appointed counsel under such circumstances.” Id.
The court then devoted a few lines to its state constitutional analysis, holding simply that “[n]o different result [was] mandated by [the Iowa] state constitution,” as similar provisions of the Iowa and federal constitutions are “usually deemed to be identical in scope, import, and purpose.” *Id.* at 744 (quoting *State v. Davis*, 304 N.W.2d 432, 434 (Iowa 1981)).

The Snodgrass court also rejected the defendant’s equal protection claim. The court noted that the Iowa equal protection clause “places substantially the same limitations on state legislation as is placed by the equal protection clause of the Fourteenth Amendment to the federal constitution.” *Id.* (citing *City of Waterloo v. Selden*, 251 N.W.2d 506, 509 (Iowa 1977)). The court found that the equal protection challenge to the provision of counsel at public expense to the woman claiming paternity but not to the defendant denying paternity was “not well taken.” *Id.* The court reasoned that the woman’s interest “closely resembles” the state interest in identifying the proper payee of child support, and that “exercise of a State’s right to promote its own interests through litigation does not carry with it an obligation to support the litigation efforts of those opposing the State’s interests.” *Id.*

**C. Proceedings for Judicial Bypass of Parental Consent for a Minor to Obtain an Abortion**

*State Statutes and Court Decisions Interpreting Statutes*

Minor females have a right to court-appointed counsel when seeking judicial waiver of parental notification before an abortion procedure. See Iowa Code § 135L.3(3)(b) (during judicial waiver proceedings, “[t]he court shall advise the pregnant minor of the pregnant minor’s right to court-appointed legal counsel, and shall, upon the pregnant minor’s request, provide the pregnant minor with court-appointed legal counsel, at no cost to the pregnant minor.”); Iowa Ct. R. 8.24 (“The clerk shall inform the [pregnant] minor that she has a right to a court-appointed attorney without cost to her” and “[t]he court shall appoint an attorney for the minor upon her request” to serve through appeal).
D. Probate Proceedings

State Statutes and Court Decisions Interpreting Statutes

When an estate is being probated, “the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented,” and the attorney’s appointment “shall be in lieu of appointment of a guardian ad litem.” Iowa Code § 633.118. It is unclear from the probate code or case law how broadly the court can exercise its discretion (i.e., whether the individual “otherwise unrepresented” must make a showing of indigence, incompetence, or some other attribute entitling him to court-appointed counsel).

E. Proceedings Involving Claims by and Against Prisoners

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Waldon v. District Court, 130 N.W.2d 728 (Iowa 1964), the state supreme court rejected an indigent prisoner’s federal due process and equal protection challenges with regard to the lower court’s failure to appoint counsel to help him appeal denial of his writ of habeas corpus; the prisoner did not raise the state constitution at all. The court found “[n]o authority” holding that “a state, to give equal protection of the laws, [must] furnish counsel to indigents to prosecute post conviction remedies.” Id. at 729. The court was not persuaded by the prisoner’s argument that his right to appeal was effectively compromised because he could not attend the hearing on his appeal due to being incarcerated. Id. at 731. The court asserted that “[p]laintiff’s right to appeal granted by Iowa law has not been denied him” and that “[a]ll that is denied him is the right to orally argue his case here,” which did not constitute a due process violation. Id. As the right to present an oral argument was “denied all prisoners,” the court held that “[a]ll those similarly situated are on the same footing” and thus that there was no equal protection violation. Id.

Similarly, in Larson v. Bennett, the court held that an indigent prisoner was not entitled as a matter of right to appointment of counsel to assist him with the initial filing of a habeas corpus petition. 160 N.W.2d 303, 304-06 (Iowa 1968). The court noted that neither the statute authorizing writs of habeas corpus to challenge convictions nor the public defender law provided for appointment of counsel in habeas cases. Id. at 305. Additionally, the court declared that “habeas corpus is a civil action and there is no provision in [Iowa] law for appointment of counsel in a civil action.” Id. (citing Waldon, 130 N.W.2d at 731). The court noted that it was “well settled there is no constitutional right to representation in habeas proceedings in the federal courts” and, without conducting any separate state constitutional analysis, stated that “[a]s the law now stands the appellant had no absolute right to the
appointment of counsel in this habeas corpus proceeding.”’ Id. (quoting U.S. ex rel. Manning v. Brierley, 392 F.2d 197, 198 (3rd Cir. 1968) (per curiam)). The court did note that the trial court had “‘a discretionary right to make an appointment of counsel’” if it “[found] it useful to appoint counsel to represent the petitioner,” but left the exercise of that discretion to the trial court. Id. (quoting Manning, 392 F.2d at 198).9 One example of the exercise of this discretion is Bolts v. Bennett, 159 N.W.2d 425, 426, 429 (Iowa 1968) (citations omitted) (finding trial court may abuse its discretion in not appointing counsel in habeas case where “complex factual data must be developed in order to support the prisoner’s position,” as in such “peculiar” factual situations, “it may be reversible error for the district court to fail to appoint counsel to assist the applicant or to assure in other ways that the prisoner receives a fair and meaningful hearing” as required by federal constitution; court relies on federal cases).

In Maghee v. Reade, a prisoner who was adjudged a vexatious litigant was denied counsel at state expense in a penalty proceeding pursuant to Iowa Code § 610A.3 where a loss of 2,000 days’ worth of earned time credits was imposed, effectively extending the length of his confinement significantly. 712 N.W.2d 687, 690 (Iowa 2006). The Maghee court did not reference Lassiter, but nonetheless applied a similar approach to assessing the federal due process required given the interest at stake (the litigant did not raise the state constitution). The prisoner argued that he had a federal due process right to counsel because a § 610A.3 proceeding was akin to a civil contempt proceeding in that it could result in the “loss of his physical liberty” by way of extended confinement. Id. at 691. The court recognized that “Iowa’s law providing for earned time credit creates a liberty interest” within the meaning of the due process clause, but held that this interest was of a lesser degree than the interest of a respondent in a civil contempt proceeding because the prisoner was already incarcerated and had only a “conditional” interest in early release. Id. at 692 (citing Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 9 (1979)). Finding that the liberty interest at issue was more akin to the interests at stake in prison disciplinary proceedings, the court followed federal precedents denying a due process right to counsel at state expense in those disciplinary proceedings. Id. at 694.

A prisoner’s right to challenge his confinement in court has been held to be “grounded ‘in the Due Process Clause [of the federal constitution] and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violation[s] of fundamental constitutional rights.’” Nowlin v. Scurr, 331 N.W.2d 394, 396 (Iowa 1983) (quoting Wolff v. McDonnell, 418 U.S. 539, 579 (1974)); see also Mark v. State, 556 N.W.2d 152, 154 (Iowa 1996); Williams v. State, 421 N.W.2d 890, 893 (Iowa 1988). Iowa courts have thus imported the federal requirement that all prisoners, including indigent prisoners, be afforded “meaningful access” to the courts. Nowlin, 331 N.W.2d at 396 (quoting Bounds v. Smith, 430

9 The reliance on Manning is odd, given that Manning itself relied on 28 U.S.C. § 1915, a statute giving federal courts the discretionary power to appoint counsel.
U.S. 817, 823 (1977)). In Nowlin, the court noted with approval the majority’s statement in Bounds that “our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts.” 331 N.W.2d at 396 (quoting 430 U.S. at 824-25). The Nowlin court remanded for a further evidentiary hearing on whether the prison had provided the required “access to a reasonably adequate law library for preparation of legal actions, or [] adequate professional or quasi-professional legal assistance.”  Id. at 398.

F. Civil Forfeiture Proceedings

State Statutes and Court Decisions Interpreting Statutes

A statute formerly stating that “court-appointed counsel, at the state’s expense, is not available in forfeiture proceedings” was repealed in 1996. Iowa Code § 809.11(2), repealed by Acts 1996 (76 G.A.) ch. 1133, § 53. The effect of this repeal is unclear, as no existing statute either authorizes or refuses to authorize appointment of counsel in such proceedings.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In re Prop. Seized From Behmer, 720 N.W.2d 191 (Iowa App. 2006), an appellate court summarily dismissed an ineffective assistance of counsel claim in a civil forfeiture proceeding by finding the defendant had no right to counsel. However, the court relied entirely on decisions interpreting the reach of the Sixth Amendment, and so it is unclear whether its ruling also reached the question of due process.

G. Juvenile Delinquency, Status Offenses, or Child in Need of Supervision Proceedings

State Statutes and Court Decisions Interpreting Statutes

In family in need of state assistance proceedings where there has been a breakdown in the relationship between a child and parent, “[t]he court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance[.]” Iowa Code § 232.126.
Law Addressing Authorization or Requirement to Appoint Counsel in Civil Proceedings Generally

Federal Statutes and Court Decisions Interpreting Statutes

The federal Servicemembers Civil Relief Act (SCRA), which applies to each state and to all civil proceedings (including custody), provides:

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.


Additionally, 50 U.S.C. § 3932(d)(1), which also applies to all civil proceedings (including custody), specifies that a service member previously granted a stay may apply for an additional stay based on a continuing inability to appear, while subsection (d)(2) states: “If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.”

State Court Decisions Addressing Constitutional Due Process or Equal Protection

The Iowa Supreme Court has said, “when an attorney is constitutionally required, the state is obligated to pay the court-appointed attorney reasonable compensation.” State Pub. Def. v. Iowa Dist. Court for Polk Cty., 721 N.W.2d 570, 574 (Iowa 2006) (citing McNabb, 315 N.W.2d at 16).

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10 50 U.S.C. § 3912(a)(2) states that the provisions of the SCRA “apply to . . . each of the States, including the political subdivisions thereof.”
11 50 U.S.C. § 3931(a) states: “This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.”
12 50 U.S.C. § 3932 applies to “any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section . . . is in military service or is within 90 days after termination of or release from military service; and . . . has received notice of the action or proceeding.” 50 U.S.C. § 3932(a).
State Court Decisions Addressing Court’s Inherent Authority

While the Iowa Supreme Court has said that “we have at least insinuated a court may have inherent power to appoint an attorney where there is neither a statutory right nor a constitutional right to such an appointment.” State Public Defender v. Iowa Dist. Court for Linn County, 728 N.W.2d 817, 820 (Iowa 2007) (referring to appointment of guardians for parents or attorneys in habeas proceedings), it has also said that “even if that power exists, which we need not decide here, it does not carry with it the power to order the state to compensate counsel thus appointed.” Id. (quotation omitted). But see McNabb, 315 N.W.2d at 16 (stating in civil contempt case that “[s]ince 1850 Iowa has stood among that strong minority of states . . . holding [that] lawyers compelled to represent indigents must receive reasonable compensation.”; “The constitution may mandate the appointment of counsel with the concomitant obligation on the part of the public fisc to pay fees in the first instance when, as here, the state is the initiating party.” (emphasis added)).