AMERICAN BAR ASSOCIATION
Directory of Law Governing Appointment of Counsel in State Civil Proceedings

MISSOURI

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American Bar Association
Standing Committee on Legal Aid and Indigent Defendants
321 N. Clark Street
Chicago, IL  60610
Phone:  312-988-5765; FAX:  312-988-5483
http://www.americanbar.org/groups/legal_aid_indigent_defendants.html

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## MISSOURI
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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The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions.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

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[.]” § 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 System 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

Proceedings to appoint a guardian, guardian ad litem, or conservator for an allegedly disabled individual (who is not a minor) automatically trigger the appointment of counsel to represent that person, regardless of indigence. See Mo. Ann. Stat. § 475.075. See also § 475.062 (providing for equivalent appointment of counsel in proceedings to appoint a conservator for allegedly disabled person’s estate). The court shall tax counsel’s “reasonable” fees as costs of the proceeding. § 475.075(3). Section 475.083(6) extends the right to appointed counsel to termination of guardianships filed without the joinder of the guardian, while § 475.082(4) specifies: “If there is an indication that the incapacity or disability of the ward or protectee has ceased, the court shall appoint an attorney to file on behalf of the ward or protectee a petition for termination of the guardianship or conservatorship or for restoration.”

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Proceedings for involuntary civil commitment for psychiatric treatment apparently trigger a right to appointed counsel. While Mo. Ann. Stat. § 632.335(2)(1) only speaks of the right in continued detention proceedings to be “represented by an attorney,” § 632.415 adds that the court “shall maintain a current register of attorneys who have agreed to be appointed to represent respondents against whom . . . proceedings have been instituted,” and that “[i]f the judge finds that the respondent is unable to pay attorney’s fees . . ., the judge shall allow a reasonable attorney’s fee . . ., which fee shall be assessed as costs and paid . . . by the state[.]” See also § 632.325(4) (respondent must be advised that “[a]n attorney has been appointed who will represent [the respondent] before and after the hearing”). Section 600.043 specifies that attorneys appointed for involuntary civil commitment proceedings cannot come from the state public defender office.
Involuntary commitment for drug and alcohol abuse rehabilitation is accompanied by a similar right to counsel. See § 631.135(4) (“The personnel of the alcohol or drug abuse facility . . . shall advise the respondent that . . . [a]n attorney has been appointed who will represent him before and after the hearing [to determine whether his detention will continue.”)

D. Sex Offender Proceedings

State Statutes and Court Decisions Interpreting Statutes

Mo. Ann. Stat. § 632.492 provides a right to appointed counsel for indigent defendants in trials to determine whether someone is a sexually violent predator. At the probable cause hearing that justifies initial detention prior to such trial, the individual has the right “to be represented by counsel,” § 632.489(3)(1), but given that there is no mention of appointment of counsel as there is for § 632.492, the probable cause hearing right to counsel is probably only the right to be represented by retained counsel.

E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings

State Statutes and Court Decisions Interpreting Statutes

Under Missouri law, a person who is the subject of a quarantine petition due to tuberculosis “shall [be] appoint[ed] legal counsel” by the court. See Mo. Ann. Stat. § 199.200(2). The quarantine patient must invoke the right to counsel, and appointment of counsel must be supported by a finding that the person is unable to employ counsel on their own. See id.

4. CHILD CUSTODY

A. Appointment of Counsel for Parent—State-Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

In all proceedings before the state’s juvenile courts (including abuse/neglect proceedings):

When a petition has been filed . . . , the court shall appoint counsel for [a child’s] custodian if it finds . . . [t]hat the custodian is indigent . . . and . . . desires the appointment of counsel[,] . . . and . . . [t]hat a full and fair hearing requires appointment of counsel . . . .
Mo. Ann. Stat. § 211.211(4). In In re N.S., 77 S.W.3d 655, 658 (Mo.App.E.D. 2002), the court held that this statutory right to counsel applied even where the parent a) requested counsel more than two months after the dispositional review hearing (but before two review hearings and the filing of the TPR petition); and b) failed to fully fill out the court appointment form despite the warning that failing to do so would result in disapproval of the application. And in In the Interest of C.F., 340 S.W.3d 296 (Mo. Ct. App. 2011), the court rejected the state’s argument that a father was not a “custodian” due to not living in the family home and sometimes going a week without seeing his children. The court responded:

We agree that Father is a "custodian" for purposes of the right to appointed counsel under Section 211.211.4 and Rule 116.01. Rule 110.05(a)(5) provides that, as used in the rules governing juvenile proceedings, the term "'custodian' includes parent, guardian of the person, and any person having legal or actual custody of a juvenile." Mo. Sup. Court Rule 110.05(a)(5) (2008). Furthermore, courts have held that the "custodian" of a juvenile includes a parent. See In re L.E.C., 182 S.W.3d 680, 685 n.5 (Mo.App.W.D. 2006); In re J.L.C., III, 844 S.W.2d 123, 128 n.2 (Mo.App.S.D. 1992). There is no dispute that Father is the natural parent of C.F. and A.K.. We therefore find that Father is a "custodian" under Section 211.211 and Rule 116.01.

The court also held that the failure to appoint counsel until the TPR stage was reversible error, even where the parent "was given an opportunity to cross-examine and otherwise participate in the hearing[s].”

While most juvenile proceedings require a parent to demonstrate that appointment of counsel is necessary for a “full and fair hearing,” see supra, hearings to terminate parental rights provide a parental right to counsel that is not subject to this requirement, although the parent must still request counsel. See § 211.462(2) (requiring that in all actions to terminate parental rights, “[t]he parent or guardian of the person of the child shall be notified of the right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel shall be appointed by the court. Notice of this provision shall be contained in the summons.”). In In Interest of J.L.C., an appeals court affirmed the termination of a father’s parental rights despite the father’s argument that he was not adequately notified of the right to counsel, nor appointed such counsel. 844 S.W.2d 123, 124-25 (Mo. Ct. App. 1992). Without explanation, the appeals court simply held that “[t]he trial court complied with the requirements of § 211.211 and Rule 116.01.” See id. at 127-28. It appears that the appellate court’s ruling may have hinged on the father not having expressed a desire for the appointment of counsel at the trial level, since his argument on appeal was that he was not informed of his

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1 Rule 116.01 was the predecessor to current Rule 115.01, which simply provides that, in all juvenile proceedings, “[a] party is entitled to be represented by counsel.” See Mo. Sup. Ct. R. 115.01(a).
right to counsel. However, the court made no mention whatsoever of § 211.462(2), which should have required appointment of counsel (although it too requires a request).

In the context of both § 211.211(4) and § 211.462(2), “[s]everal Missouri appellate courts have taken the trial court’s obligation a step further, and required that the trial court either appoint counsel for a parent or secure an affirmative waiver of counsel.” See In re J.R., 347 S.W.3d 641, 645 (Mo. Ct. App. 2011) (citing cases).

In State v. Churchill, the Supreme Court of Missouri construed a mother’s various comments as being an insufficient request for counsel (thus implicitly reaffirming the need for a request). See 454 S.W.3d 328, 336-37 (Mo. 2015) (en banc). The court stated:

this statutory right to appointed counsel [in § 211.211(4)] is not self-executing and unlimited. The custodian must ask for counsel to be appointed and must prove that she is unable to afford counsel on her own. In addition, the statute recognizes that the judge is entitled to decline to appoint counsel if such an appointment is not necessary for a “full and fair hearing.” Here, [the mother] never requested that the judge appoint counsel for her, and she never even claimed to be indigent. Instead, she repeatedly stated she was in the process of obtaining counsel on her own.

Id. Conversely, in K.G. v. K.G., the Court of Appeals from the Western District Division One found error where, under § 211.211(4), “no inquiry was made regarding whether Father had or

2 When the mother was called to testify at the hearing, she said “I want legal counsel” prior to agreeing to take the oath to tell the truth. 454 S.W.3d 328, 332 (Mo. 2015). She then took the oath after the judge tried to continue anyway and the judge said: “If you cannot afford legal counsel, we will appoint one for you.” Id. She then said “I want legal counsel, sir, please,” but the court allowed the juvenile officer to begin questioning her and did not appoint counsel. Id. She then denied that the child in question existed, and after being reminded she was under oath, she said: “I want to stop these proceedings. Because I was served yesterday and I’m trying to find an attorney[.]” Id. at 332-33. She then said the seventh child her other children had seen was actually someone else’s child, then repeated: “I want an attorney. . . . I would like to pursue this with an attorney, please.” Id. at 333. She repeated this request again several times. See id. After the end of the mother’s testimony, the mother said she intended to try to retain an attorney, and the judge said he would appoint counsel for her if she was unable to retain counsel as she wanted to do, but the judge ordered her to produce the child. Id.

3 The court added: “Even if [the mother] had requested appointment of counsel under section 211.211.4 and proved her indigence, however, the trial court did not consider her representation necessary for a ‘full and fair hearing’ to determine whether [the son] existed and was in need of protective custody. Section 211.032.2 requires that an initial hearing on a protective custody petition be held within three days of a request for such a hearing. But this is not a final determination of the child’s placement. The statute provides for further review (an ‘adjudication hearing’) within 60 days and, if the child is still in the state’s custody, a ‘dispositional hearing’ within 90 days and periodic hearings thereafter. § 211.032.4. Accordingly, the focus of the initial hearing . . . was to determine whether there was a juvenile within the court’s jurisdiction and whether there were grounds to take that child into protective custody. It was not an abuse of discretion to determine that [the mother]’s right to
desired counsel. Likewise, there is no indication that the Commissioner sought to determine whether Father was indigent or whether a full and fair hearing required appointment of counsel for Father.” See 472 S.W.3d 230, 234 (Mo. Ct. App. 2015) (adding that “This Court has [] found that ‘it is the court’s obligation to inform a custodian of his right to representation, not the custodian’s obligation to initiate an inquiry into his right to counsel.’” (quoting In re N.H., 41 S.W.3d 607, 613 (Mo. Ct. App. 2001))). The court also rejected the Juvenile Officer’s argument that a 2010 amendment to the court rule corresponding to § 211.211(4), which changed the rule’s language from “the parent . . . desires appointment of counsel” to “the parent . . . requests appointment of counsel,” placed an affirmative obligation solely on the parent. K.G., 472 S.W.3d at 234-35 (quoting Mo. Sup. Ct. R. 115.03(a)(2)). Instead, the court reasoned, the rule change was meant to clarify that the custodian, upon being informed of the right to appointment of counsel, as required by . . . N.H. . . . has an affirmative duty at that point to notify the court, either verbally or in writing, that the custodian wants counsel appointed. It was meant to adjust the nature of a finding required for the appointment of counsel and not meant to eliminate the court’s responsibility to inquire into whether the appointment of counsel was required.

Id. at 235 (citing 41 S.W.3d at 613). The court observed that the summons received by the father made no mention of his right to request appointed counsel. See id. at 236. The court also pointed to Rule 124.06(b)(3), which states that “[a]t . . . an adjudication hearing, the court shall first determine whether . . . (3) the parents, guardian or custodian of the juvenile are entitled to appointed counsel.” Id. at 235 (quoting Mo. Sup. Ct. R. 124.06(b)(3)) (emphasis in original). Thus, the court held, “in order to determine if a parent is entitled to counsel, as Rule 124.06(b) requires at any adjudication hearing, the court must inquire of the custodian regarding indigence and the desire for counsel and must evaluate the necessity of counsel for a full and fair hearing.” Id. (citation omitted).

Federal Statutes and Court Decisions Interpreting Statutes

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

representation (or even appointed counsel, if she had asked for that and demonstrated her indigence) was not essential to a ‘full and fair hearing’ on the initial hearing . . . .” Id. at 337.

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 (a) 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 [of the Interior] 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 . . . .


State Court Rules and Court Decisions Interpreting Court Rules

The Missouri Supreme Court incorporated substantially the same language as that in Mo. Ann. Stat. § 211.211(4) (discussed supra, regarding the limited right to counsel for parents in proceedings before the state’s juvenile courts) into Rule 115, the statute’s implementing rule. See Mo. Sup. Ct. R. 115.03(a) (stating that court shall appoint counsel if it finds that “(1) the parent, guardian or custodian is indigent; and (2) the parent, guardian or custodian requests appointment of counsel; and (3) a full and fair hearing requires appointment of counsel for the parent, guardian or custodian.”).

In In Interest of J.L.C., discussed supra, an appeals court affirmed the termination of a father’s parental rights despite the father’s argument that he was not adequately notified of the right to counsel, nor appointed such counsel, holding that “[t]he trial court complied with the requirements of § 211.211 and [the predecessor to current Rule 115.01].” 844 S.W.2d 123, 125, 128 (Mo. Ct. App. 1992).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In Interest of B.M.P., the court observed that “the due process clause of [the Fourteenth Amendment] does not require the appointment of counsel for an indigent parent in every parental termination proceeding.” 704 S.W.2d 237, 247 (Mo. Ct. App. 1986) (citing Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18, 31 (1981)). See also State v. Churchill, 454 S.W.3d 328, 334-35 (Mo. 2015) (parent who was denied counsel in child protective proceeding ultimately jailed for perjury; court dispenses with Sixth Amendment claims by noting that child protective proceeding was not criminal, then stated: “To the extent she could be sentenced to prison for committing perjury during that hearing, that is not the sort of risk for which due
process may require a right to counsel because that risk is present whenever any witness gives sworn testimony in any case of any nature.

In *B.L.E. v. Elmore*, a Missouri appeals court found a due process violation under *Lassiter* when a mother was denied court-appointed counsel in a termination of parental rights proceeding in which allegations of sexual abuse had been raised. 723 S.W.2d 917, 919-20 (Mo. Ct. App. 1987). While substantially adopting *Lassiter’s* framework for analysis, the court found a right to counsel in the instant case in part because the mother in *B.L.E.*, unlike the defendant in *Lassiter*, could have faced criminal charges for the conduct that gave rise to the termination of rights hearing. *Id.* (observing also that “[i]n *Lassiter* no allegations of neglect or abuse upon which criminal charges could be based existed, no expert witnesses testified, and no troublesome procedural or substantive points of law were presented,” thereby suggesting set of guideposts for due process analysis).

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

**State Statutes and Court Decisions Interpreting Statutes**

Counsel is statutorily provided for birth parents in adoption proceedings. Under Mo. Ann. Stat. § 453.030(1), a birth parent “shall have the right to legal representation and payment of any reasonable legal fees incurred throughout the adoption process.” The statute adds, “in addition, the court may appoint an attorney to represent a birth parent” if certain conditions are met. *Id.* The statute requires that the birth parent request such counsel, not already be represented by counsel, and be, in the court’s view, faced with “financial hardship” if obliged to hire an attorney out of pocket. *Id.* The import of the overlapping provisions appears to be that a birth parent can either hire an attorney and submit for reimbursement of “reasonable” fees (presumably at the end of the proceedings) as a matter of right, or attempt to secure appointed counsel (subject to the discretion of the court) and thus avoid the reimbursement issue. Subsection (12) adds that under ordinary circumstances, the attorney’s fees of the private or appointed attorney are paid by either “the prospective adoptive parents or the child-placing agency” (the statute does not say how the court is to choose). If, however, the court opts to have the adoptive parents pay and they are financially unable to do so, then apparently the court’s course of action under subsection (12) is to “appoint[] pro bono counsel for the birth parents,” seemingly allowing conscription of an attorney without payment. 5

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5 In full, subsection (12) reads: “Except in cases where the court determines that the adoptive parents are unable to pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall order the costs of the attorney fees incurred pursuant to subsection 11 of this section to be paid by the prospective adoptive parents or the child-placing agency.”
In *In re J.L.B.*, the court observed that Missouri law does not address a parent’s right to counsel in the private guardianship context:

We note that section 211.462.2 relating to the juvenile court provides that in termination of parental rights proceedings the “parent or guardian of the person of the child shall be notified of the right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel shall be appointed by the court . . . .” We find no similar provision in the probate code relating to guardianship proceedings.

280 S.W.3d 147, 154 n.11 (Mo. Ct. App. 2009).

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

**State Statutes and Court Decisions Interpreting Statutes**

The Missouri juvenile court system handles a range of proceedings, such as delinquency, findings of abuse and neglect, and termination of parental rights. In all proceedings before the state’s juvenile courts:

The court shall appoint counsel for a child prior to the filing of a petition if a request is made therefor . . . and the court finds that the child is the subject of a juvenile court proceeding and that the child making the request is indigent. When a petition has been filed, the court shall appoint counsel for the child when necessary to assure a full and fair hearing.

Mo. Ann. Stat. § 211.211(2)-(3). The statute is difficult to parse, as it seems to suggest the child has a right to appointed counsel upon request prior to the filing of the petition, whereas post-petition the court must determine counsel is necessary for a “full and fair hearing.”

Additionally, “[i]n every case involving an abused or neglected child which results in a judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent . . . (1) [a] child who is the subject of” abuse and neglect proceedings. § 210.160(1). Further, “[w]hen appointing a guardian ad litem for a child, the court shall only appoint a lawyer licensed by the Supreme Court who has completed the training required by these standards.” Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 1.0, available at [https://www.courts.mo.gov/file.jsp?id=63973](https://www.courts.mo.gov/file.jsp?id=63973).

**Federal Statutes and Court Decisions Interpreting Statutes**

The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in
state court, 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 . . . shall contain . . . 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.


State Court Rules and Court Decisions Interpreting Court Rules

The Missouri Supreme Court incorporated substantially the same language regarding the limited right to counsel for children in proceedings before the state’s juvenile courts as that found in Mo. Ann. Stat. § 211.211(2)-(3) (discussed supra Part 4.C) into Rule 115, the statute’s implementing rule. See Mo. Sup. Ct. R. 115.02. Additionally, regarding guardians ad litem who

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6 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 (a) 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, of the pending proceedings and of their right of intervention.” § 1912(a). These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law proceedings.
are appointed to appear and represent children who are the subject of abuse or neglect proceedings (as required by § 210.160, discussed supra), “the court shall only appoint a lawyer licensed by the Supreme Court who has completed the training required by these standards.” Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 1.0, available at https://www.courts.mo.gov/file.jsp?id=63973.

D. Appointment of Counsel for Child—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

“The court shall, in all [adoption] cases where the person sought to be adopted is under eighteen years of age, appoint a guardian ad litem . . . to represent the person[.]” Mo. Ann. Stat. § 453.025(1). Further, “[w]hen appointing a guardian ad litem for a child, the court shall only appoint a lawyer licensed by the Supreme Court who has completed the training required by these standards.” Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 1.0, available at https://www.courts.mo.gov/file.jsp?id=63973.

“The guardian ad litem may be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds.” § 453.025(3).

In custody proceedings involving the visitation rights of grandparents:

If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

§ 452.402(3). In other types of custody proceedings, a Missouri statute authorizes the appointment of a guardian ad litem, and requires such appointment where abuse is alleged. See § 452.423(1)-(2). See also supra § 4.C (describing requirement that guardian ad litem be licensed Missouri lawyer).

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Statutes and Court Decisions Interpreting Statutes
In State ex rel. O’Brien v. Ely, the appellate court left open the possibility that Missouri’s public defender statute, Mo. Ann. Stat. § 600.042, may permit appointment of counsel in certain civil contempt cases. See 718 S.W.2d 177, 179-80 (Mo. Ct. App. 1986). The Ely court held that a father charged with civil contempt for failure to comply with court-ordered child support was not entitled to appointed counsel from the public defender’s office where the trial court made the initial determination of a defendant’s indigency, as such a determination usurped the public defender’s statutory authority to make the initial determination of indigency. Id. at 180. However, the Ely court remarked in passing that a person found to have “‘contemptuously placed himself in a position so that he cannot pay [the] child support awards,’ although entered in a proceeding of civil contempt, actually faces an indirect criminal contempt, so that, if indigent, is entitled to a public defender under . . . § 600.042.” Id. (quoting State ex rel. Shaw v. Provaznik, 708 S.W.2d 337, 340 (Mo. 1986)). Nevertheless, a subsequent appellate court decision has clarified that a trial court does not have the statutory authority to appoint a public defender as counsel. State ex rel. Family Support Div.-Child Support Enforcement v. Lane, 313 S.W.3d 182, 187 (Mo. Ct. App. 2010) (citing State ex rel. Sterling v. Long, 719 S.W.2d 455, 455 (Mo. 1986) (en banc)).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In State ex rel. O’Brien v. Ely, discussed supra, the appellate court remarked in passing that a person found to have “‘contemptuously placed himself in a position so that he cannot pay [the] child support awards,’ although entered in a proceeding of civil contempt, actually faces an indirect criminal contempt, so that, if indigent, is entitled to a public defender under . . . constitutional principles[].” 718 S.W.2d 177, 180 (Mo. Ct. App. 1986) (quoting State ex rel. Shaw v. Provaznik, 708 S.W.2d 337, 340 (Mo. 1986)). To satisfy a defendant’s federal due process rights, the trial court has “the inherent authority to appoint members of the bar to represent the defendant.” State ex rel. Family Support Div.-Child Support Enforcement v. Lane, 313 S.W.3d 182, 187 (Mo. Ct. App. 2010) (citing Provaznik, 708 S.W.2d at 340).

In Hunt v. Moreland, 697 S.W.2d 326, 328-330 (Mo. Ct. App. 1985), the Eastern District held in a child support contempt proceeding that “in the case of indirect contempt, civil or criminal, unless the trial judge predetermines the nature of the infraction is of insufficient gravity to warrant the imposition of imprisonment if the accused is found guilty, the unrepresented accused must be advised of his right to counsel and, absent a knowing and intelligent waiver thereof, be given adequate opportunity to obtain representation. If he be found indigent, counsel must be appointed before any critical stage of the contempt proceeding.” The Western District came to a similar conclusion in Lane, holding that notification to the contemnor that he had a right to an attorney but not that he could have an appointed attorney if he was indigent was insufficient to satisfy due process, and affirming that the threat of “actual imprisonment” is an essential guidepost to assessing due process in such
cases. 313 S.W.3d at 187-88 & n.7. In Carothers v. Carothers, the Missouri Supreme Court relied entirely on Lane to hold that a trial court in a civil contempt case must either predetermine that there is no danger of imprisonment or advise the defendant of the right to be represented by counsel. 337 S.W.3d 21, 25-26 (Mo. 2011). The Carothers court did not answer the question of appointment of counsel because the defendant in question was not indigent, although it observed that the courts of appeal in both the eastern and western district had found that counsel must be appointed. Id. at 26 n.5.

These civil contempt cases may be in question after Turner v. Rogers, with respect to cases within Turner’s scope, given that they relied entirely on the Fourteenth Amendment and the threat of imprisonment. However, a post-Turner decision from the supreme court has cited approvingly to Lane. See State v. Churchill, 454 S.W.3d 328, 335 (Mo. 2015) (en banc) (commenting that Lane held that “for purposes of triggering a defendant’s right to counsel under the due process clause, the distinction between a ‘criminal’ and a ‘civil’ proceeding is irrelevant if the outcome of the civil proceeding is imprisonment”).

State Court Decisions Addressing Court’s Inherent Authority

In State ex rel. Family Support Div.-Child Support Enforcement v. Lane, a Missouri court of appeals stated that “[w]hen neither the state legislature nor the subject county has provided a mechanism for the defense of civil contempt actions, . . . the court’s inherent power to appoint counsel appears to be the only mechanism by which an indigent defendant, facing actual imprisonment in a civil case, can be afforded his constitutionally guaranteed right to counsel. The court must use that power when the right to due process requires it.” 313 S.W.3d 182, 187 (Mo. Ct. App. 2010) (citations omitted). The court found that, with regard to the defendant, who was facing civil contempt, “the court should have either (1) predetermine that [defendant’s] failure to pay child support would not result in jail time; or (2) advised [defendant] that he had a right to counsel and that, if he were found to be indigent, counsel

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7 Notably, the court in Lane conceded the contemnor had not raised his due process right to counsel on appeal, and that normally it therefore would not hear such issues, but the court nonetheless explained that it “may, within [its] discretion, and on [its] own initiative, address issues that affect a defendant’s federally mandated constitutional rights[,] . . . [w]ith [t]he right to counsel [being] such a right.” Id. at 186 (citations and footnotes omitted). The court also stated that “a complete denial of the right (as opposed to a denial of the right where the defendant was provided with counsel, but counsel was incompetent) constitutes reversible error irrespective of whether the violation caused prejudice.” Id.

8 564 U.S. 431, 449 (2011) (Fourteenth Amendment does not require right to counsel in civil contempt, at least where opponent is neither the state nor represented and matter is not “especially complex”).

9 However, Lane had said that “[t]he right to counsel exists in state, in addition to federal, proceedings, by virtue of the Due Process Clause of the Fourteenth Amendment to the United States Constitution,” 313 S.W.3d at 186, so it was not a state constitutional decision.
would be appointed unless [he] chose to waive his right to counsel.” *Id.* at 187-88 (footnote omitted).

**B. Paternity Proceedings**

**State Court Decisions Addressing Constitutional Due Process or Equal Protection**

In *Wash. ex rel. Lewis v. Collis*, a paternity case, the alleged father argued that the trial court denied him due process of law by failing to permit him to attend a paternity hearing in person when he was incarcerated and by failing to appoint counsel for him. 963 S.W.2d 700, 704 (Mo. Ct. App. 1998). On the appointment of counsel issue, the court reached the same conclusion as in *Christiansen v. Mo. State Bd. of Accountancy*, finding no right to appointment of counsel.\(^{10}\) See *id.* at 705 (finding father “not entitled, as a matter of right, to the appointment of counsel”); despite Missouri statutes providing counsel in certain areas and prior Missouri decisions finding right to counsel in certain areas, court incorrectly states that: “‘[P]arty litigants to civil proceedings have *no constitutional or statutory right* to the appointment of counsel.’” (quoting 764 S.W.2d 952, 954 (Mo. Ct. App. 1988) (emphasis added)).

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

**State Statutes and Court Decisions Interpreting Statutes**

Mo. Ann. Stat. § 188.028(2)(2) provides appointed counsel to “any party” to a proceeding where a minor is seeking a judicial bypass of parental consent for an abortion, if that party is unable to afford counsel.

**D. Proceedings Involving Claims by and Against Prisoners**

**State Statutes and Court Decisions Interpreting Statutes**

In *State ex rel. Marshall v. Blaeuer*, the Missouri Supreme Court ruled that it was error for a trial court to appoint a public defender to represent inmates in habeas petitions challenging the conditions of their detention. 709 S.W.2d 111, 112-13 (Mo. 1986). In addition to finding that the trial court had misread the state’s public defender statutes, the court also stated that “a court may not compel the State to expend public funds to prosecute the claims of prisoners challenging the conditions of their confinement *unless there is authorization by statute or rule of this Court.*” *Id.* at 112 (emphasis added). The court went on to consider the

\(^{10}\) *Christiansen* is discussed *infra* Part 5.E.
statutory basis for the proposed appointment, finding that “§ 600.042.3(1) [(i.e., the applicable public defender statute)] provides no such authorization.” Id.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Muza v. Mo. Dep’t of Soc. Servs., the court affirmed the dismissal of an inmate’s § 1983 claim, despite the inmate’s argument that he was improperly refused appointed counsel. 769 S.W.2d 168, 176 (Mo. Ct. App. 1989). The court held that the inmate “was not entitled as a matter of right either under federal or state decisions to appointed counsel” because “[s]uch a right exists for an indigent only where the loss of liberty or other cognate interests are at stake in the litigation.” Id. (citing Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18, 25 (1981)) (emphasis added). Notably, this statement of law transformed Lassiter’s “presumption” against counsel except where liberty is threatened into an absolute bar. This decision paralleled a prior decision, Fitzpatrick v. Hoehn, with the same holding—that absent statutory modification, state and federal due process rights are coextensive. See 746 S.W.2d 652, 654 (Mo. Ct. App. 1988) (“an indigent’s right to appointed counsel only exists where the indigent litigant may lose his physical liberty if he loses the litigation”). Because the inmate plaintiff in Fitzpatrick was suing for damages, and was already incarcerated, no physical liberty was in jeopardy and thus he was not entitled to counsel under Lassiter or any Missouri precedent. See id. (“as a litigant’s interest in personal liberty diminishes, so does his right to appointed counsel” (quoting Lassiter, 452 U.S. at 26)).

State Court Decisions Addressing Court’s Inherent Authority

In State ex rel. Scott v. Roper, a relator attorney sought an order of prohibition against a trial judge who had appointed him to represent an indigent prison inmate in an action to recover damages for medical malpractice. 688 S.W.2d 757, 758 (Mo. 1985) (en banc). Finding first that the trial court had erred in adjudging the plaintiff inmate indigent, the court then considered whether the appointment was nonetheless a valid exercise of inherent judicial power. Id. at 758-59. As a related inquiry, the court also examined whether the appointed attorney could be compelled to advance litigation expenses. Id. at 759. The latter question was easily dispatched by drawing from State ex rel. Wolff v. Ruddy: “[w]e know of no requirement of either law or professional ethics which requires attorneys to advance personal funds . . . for the payment of either costs or expenses of the preparation of a proper defense of the indigent accused.” Id. (quoting 617 S.W.2d 64, 67 (Mo. 1981) (en banc)).

The Scott court went on to hold that that “[t]he courts of this state have no inherent power to appoint or compel attorneys to serve in civil actions without compensation.” Id. at 769. Distinguishing the instant case from the criminal appointment power tentatively exercised in Wolff, the court found that “there are fewer reasons justifying imposing a mandatory
obligation on attorneys in civil cases than in criminal cases.” *Id.* at 768. Further, the court noted important differences between indigent plaintiffs with contingent-fee claims and those with non-fee-generating claims, finding that for a contingent-fee plaintiff, “[t]he ability to find a lawyer depends upon the degree of merit of the claim,” not upon the plaintiff’s financial status. *Id.* (citations omitted). Finally, the court disclaimed any authority based on inherent judicial powers, concluding that “[p]roviding for [indigent civil] representation and the funding thereof is a matter for legislative action.” *Id.* at 769.

E. Accountant Disciplinary Hearings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Christiansen v. Mo. State Bd. of Accountancy*, an accountant who had been disciplined by the state board of accountancy appealed that decision to the trial court, but was rebuffed. 764 S.W.2d 952, 953 (Mo. Ct. App. 1988). He then appealed the trial court’s rejection, arguing that he had been denied effective assistance of counsel. *Id.* The appellate court rejected the accountant’s argument, finding that he had no right to counsel in the first place. *Id.* at 954. In doing so, the court stated the incorrect proposition that in Missouri, “litigants to civil proceedings have no constitutional or statutory right to the appointment of counsel,” *id.*; as discussed supra, Missouri recognizes a statutory and constitutional right to counsel in a number of areas, such as termination of parental rights or civil contempt. The *Christiansen* court went on to state, “civil litigants who claim counsel was incompetent or ineffective have no claim of right to a new trial or other relief from the court on that basis[.]” *Id.* The *Christiansen* court did not consider the state and federal due process clauses separately, although it also did not say which clause was raised by the litigant or which clause it was interpreting.

F. Dissolution of Marriage/Divorce Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Gilman v. Gilman*, a case considering the appeal of a divorce judgment on the grounds of ineffective assistance of counsel, the appellate court denied the request for a new trial and

11 In *State ex rel. Mo. Pub. Def. Comm’n v. Pratte*, the court again relied on the difference between criminal and civil cases, noting that “[i]n contrast to parties in civil cases, indigent defendants in criminal cases have a constitutional right to counsel that the courts are obligated to ensure is met. . . . Missouri’s lawyers have been appointed to represent indigent defendants since Missouri first became a state and long before any court ever found a constitutional right to counsel.” 298 S.W.3d 870, 889 (Mo. 2009) (en banc) (citations omitted). The court, though, expressed a serious reluctance, even in criminal cases, to order the legislature to increase funding for indigent defense. *Id.* at 888.

12 But see *In Interest of J.P.B.*, 509 S.W.3d 84, 97 (Mo. 2017) (en banc) (“a natural parent has a statutory right to counsel in a termination of parental rights proceeding and, therefore, an implied right to effective assistance of counsel.”).
interpreted Christiansen v. Mo. State Bd. of Accountancy, discussed supra Part 5.E, broadly for the holding that “[t]here is no statutory or constitutional right in civil cases to effective assistance of counsel.” 851 S.W.2d 15, 19 (Mo. Ct. App. 1993) (citing 764 S.W.2d 952, 954 (Mo. Ct. App. 1988)). The court did not make explicit which constitution was being interpreted.

The court in Marquez v. Marquez applied Christiansen in holding that a wife was not entitled to relief from the outcome of her divorce settlement on the basis of ineffective assistance of counsel. See 136 S.W.3d 574, 579 (Mo. Ct. App. 2004) (“[A]s a general rule, there is no statutory or constitutional right in civil cases to effective assistance of counsel.” (internal quotation marks and citations omitted)). The holding in Marquez, like that in Gilman and Christiansen, did not distinguish between the federal and state constitutions, and also misstated the law in saying that Missouri recognizes no statutory or constitutional rights to counsel in any civil cases.
Law Addressing Authorization or Requirement to Appoint Counsel in Civil Proceedings Generally

State Statutes and Court Decisions Interpreting Statutes

Missouri law creates a right to sue in forma pauperis for those who fit the statutory definition of “poor person.” See Mo. Ann. Stat. § 514.040. Proceeding in forma pauperis entitles the person to avail themselves of “all necessary process and proceedings as in other cases, [but] without fees, tax or charge as the court determines the person cannot pay[.]” § 514.040(1). The statute adds that the court “may . . . assign . . . counsel, who, as well as all other officers of the court, shall perform their duties in such suit without fee or reward as the court may excuse; but if judgment is entered for the plaintiff, costs shall be recovered, which shall be collected for the use of the officers of the court.” Id. (emphasis added). Leave to proceed in forma pauperis is not a given, however. In fact, the procedural obstacles that a putative plaintiff faces in suing as a pauper are arguably greater than those required to invoke the other statutorily created rights to counsel.

The first and foremost obstacle that a plaintiff seeking to sue in forma pauperis must meet is the statutory definition of “poor person” under § 205.590. To be deemed poor for purposes of the statute, a person must be “[a]ged, infirm, lame, blind or sick[,] . . . unable to support themselves, and . . . [have] no other persons required by law and able to maintain them.” Id. This definition would seem to exclude a large category of persons who might be eligible under a more relaxed standard of indigency, particularly those who do not meet the required threshold of physical disability. See State ex rel. Scott v. Roper, 688 S.W.2d 757, 759 (Mo. 1985) (holding that plaintiff could not sue in forma pauperis where he was an incarcerated felon bringing tort action for malpractice).

A plaintiff who convinces the court that he meets the statutory definition of poor person still must convince the court that he ought to be permitted to proceed with his suit in forma pauperis. See State ex rel. Coats v. Lewis, 689 S.W.2d 800, 804 (Mo. Ct. App. 1985); see also § 514.040(1) (requiring that the court must be “satisfied that the plaintiff is a poor person” before using “its discretion [to] permit him or her to commence” the suit). This discretion is intended to measure the frivolity or merit of his complaint in order to prevent meritless or harassing lawsuits. Coats, 689 S.W.2d at 806 (“[T]he court may and should in its discretion examine the plaintiff’s petition to see if it is patently and irreparably frivolous or malicious on its face.”). And even if the litigant can pass this test, there is the issue that the statute does not specify payment for an appointed attorney, and “[t]he courts of this state have no inherent power to appoint or compel attorneys to serve in civil actions without compensation.” Roper, 688 S.W.2d at 769.
Federal Statutes and Court Decisions Interpreting Statutes

The federal Servicemembers Civil Relief Act (SCRA), which applies to each state\(^{13}\) and to all civil proceedings (including custody),\(^{14}\) 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, § 3932(d)(1), which also applies to all civil proceedings (including custody),\(^{15}\) 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

In Christiansen v. Mo. State Bd. of Accountancy, discussed supra Part 5.E, the appellate court found that “litigants to civil proceedings have no constitutional . . . right to the appointment of counsel.” 764 S.W.2d 952, 954 (Mo. Ct. App. 1988). The Christiansen court did not consider the state and federal due process clauses separately, although it also did not say which clause was raised by the litigant or which clause it was interpreting. And as previously discussed, the court’s statement that there is never a constitutional right to counsel in a civil case is belied by several appellate decisions that found a right to counsel in civil contempt proceedings.

Missouri appellate courts have extended Christiansen to the realm of family law. See, e.g., Gilman v. Gilman, 851 S.W.2d 15, 19 (Mo. Ct. App. 1993) (holding that, in case considering

\(^{13}\) 50 U.S.C. § 3912(a)(2) states that the SCRA’s provisions apply to “each of the States, including the political subdivisions thereof.”

\(^{14}\) 50 U.S.C. § 3931 “applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.” § 3931(a).

\(^{15}\) Section 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.” § 3932(a).
appeal of divorce judgment on grounds of ineffective assistance of counsel, “[t]here is no . . . constitutional right in civil cases to effective assistance of counsel”; court did not state whether federal or state constitution was being interpreted (citing Christiansen, 764 S.W.2d at 954))\textsuperscript{16}; Wash. ex rel. Lewis v. Collis, 963 S.W.2d 700, 704-05 (Mo. Ct. App. 1998) (finding father in paternity case “not entitled, as a matter of right, to the appointment of counsel” because “[p]arty litigants to civil proceedings have no constitutional . . . right to the appointment of counsel” (quoting Christiansen, 764 S.W.2d at 954) (emphasis added) (internal quotation marks omitted))\textsuperscript{17}; Marquez v. Marquez, 136 S.W.3d 574, 579 (Mo. Ct. App. 2004) (holding wife not entitled to relief from outcome of divorce settlement on basis of ineffective assistance of counsel: “as a general rule, there is no . . . constitutional right in civil cases to effective assistance of counsel.” (internal quotation marks and citations omitted)).\textsuperscript{18} The holdings in Marquez, Lewis, Gilman, and Christiansen do not distinguish between the federal and state constitutions.

**State Court Decisions Addressing Court’s Inherent Authority**

In State ex rel. Scott v. Roper, discussed supra Part 5.D, a relator attorney sought an order of prohibition against a trial judge who had appointed him to represent an indigent prison inmate in an action to recover damages for medical malpractice. 688 S.W.2d 757, 758 (Mo. 1985). Finding first that the trial court had erred in adjudging the plaintiff inmate indigent, the court then disclaimed any authority of the trial court to appoint counsel based on inherent judicial powers, concluding that “[p]roviding for [indigent civil] representation and the funding thereof is a matter for legislative action.” Id. at 769. While the inherent power discussed by the court in this case clearly applies in the specific type of proceeding at hand, it is not clear from the decision whether such power to appoint may also apply across the board in all civil proceedings.

\textsuperscript{16}Gilman is discussed supra Part 5.F.
\textsuperscript{17}Lewis is discussed supra Part 5.B.
\textsuperscript{18}Marquez is discussed supra Part 5.F.