MISSOURI

Table of Contents

Preface................................................................................................................................. 1
Law Addressing Authorization or Requirement to Appoint Counsel in Specific Types of Civil Proceedings 2
1. SHELTER.................................................................................................................................. 2
   Federal Statutes and Court Decisions Interpreting Statutes....................................................... 2
2. SUSTENANCE.......................................................................................................................... 2
   Federal Statutes and Court Decisions Interpreting Statutes....................................................... 2
3. SAFETY AND/OR HEALTH .................................................................................................... 3
   A. Domestic Violence Protection Order Proceedings................................................................. 3
   B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings............................... 3
      State Statutes and Court Decisions Interpreting Statutes........................................................ 3
   C. Civil Commitment or Involuntary Mental Health Treatment Proceedings............................ 3
      State Statutes and Court Decisions Interpreting Statutes........................................................ 3
   D. Sex Offender Proceedings....................................................................................................... 4
      State Statutes and Court Decisions Interpreting Statutes........................................................ 4
   E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings........................................ 4
      State Statutes and Court Decisions Interpreting Statutes........................................................ 4
4. CHILD CUSTODY .................................................................................................................. 4
   A. Appointment of Counsel for Parent—State-Initiated Proceedings......................................... 4
      State Statutes and Court Decisions Interpreting Statutes........................................................ 4
      Federal Statutes and Court Decisions Interpreting Statutes....................................................... 5
      State Court Rules and Court Decisions Interpreting Court Rules............................................. 6
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ................ 6
   B. Appointment of Counsel for Parent—Privately Initiated Proceedings.................................... 6
      State Statutes and Court Decisions Interpreting Statutes........................................................ 6
   C. Appointment of Counsel for Child—State-Initiated Proceedings.......................................... 7
      State Statutes and Court Decisions Interpreting Statutes........................................................ 7
      Federal Statutes and Court Decisions Interpreting Statutes....................................................... 8
      State Court Rules and Court Decisions Interpreting Court Rules............................................. 9
   D. Appointment of Counsel for Child—Privately Initiated Proceedings..................................... 9
5. MISCELLANEOUS .................................................................................................................. 9
   A. Civil Contempt Proceedings.................................................................................................. 9
      State Statutes and Court Decisions Interpreting Statutes........................................................ 9
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ............... 10
      State Court Decisions Addressing Court’s Inherent Authority................................................. 11
   B. Paternity Proceedings........................................................................................................... 11
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ............... 11
   C. Proceedings for Judicial Bypass of Parental Consent for a Minor to Obtain an Abortion........ 12
      State Statutes and Court Decisions Interpreting Statutes........................................................ 12
   D. Proceedings Involving Claims by and Against Prisoners..................................................... 12
      State Statutes and Court Decisions Interpreting Statutes........................................................ 12
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 early 2012. 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-- (1) appoint an attorney for such person....” 42 U.S.C. § 3613(b).

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. Court of Appeals 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) trigger the appointment of counsel to represent that person. See Mo. Ann. Stat. §§ 475.075, 475.062. Mo. Ann. Stat. § 475.083(6) extends the right to appointed counsel to termination of guardianships. The right to counsel for an alleged disabled person is triggered automatically upon the filing of a petition seeking appointment as a guardian or conservator over that person; no finding of indigency or desire for appointed counsel is necessary. § 475.075.

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Proceedings for involuntary civil commitment 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 must “maintain a current register of attorneys who have agreed to be appointed to represent respondents against whom involuntary civil detention proceedings have been instituted in such county,” and that “[i]f the judge finds that the respondent is unable to pay attorney’s fees for the services rendered in the proceedings, the judge shall allow a reasonable attorney’s fee for the services, which fee shall be assessed as costs and paid together with all other costs in the proceeding by the state . . . .” See also § 632.325 (respondent must be advised that “[a]n attorney has been appointed who will represent him before and after the hearing and who will be notified as soon as possible . . . .”) 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 (“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].”)

ABA DIRECTORY OF LAW GOVERNING APPOINTMENT OF COUNSEL IN STATE CIVIL PROCEEDINGS • MISSOURI • 2012
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

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 Missouri legislature has created at least a limited right to counsel for indigent parents, although this right is dependent on a finding by the court that such an appointment is necessary for fairness reasons. Mo. Ann. Stat. § 211.211 states:

“[T]he court shall appoint counsel for the [child’s] custodian if it finds . . . [t]hat the custodian is indigent[,] . . . desires the appointment of counsel[,] . . . [and t]hat a full and fair hearing requires appointment of counsel for the custodian.”

Note that Missouri’s definition of “custodian” of a juvenile would include a biological parent. See Mo. Sup. Ct. R. 110.04(a)(4).
In *In re J.R.*, 347 S.W.3d 641, 645 (Mo. App. 2011), the court noted of § 211.211 that “[s]everal Missouri courts have required that the trial court either appoint counsel for a parent or secure an affirmative waiver of counsel.”

While most juvenile proceedings require a parent to demonstrate that appointment of counsel is necessary for a full and fair hearing, 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* Mo. Ann. Stat. § 211.462 (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 the Interest of J.L.C.*, 844 S.W.2d 123 (Mo. Ct. App. 1992), 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. *Id.* at 125.

Without explanation, the appeals court simply held that “[t]he trial court complied with the requirements of § 211.211 and Rule 116.01 [(currently Rule 115.01)].” *Id.* at 128. 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 right to counsel. However, the court made no mention whatsoever of Mo. Ann. Stat. § 211.462, which should have required appointment of counsel (although it too requires a request).

**Federal Statutes and Court Decisions Interpreting Statutes**

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

> 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 section 13 of this title.”

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2 While the ICWA does not appear to have a definitive statement about jurisdiction, 25 U.S.C. § 1912(b) refers to state law not providing for appointment of counsel. Additionally, 25 U.S.C. § 1912(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, of the pending proceedings and of their right of intervention.” These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law proceedings.

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 (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. R. RCP Rule 115.01 to .03.

In In the Interest of J.L.C., 844 S.W.2d 123 (Mo. Ct. App. 1992), 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 Rule 116.01 [(currently Rule 115.01)].” Id. at 125, 128.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In the Interest of B.M.P., 704 S.W.2d 237, 248-49 (Mo. Ct. App. 1986), the court held 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”. See also State v. Churchill, --- S.W.3d ----, 2014 WL 839455 (Mo. App. 2014) (declining to find a federal constitutional right to counsel in dependency proceeding because “Churchill was not subject to criminal prosecution, nor was she in any way at risk of losing her physical liberty.”)

In In the Interest of B.L.E. v. Elmore, 723 S.W.2d 917 (Mo. Ct. App. 1987), a Missouri appeals court found a due process violation under Lassiter v. Department of Social Services, 452 U.S. 18 (1981), when a mother was denied court-appointed counsel in a termination of parental rights proceeding in which allegations of sexual abuse had been raised. 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. B.L.E., 723 S.W.2d 917 at 919-920, 920 (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 a 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(12), 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. Section 453.030(13) 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 § 453.030(13) is to “appoint[] pro bono counsel for the birth parents,” seemingly allowing conscription of an attorney without payment.3

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 Missouri legislature has created at least a limited right to counsel for indigent children, although this right is dependent on a finding by the court that such an appointment is necessary for fairness reasons. Mo. Ann. Stat. § 211.211 states:

“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 making the request is indigent [or,] . . . [w]hen a petition has been filed, the court shall appoint counsel for the child when necessary to assure a full and fair hearing.”

Additionally, Mo. Ann. Stat. § 210.160 specifies that “[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...[a] child who is the subject of [abuse and neglect]

3 In full, § 453.030(13) 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 12 of this section to be paid by the prospective adoptive parents or the child-placing agency.”
proceedings.” 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.

Federal Statutes and Court Decisions Interpreting Statutes

The 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 section 13 of this title.”


The federal Child Abuse Prevention and Treatment Act (CAPTA) 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— ...(B) 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-- ... (xiii) 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.”

42 U.S.C. § 5106a(b)(2).

While the ICWA does not appear to have a definitive statement about jurisdiction, 25 U.S.C. § 1912(b) refers to state law not providing for appointment of counsel. Additionally, 25 U.S.C. § 1912(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, of the pending proceedings and of their right of intervention.” These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law 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 (discussed supra Part 4.A) into Rule 115, the statute’s implementing rule. See Mo. R. RCP Rule 115.01 to .03. Additionally, regarding guardians ad litem who are appointed to appear and represent children who are the subject of abuse or neglect proceedings (as required by Mo. Ann. Stat. § 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.

D. Appointment of Counsel for Child—Privately Initiated Proceedings

No law could be located regarding the appointment of counsel for children in privately initiated child custody proceedings.

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Statutes and Court Decisions Interpreting Statutes

In State ex rel. O’Brien v. Ely, 718 S.W.2d 177 (Mo. Ct. App. 1986), 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. 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. Ely, 718 S.W.2d 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. at 180 (quoting State ex rel. Shaw v. Provacnik, 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)).
In State ex rel. O’Brien v. Ely, 718 S.W.2d 177 (Mo. Ct. App. 1986), 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 . . . .” Id. at 180 (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,” which might include public defenders in their capacity as bar members. 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)); Provaznik, 708 S.W.2d at 340.

In Persky v. Persky, 96 S.W.3d 910 (Mo. Ct. App. 2003), the appellate court in the Eastern District reversed a civil contempt order against a husband resulting from his failure to pay court-ordered child support. The appeals court found the trial judge had failed to obtain the husband’s knowing waiver of counsel, and thus violated his federal due process rights. See id. at 914. As this failure to obtain a waiver could only have violated a right which existed in the first place, the court also found that the husband was entitled to appointed counsel. Id. at 913-14. (“In a proceeding for civil contempt to compel compliance with a court order, the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States constitution confer upon the alleged contemnor the right to be represented by counsel.”) (citing Hunt v. Moreland, 697 S.W.2d 326, 328-330 (Mo. Ct. App. 1985)). The Western District came to a similar conclusion in State ex rel. Family Support Division-Child Support Enforcement v. Lane, 313 S.W.3d 182, 187-88, 187 n.7 (Mo. Ct. App. 2010), 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.5 In Carothers v. Carothers, 337 S.W.3d 21, 25-26 (Mo. 2011), 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. 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 n5.

5 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 that the court “may, within [its] discretion, and on [its] own initiative, address issues that affect a defendant’s federally mandated constitutional rights[,] . . . [with] [t]he right to counsel [being] such a right.” Id. at 186 (citations and footnotes omitted). The court also held that a complete failure to appoint counsel is reversible regardless of whether the error caused prejudice. Id.
These civil contempt cases are in doubt after Turner v. Rogers, 131 S.Ct. 2507 (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”), with respect to cases within Turner’s scope, given that they relied entirely on the Fourteenth Amendment and the threat of imprisonment. However, recently one of the post-Turner appellate decisions cited approvingly to Hunt v. Moreland, although it did not mention Turner v. Rogers. State v. Churchill, --- S.W.3d ----, 2014 WL 839455 (Mo. App. 2014).

State Court Decisions Addressing Court’s Inherent Authority

In State ex rel. Family Support Div.-Child Support Enforcement v. Lane, 313 S.W.3d 182, 187 (Mo. Ct. App. 2010), 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.” Id. (citations omitted). The court found that, with regard to the defendant, who was facing civil contempt, “the court should have either (1) predetermined that Lane's failure to pay child support would not result in jail time; or (2) advised Lane that he had a right to counsel and that, if he were found to be indigent, counsel would be appointed unless Lane chose to waive his right to counsel.” Id.

B. Paternity Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Washington ex rel. Lewis v. Collis, 963 S.W.2d 700, 704 (Mo. Ct. App. 1998), 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. On the appointment of counsel issue, the court reached the same conclusion as in Christiansen v. Missouri State Board of Accountancy, 764 S.W.2d 952 (Mo. Ct. App. 1988), finding no right to appointment of counsel. See id. at 705 (finding the 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 Christiansen, 764 S.W.2d at 954), discussed infra Part 5.E (emphasis added) (internal quotation marks omitted).
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)(1) provides appointed counsel to “any party” to a proceeding where a minor is seeking a judicial bypass 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*, 709 S.W.2d 111, 112-13 (Mo. 1986), 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. 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 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. Missouri Department of Social Services*, 769 S.W.2d 168 (Mo. Ct. App. 1989), the court affirmed the dismissal of an inmate’s § 1983 claim, despite the inmate’s argument that he was improperly refused appointed counsel. *Id.* at 176. 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.* (emphasis added) (citing *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981)). 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*, 746 S.W.2d 652 (Mo. Ct. App. 1988), with the same holding—that absent statutory modification, state and federal due process rights are coextensive. *See id.* at 654 (“[A]n 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 Fitzpatrick at 654 (“[A]s 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, 688 S.W.2d 757 (Mo. 1985), 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. Id. at 7558. 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. The latter question was easily dispatched by drawing from State ex rel. Wolf v. Ruddy, 617 S.W.2d 64 (Mo. 1981): “[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.” Scott, 688 S.W.2d at 759 (alteration in original) (quoting Wolf, 617 S.W.2d at 67) (internal quotation marks omitted).

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 Wolf, 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

6 In State ex rel. Missouri Public Defender Commission v. Pratte, 298 S.W.3d 870, 889 (Mo. 2009), 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.” Id. at 889 (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.
State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Christansen v. Missouri State Board of Accountancy*, 764 S.W.2d 952 (Mo. Ct. App. 1988), an accountant who had been disciplined by the state board of accountancy appealed that decision to the trial court, but was rebuffed. *Id.* at 953. 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. In doing so, the court stated the incorrect proposition that in Missouri, “[t]here is no constitutional or statutory right for an indigent to have counsel appointed in a civil case”; 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 *Christansen* court went on to state, “It of course follows that there is no constitutional or statutory right to effective assistance of counsel in a civil case.” *Id.* at 954 (quoting *Watson v. Moss*, 619 F.2d 775, 776 (8th Cir. 1980)) (internal quotation marks omitted). The *Christansen* 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

In *Gilman v. Gilman*, 851 S.W.2d 15 (Mo. Ct. App. 1993), 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 interpreted *Christansen v. Missouri State Board of Accountancy*, 764 S.W.2d 952 (Mo. Ct. App. 1988), 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” *Gilman*, 851 S.W.2d at 19 (citing *Christansen*, 764 S.W.2d at 954). The court did not make explicit which constitution was being interpreted.

The court in *Marquez v. Marquez*, 136 S.W.3d 574 (Mo. Ct. App. 2004) applied *Christansen* 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 Marquez* at 579 (“[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 *Christansen*, 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.” State ex rel. Scott v. Roper, 688 S.W.2d 757 (Mo. 1985).
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 App. U.S.C. § 522(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 § 522(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 Christansen v. Missouri State Board of Accountancy, 764 S.W.2d 952 (Mo. Ct. App. 1988), discussed supra Part 5.E, the appellate court found that “[t]here is no constitutional . . . right for an indigent to have counsel appointed in a civil case. It of course follows that there is no constitutional . . . right to effective assistance of counsel in a civil case.” Id. at 954 (quoting Watson v. Moss, 619 F.2d 775, 776 (8th Cir. 1980)) (internal quotation marks omitted). The Christansen 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.

5 App. U.S.C.A. § 512(a) states, “This Act [sections 501 to 515 and 516 to 597b of this Appendix] applies to-- ... (2) each of the States, including the political subdivisions thereof...”
8 50 App. U.S.C. § 521(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.”
9 50 App. U.S.C. § 522(a) 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-- (1) is in military service or is within 90 days after termination of or release from military service; and (2) has received notice of the action or proceeding.”
Missouri appellate courts have extended *Christansen* to the realm of family law. *See, e.g., Gilman v. Gilman*, 851 S.W.2d 15, 19 (Mo. Ct. App. 1993), discussed *supra* Part 5.F (holding that, in a case considering the appeal of a divorce judgment on the 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 *Christansen*, 764 S.W.2d at 954); *Washington ex rel. Lewis v. Collis*, 963 S.W.2d 700, 704-705 (Mo. Ct. App. 1998), discussed *supra* Part 5.B (finding father in a paternity case “not entitled, as a matter of right, to the appointment of counsel . . . [as p]arty litgants to civil proceedings have no constitutional . . . right to the appointment of counsel”) (quoting *Christansen*, 764 S.W.2d at 954)(emphasis added) (internal quotation marks omitted); *Marquez v. Marquez*, 136 S.W.3d 574, 579 (Mo. Ct. App. 2004), discussed *supra* Part 5.F (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). The holdings in *Marquez*, *Gilman*, and *Christansen* do not distinguish between the federal and state constitutions.

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

In *State ex rel. Scott v. Roper*, 688 S.W.2d 757 (Mo. 1985), 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. *Id.* at 758. 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.