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

MISSISSIPPI

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Table of Contents

MISSISSIPPI

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

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
      State Statutes and Court Decisions Interpreting Statutes ........................................ 3
   B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings .................... 3
      State Statutes and Court Decisions Interpreting Statutes ........................................ 3
   C. Civil Commitment Proceedings .................................................................................. 3
      State Statutes and Court Decisions Interpreting Statutes ........................................ 3
   D. Sex Offender Proceedings ........................................................................................ 4
   E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings ............................ 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 Decisions Addressing Constitutional Due Process or Equal Protection ....... 5
   B. Appointment of Counsel for Parent—Privately Initiated Proceedings ....................... 6
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ....... 6
      State Court Decisions Addressing State Constitution’s Open Courts Provision ............. 7
   C. Appointment of Counsel for Child—State-Initiated Proceedings .............................. 8
      State Statutes and Court Decisions Interpreting Statutes ........................................ 8
      Federal Statutes and Court Decisions Interpreting Statutes ........................................ 8
   D. Appointment of Counsel for Child—Privately Initiated Proceedings ......................... 9

5. MISCELLANEOUS .......................................................... 10
   A. Civil Contempt Proceedings ....................................................................................... 10
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ....... 10
   B. Paternity Proceedings .............................................................................................. 10
   C. Proceedings for Judicial Bypass of Parental Consent for a Minor to Obtain an Abortion 10
      State Statutes and Court Decisions Interpreting Statutes ........................................ 10
   D. Proceedings Regarding “Beneficial Use” of Water ................................................... 10
      State Statutes and Court Decisions Interpreting Statutes ........................................ 10
   E. Proceedings Investigating Judges’ Conduct ............................................................. 11
      State Court Rules and Court Decisions Interpreting Court Rules ............................... 11
   F. Probation and Parole Revocation Hearings ............................................................. 11
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ....... 11
      State Court Decisions Addressing State Constitution’s Open Courts Provision ............. 11
   G. Proceedings Involving Claims by and Against Prisoners ......................................... 12
      State Court Decisions Addressing Constitutional Due Process or Equal Protection ....... 12
H. Surgical Privileges Revocation Hearings ..........................................................12
State Court Decisions Addressing State Constitution’s Open Courts Provision..........12
I. Proceedings to Enforce Payment of Child Support ...............................................13
State Court Decisions Addressing Constitutional Due Process or Equal Protection........13
Law Addressing Authorization or Requirement to Appoint Counsel in Civil Proceedings Generally ..........15
Federal Statutes and Court Decisions Interpreting Statutes....................................15
State Court Decisions Addressing Constitutional Due Process or Equal Protection........15
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[.]” 42 U.S.C. § 3613(b)(1).

2. SUSTENANCE

Federal Statutes and Court Decisions Interpreting Statutes

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

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

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

A. Domestic Violence Protection Order Proceedings

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

B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings

State Statutes and Court Decisions Interpreting Statutes

In a protective services hearing for a “vulnerable person,” Miss. Code Ann. § 43-47-13(2) states a right to be “represented by counsel at the hearing” and does not specifically mention appointment of counsel. However, the subsequent sentence states, “[i]f the person, in the determination of the court, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem,” suggesting perhaps that counsel is actually provided.

C. Civil Commitment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Mississippi provides for a right to counsel when an indigent person is in need of mental treatment under Miss. Code Ann. § 41-21-61 et seq., and this right is apparently not tied to indigence. See Miss. Code Ann. §§ 41-21-67(3) (when affidavit filed suggesting person is in need of treatment, “[i]f the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.”); 41-21-83 (for continued commitment hearing, “[t]he clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that the patient for any reason does not have the services of an attorney; however, the patient may waive the appointment of counsel subject to the approval of the court.”); 41-21-102(8) (“A patient has the right to be represented by counsel at any proceeding under sections 41-21-61 through 41-21-107. The court shall appoint counsel to represent the proposed patient if neither the proposed patient nor others provide counsel. In all proceedings under section 41-21-61 through 41-21-107, counsel shall: (a) consult with the person prior to any hearing; (b) be given adequate time to prepare for all hearings; (c) continue
to represent the person throughout any proceedings under this charge unless released as
counsel by the court; and (d) be a vigorous advocate on behalf of his client.”).

D. Sex Offender Proceedings

No law could be located regarding the appointment of counsel for indigent civil litigants
in sex offender proceedings. However, this jurisdiction might not have a mechanism for
confining sexually dangerous/violent persons.

E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings

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

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

As of 2017, youth courts are authorized to appoint counsel for parents in abuse/neglect
or termination of parental rights cases. See Miss. Code Ann. §§ 43-21-201(2) (“If the court
determines that a parent or guardian who is a party in an abuse, neglect or termination of
parental rights proceeding is indigent, the youth court judge may appoint counsel to represent
the indigent parent or guardian in the proceeding.”); 99-18-13(2) (“The State Defender may
provide representation to parents or guardians who have been determined by the youth court
judge to be indigent and in need of representation in an abuse, neglect or termination of
parental rights proceeding or appeal therefrom. Representation may be provided by staff or
contract counsel including, but not limited to, by contract with legal services organizations.”);
93-15-113(2)(b) (in termination cases, “[t]he court shall then determine whether the parent
before the court is represented by counsel. If the parent wishes to retain counsel, the court
shall continue the hearing for a reasonable time to allow the parent to obtain and consult with
counsel of the parent’s own choosing. If an indigent parent does not have counsel, the court
shall determine whether the parent is entitled to appointed counsel under the Constitution of
the United States, the Mississippi Constitution of 1890, or statutory law and, if so, appoint
counsel for the parent and then continue the hearing for a reasonable time to allow the parent
to consult with the appointed counsel. The setting of fees for court-appointed counsel and the
assessment of those fees are in the discretion of the court.”).
Federal Statutes and Court Decisions Interpreting Statutes

The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,\(^1\) 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 \([25 \text{ U.S.C. } \S\] 13.


State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *K.D.G.L.B.P. v. Hinds Cty. Dep’t of Human Servs.*, the mother in a termination of parental rights case only raised the question of the federal constitution, so the Supreme Court of Mississippi did not address her rights under the Mississippi Constitution. 771 So. 2d 907, 910-11 (Miss. 2000). The court held she did not have a right under the federal constitution to state-appointed counsel in her trial to terminate her parental rights. *Id.* The court found that the presence of counsel would not have made a “determinative difference,” relying upon *Lassiter v. Dep’t of Social Servs.* *Id.* (citing 452 U.S. 18, 34-35 (1981) (finding no absolute Fourteenth Amendment right to counsel in termination of parental rights proceedings, and that such appointment, while wise, is not mandatory and therefore should be determined by state courts on a case-by-case basis)). The court also relied upon the fact that the mother had not asserted that her financial situation made her unable to retain counsel and had not asked for a continuance to obtain counsel. *Id.*

In *J.C.N.F. v. Stone Cty. Dep’t of Human Servs.*, a mother appealed the termination of her parental rights by the Stone County Chancery Court. 996 So. 2d 762, 764 (Miss. 2008). Among other things, the mother claimed that she was denied due process because the chancellor failed

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\(^1\) 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.” These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law proceedings.
to appoint an attorney to represent her at the termination hearing. *Id.* at 769. The mother cited only to *Lassiter* and *K.D.G.L.B.P.*, cases that both addressed the federal constitution. *Id.* Applying *Lassiter*, the court first noted that the mother was at risk of prosecution due to the allegations of serious abuse/neglect. *Id.* at 771. However, the court also noted that the petitioner had ample time to find an attorney (4-5 months), the case “did not involve expert testimony” nor “specially troublesome points of law,” and “the presence of counsel would not have made a determinative difference, although it may have greatly changed the hearing transcript now before this Court.” *Id.* The court also noted the mother had been an active participant in the hearings (“She . . . attempted to represent herself, to object to the admission of evidence, and to question witnesses.”) and “[t]he chancellor also made efforts to assist the mother by examining witnesses when she was unable to do so, as well as directing her own testimony when she was unable to present a persuasive case for the return of her children.” *Id.* at 772. See also *Green v. Miss. Dep't of Human Servs.*, 40 So. 3d 660, 664-65 (Miss. Ct. App. 2010) (upholding denial of counsel in termination case because mother “never mentioned to the chancery court that she lacked the financial means to hire an attorney to represent her. In fact, prior to the hearing, [mother] enjoyed the representation of an attorney.”); court also found that presence of attorney “would not have made a determinative difference” as per *Lassiter*, in part because many of her arguments were considered in her post-trial motion filed by counsel); *In re Williams*, 69 So. 3d 782, 786-88 (Miss. Ct. App. 2011) (upholding denial of counsel in termination case; court applies *Lassiter* and finds that parents faced no criminal prosecution in Mississippi for alleged abuse occurring in Georgia, no troublesome points of law raised because complex issues already adjudicated in abuse/neglect proceeding, and counsel would not have made determinative difference); *Pritchett v. Pritchett*, 161 So. 3d 1106 (Miss. Ct. App. 2015) (reversing based on failure to appoint counsel for incarcerated parent, where parent also denied ability to attend hearing in person; court says counsel could have made difference because parent’s “request to be present for the hearing could have been secured by his attorney filing a writ of habeas corpus ad testificandum, which would have required [parent’s] presence at the hearing to testify. . . . Additionally, an attorney’s presence could have aided [parent] with presenting the complex issue of the applicability of the section 93–15–103 to the present facts.”).

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

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

In *Blakeney v. McRee*, the Supreme Court of Mississippi declined to either recognize a state constitutional right to counsel in adoption cases, or adopt an independent interpretation of the Mississippi Constitution (an argument urged by the dissent), saying its due process clause had always been presumed to be identical to the federal version. 188 So. 3d 1154, 1161-62 (Miss. 2016). The Court acknowledged that recently the Hawaii Supreme Court had two years
before recognized a state constitutional right to counsel in termination of parental rights cases, id. at 1162, but stated, “the overwhelming majority of states that have created a right to counsel in termination proceedings have done so through legislative action, not judicial rulings.” Id. (citing cases). The Court also said, “prior to Lassiter, many state and federal courts had interpreted the Due Process Clause of the Fourteenth Amendment to require the appointment of counsel for indigent parents in state-initiated termination proceedings. . . . However, Lassiter ‘cast real doubt on the validity of these decisions, insofar as they were premised on federal due process grounds.’” Id. n.6 (quoting Matter of Adoption of K.A.S., 499 N.W.2d 558, 562 (N.D. 1993)). The Court apparently did not know that at least eleven jurisdictions revisited their constitutional jurisprudence after Lassiter and found a state constitutional right to counsel, with the statutes in these jurisdictions coming after the judicial decision.2 Also, the Court brushed aside the fact that the majority of states have a statutory right to counsel, see id., but as the dissent noted, “[t]he majority fails to grasp . . . that the legislatures of many states have obviated the need for judicial action by statutorily guaranteeing this right.” Id. at 1169 (Dickinson, J., dissenting).

State Court Decisions Addressing State Constitution’s Open Courts Provision

Article 3, Section 25 of the Mississippi Constitution provides: “No person shall be debarred from prosecuting or defending any civil cause for or against himself or herself, before any tribunal in the state, by him or herself, or counsel, or both.” Miss. Const. Art. 3, § 25.

In Blakeney v. McRee, the Supreme Court of Mississippi declined to recognize a right to counsel in adoption cases under this constitutional provision.3 The court stated:

While this Court has had rare occasion to interpret this provision, we generally have held that it provides an individual "the right to represent himself or herself in any court in any civil cause." Saxon v. Harvey, 223 So. 2d 620, 623 (Miss. 1969). But we have rejected the argument that this provision provides an absolute right to counsel in parole revocation hearings. Miss. State Prob. and Parole Bd. v. Howell, 330 So. 2d 565, 566 (Miss. 1976). The Howell Court did recognize that there may be cases in which due process may require the appointment of counsel for indigent parolees in revocation

2 See John Pollock, The Case Against Case-By-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases, 61 Drake L.J. 763, 783 (Spring 2013), available at http://civilrighttocounsel.org/uploaded_files/4/The_Case_Against_Case-by-Case__Pollock__.pdf. Hawaii joined the list since the article was published.

3 While the Blakeney court stated it was evaluating Article 3, Section 24 since the dissent had raised it, see 188 So. 3d at 1162, the dissent actually relied on Article 3, Section 25, see id. at 1170 (Dickinson, J., dissenting), and so did the Howell case that the majority opinion analyzes. See Miss. State Prob. & Parole Bd. v. Howell, 330 So. 2d 565, 566 (Miss. 1976).
cases. See id. Likewise, this Court has provided a framework for the appointment of counsel for indigent parents in appropriate termination cases. K.D.G.L.B.P., 771 So. 2d at 909. But again, our Constitution does not mandate appointment of counsel in all such cases.

188 So. 3d 1154, 1162 (Miss. 2016).

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

State Statutes and Court Decisions Interpreting Statutes

An indigent minor has a right to counsel in “all critical stages” of any proceeding before the Youth Court. See Miss. Code Ann. § 43-21-201(1). This includes abuse/neglect proceedings. See § 43-21-151(1) (giving youth court exclusive jurisdiction in proceedings involving “a child in need of supervision, a neglected child, an abused child or a dependent child,” except in certain limited circumstances). “In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child.” § 43-21-121(4). Rule 13(f) of the Uniform Rules of Youth Court Practice adds that if the child’s wishes conflict with the guardian’s recommendations, then the court “shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child’s preferences.” If abuse/neglect allegations surface in the context of a custody proceeding, then the court “shall appoint a guardian ad litem for the child as provided under Section 43-21-121, who shall be an attorney.” § 93-5-23.

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

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4 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.
Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to [25 U.S.C. §] 13.


The federal Child Abuse Prevention and Treatment Act provides:

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


D. Appointment of Counsel for Child—Privately Initiated Proceedings

Miss. Code Ann. § 93-17-8(1)(b) states: “Whenever an adoption becomes a contested matter, whether after a hearing on a petition for determination of rights . . . or otherwise, the court . . . [s]hall appoint a guardian ad litem to represent the child. Such guardian ad litem shall be an attorney, however his duties are as guardian ad litem and not as attorney for the child.” Furthermore, the provision provides that “[n]either the child nor anyone purporting to act on his behalf may waive the appointment of a guardian ad litem.” Id. Subsection (5) adds:

Appointment of a guardian ad litem is not required in any proceeding under this chapter except as provided in subsection (1)(b) above and except for the guardian ad litem needed for an abandoned child. It shall not be necessary for a guardian ad litem to be appointed where the chancery judge presiding in the adoption proceeding deems it unnecessary and no adoption agency is involved in the proceeding. No final decree of adoption heretofore granted shall be set aside or modified because a guardian ad litem was not appointed unless as the result of a direct appeal not now barred.

This suggests the judge may have discretion to not appoint in certain circumstances.
5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Chasez v. Chasez, the petitioner in a contempt case asserted ineffective assistance of appointed counsel. 957 So. 2d 1031, 1038 (Miss. Ct. App. 2007). The court cited to Goodin v. Dep’t of Human Servs., discussed infra Part 5.I, for the proposition that “[c]learly, there is no right to counsel in a civil proceeding.” Id. (citing 772 So. 2d 1051, 1055 (Miss. 2000)). Similarly, Parker v. Bliven was a case involving child support and custody modification where the litigant was jailed as a result of contempt for failure to pay child support. 59 So. 3d 619, 620-21 (Miss. Ct. App. 2010). The Parker court refused to find a right to counsel, citing Goodin for the proposition that “[t]he supreme court has found that the rights to appointed counsel and to effective assistance of counsel do not apply in civil proceedings.” Id. at 621 (citing 772 So. 2d at 1055). Also, the Parker court cited Lassiter for the proposition that “[t]he United States Supreme Court has also held that counsel should only be appointed if the unrepresented party may be ‘deprived of his physical liberty.’” Id. (citing 452 U.S. at 26-27).

B. Paternity Proceedings

No law could be located regarding the appointment of counsel for indigent litigants in paternity proceedings.

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

State Statutes and Court Decisions Interpreting Statutes

A minor in a hearing for waiver of parental consent to abortion has a right to counsel if the minor requests counsel, and the minor must be advised of this right. Miss. Code Ann. § 41-41-55(2).

D. Proceedings Regarding “Beneficial Use” of Water

State Statutes and Court Decisions Interpreting Statutes
For concerned persons who appear at an application hearing for the “beneficial use” of water, there is a “right of counsel.” Miss. Code Ann. § 51-3-35(1). It is unclear whether this includes appointment.

E. Proceedings Investigating Judges’ Conduct

State Court Rules and Court Decisions Interpreting Court Rules

At all stages of a proceeding investigating a judge conducted by the Mississippi Committee on Judicial Performance, the judge is “entitled” to counsel, which may or may not mean appointed counsel. Mississippi Commission on Judicial Performance Rule 5(F).

F. Probation and Parole Revocation Hearings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Riely v. State*, the petitioner argued that the failure to appoint counsel for his probation revocation hearing “violated his constitutional rights,” but it is not clear whether he invoked both the federal and state constitution. 562 So. 2d 1206, 1209 (Miss. 1990). However, it is likely the court perceived (or chose to address) the challenge as federal-only, as the court cited only *Lassiter* and other U.S. Supreme Court cases (and additionally, the petitioner in *Riely* only raised the Fourteenth Amendment for his other challenges to the probation revocation process, see id. at 1210). *Id.* at 1209 (citing 452 U.S. at 26). The court applied the case-by-case analysis specified in *Gagnon v. Scarpelli* to find no right to counsel in a probation revocation hearing because “the case was not ‘complex or otherwise difficult to develop’” and because “counsel was provided upon request by Riely prior to the fourth hearing and prior to his appeal to this Court.” *Id.* (quoting 411 U.S. 778, 790-91 (1973)).

In *Harwell v. State*, the petitioner in a probation revocation hearing raised the Fourteenth and Sixth Amendments as requiring the appointment of counsel. 817 So. 2d 598, 598-99 (Miss. Ct. App. 2002). The court cited to *Riely, see id.* at 599 (citing 562 So. 2d at 1209), and held that because “the defenses argued by Harwell were straightforward and certainly not ‘complex or otherwise difficult to develop or present,’” the trial court was not required to appoint counsel at the hearing. *Id.* at 600 (quoting 411 U.S. at 790).

State Court Decisions Addressing State Constitution’s Open Courts Provision

Article 3, Section 25 of the Mississippi Constitution provides:
No person shall be debarred from prosecuting or defending any civil cause for or against himself or herself, before any tribunal in the state, by him or herself, or counsel, or both.

In Miss. State Prob. & Parole Bd. v. Howell, the Supreme Court of Mississippi found that this provision does not guarantee a parolee being represented by retained counsel at any revocation hearing, whether preliminary or final, primarily because parole hearings were administrative proceedings and therefore not a “civil cause” covered by the provision. 330 So. 2d 565, 566 (Miss. 1976). The court also held that while there might be some cases sufficiently complex to require counsel, “most of the tens of thousands of hearings would not require counsel, and the courts ought not to hold that every parolee is entitled to counsel in every hearing.” Id. The court also speculated that requiring counsel for the probationer would transform the proceedings in a way that would actually hurt the probationer:

The role of the hearing body itself, aptly described in Morrissey as being ‘predictive and discretionary’ as well as fact-finding, may become more akin to that of a judge at a trial, and less attuned to the rehabilitative needs of the individual probationer or parolee. In the greater self-consciousness of its quasi-judicial role, the hearing body may be less tolerant of marginal deviant behavior and feel more pressure to reincarcerate rather than to continue nonpunitive rehabilitation.

Id.

G. Proceedings Involving Claims by and Against Prisoners

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Moore v. State, the court stated that “a criminal defendant has neither a state nor federal constitutional right to appointed counsel in post-conviction proceedings.” 587 So. 2d 1193, 1195 (Miss. 1991). See also Neal v. State, 422 So. 2d 747, 748 (Miss. 1982) (reaching same conclusion under federal constitution).

H. Surgical Privileges Revocation Hearings

State Court Decisions Addressing State Constitution’s Open Courts Provision

Article 3, Section 25 of the Mississippi Constitution provides:

No person shall be debarred from prosecuting or defending any civil cause for or against himself or herself, before any tribunal in the state, by him or herself, or counsel, or both.
In *Wong v. Stripling*, the Supreme Court of Mississippi found that this provision does not guarantee representation by retained counsel at any hearing for revocation of surgical privileges, whether preliminary or final, primarily because such hearings were administrative proceedings and therefore not a “civil cause” covered by the provision. 700 So. 2d 296 (Miss. 1997).

I. Proceedings to Enforce Payment of Child Support

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Goodin v. Dep’t of Human Servs.*, the court considered the question of appointed counsel in a proceeding for enforcement of a child support order. 772 So. 2d 1051, 1053 (Miss. 2000). The petitioner alleged that the trial court should not have proceeded without assigning him counsel (and did not say what constitutional right in particular was allegedly violated), to which the *Goodin* court responded, “the rights to appointed counsel and to effective assistance of counsel do not apply in civil proceedings.” *Id.* at 1055 (citing *DeMyers v. DeMyers*, 742 So. 2d 1157, 1162 (Miss. 1999) (en banc)). *DeMyers* was a civil case involving the conveyance of title of home. 742 So. 2d at 1159. The *DeMyers* petitioner did not argue, though, that he had a right to appointed counsel; in fact, he already had counsel, and his argument was that “he received ineffective assistance of counsel, based on the fact that his trial counsel committed suicide two days after the trial[.]” *Id.* at 1162. Moreover, the *DeMyers* court only held that “the constitutional right to effective assistance of counsel does not apply to a civil proceeding,” and it did not cite any authority whatsoever even for this proposition. *Id.*

It is unclear whether *Goodin* passed on the Sixth Amendment (or the state equivalent), the Fourteenth Amendment, or the state constitution’s due process clause. The *Goodin* court did note that the U.S. Supreme Court had “ruled similarly” to *DeMyers* in *Lassiter*, perhaps suggesting that it interpreted *DeMyers* as a decision on the state constitution. 772 So. 2d at 1055.

The *Goodin* court also interpreted the *Lassiter* “presumption” against appointed counsel when physical liberty is not threatened into an absolute bar, stating that “[t]he United States Supreme Court has ruled . . . that counsel should be appointed only in cases in which, if the unrepresented party loses, he ‘may be deprived of his physical liberty.’” *Id.* (emphasis added)

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5 *DeMyers* has never been subsequently cited by any court.

6 *Goodin* further held that the trial court did not err in requiring the husband to represent himself because “Mississippi’s Constitution guarantees litigants in the courts of this State the right to represent themselves as they see fit. Miss. Const. art. 3, § 26.” *Goodin* at 1055. However, art. 3, § 26 only deals with the rights of an accused in a criminal proceeding, and the court had already made it clear in *Goodin* that “[i]n the case at hand, Goodin had no right to have counsel appointed as this was a civil proceeding” (emphasis added). *Id.*
(quoting 452 U.S. at 26-27). Similarly, in Bougard v. Bougard, the husband in a divorce proceeding argued that since he was eventually incarcerated for failure to pay child support, he should have been entitled to counsel at the temporary support hearing, as it was “quasi-criminal.” 991 So. 2d 646, 648-49 (Miss. Ct. App. 2008). The husband only asserted that the Sixth Amendment was violated, and based on that the court stated that “[a] party in a civil action does not have a right to counsel.” Id. at 649. The court noted that the husband did not lose his liberty at the temporary support hearing, but rather at the subsequent contempt hearing, where he was represented. Id. And, in Reasor v. Jordan, where the trial court ordered a parent to pay child support and arrears, but reserved question of contempt, the court quoted Goodin for the lack of a right to appointed counsel except where physical liberty is threatened. 110 So. 3d 307, 310 (Miss. 2013) (quoting 772 So. 2d at 1055).
Law Addressing Authorization or Requirement to Appoint Counsel in Civil Proceedings Generally

Federal Statutes and Court Decisions Interpreting Statutes

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

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


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

State Court Decisions Addressing Constitutional Due Process or Equal Protection

A few court of appeals decisions have relied upon Goodin v. Dep’t of Human Servs., discussed supra Part 5.I, for a blanket statement that there is no right to counsel in any civil proceedings whatsoever, and these courts have not limited their statements to considerations of the Sixth Amendment or its equivalent. See, e.g., Chazez v. Chazez, 957 So. 2d 1031, 1038 (Miss. Ct. App. 2007) (petitioner in contempt case asserted ineffective assistance of appointed counsel; court cites to Goodin for proposition that “[c]learly, there is no right to counsel in a civil proceeding” (citing 772 So. 2d 1051, 1055 (Miss. 2000))); Bougard v. Bougard, 991 So. 2d

7 50 U.S.C. § 3912(a)(2) states that the provisions of the SCRA “...apply[.] . . . each of the States, including the political subdivisions thereof.”
8 50 U.S.C. § 3931(a) states, “This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.”
9 50 U.S.C. § 3932 applies to “any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section . . . is in military service or is within 90 days after termination of or release from military service; and . . . has received notice of the action or proceeding.”

646, 648-49 (Miss. App. 2008) (husband in divorce proceeding asserted violation of Sixth Amendment, arguing he was entitled to counsel at temporary support hearing because he was eventually incarcerated for failure to pay child support; court cited to Chasez for proposition that “[a] party in a civil action does not have a right to counsel” (citing 957 So. 2d at 1038)); Parker v. Bliven, 59 So. 3d 619, 620-21 (Miss. Ct. App. 2010) (in case involving child support and custody modification where litigant was jailed for failure to pay child support, even though court cited Lassiter for the proposition that “counsel should only be appointed if the unrepresented party may be ‘deprived of his physical liberty,’” court noted that “the rights to appointed counsel and to effective assistance of counsel do not apply in civil proceedings.” (citing 452 U.S. at 26-27)).