

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

NEW MEXICO

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NEW MEXICO

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Preface

Important Information to Read Before Using This Directory

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

Terms of Use/Disclaimers

This Directory should not be construed as providing legal advice and the ABA makes no warranties concerning the information contained therein, which has been updated to reflect the law through early 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The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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-- (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.”

737 F.2d 1173, 1183-85 (D.C. Cir. 1984).

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 New Mexico, courts must appoint counsel for the person to be protected in a conservatorship proceeding. NMSA 1978, §§ 45-5-407(B) (long-term conservators), 45-5-408(B) (temporary conservators). Additionally, counsel must be provided to any indigent, incapacitated adult in a protective placement or guardianship hearing. NMSA 1978, § 27-7-27(A)(2) (in adult protective proceedings, “the adult has the right to counsel whether or not the adult is present at the hearing. If the adult is indigent, the court shall appoint counsel no later than the time of the filing of the petition”); N.M. Stat. § 45-5-303(C) (in guardianship proceeding, “[u]nless an alleged incapacitated person already has an attorney of the alleged incapacitated person’s own choice, the court shall appoint an attorney to represent the alleged incapacitated person. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem”); § 45-5-310(B) (in temporary guardianship proceeding, “[u]pon motion of the Petitioner, the court shall . . . appoint counsel for the alleged incapacitated person”); § 45-5-307(D) (for review/termination of guardianship, “the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.”)

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

“A child shall be represented by an attorney at all commitment or treatment guardianship proceedings under the Children’s Mental Health and Developmental Disabilities Act if the child is fourteen years of age or older or by a guardian ad litem if the child is under fourteen years of age.” NMSA 1978, § 32A-6A-13(A). Additionally, developmentally disabled adults subjected to involuntary commitment in residential care have a right to counsel. NMSA 1978, § 43-1-13(D) (“At the hearing on the petition, the proposed client shall be represented by

counsel . . .”).¹ And NMSA 1978, § 43-1-4 provides that in all mental health and developmental disabilities proceedings, “[t]he court shall appoint counsel to represent a client who has not retained counsel and is unable to do so. When appointing counsel, the court shall give preference to nonprofit organizations offering representation to persons with a mental illness or a developmental disability. A client shall be liable for the cost of legal representation unless the client is indigent.”

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

State Statutes and Court Decisions Interpreting Statutes

Counsel must be appointed to represent any person who is temporarily detained due to a doctor’s belief that he is infected with a threatening communicable disease, “if the court determines that the person held cannot afford legal representation or if the court determines that appointment of counsel is required in the interest of justice.” NMSA 1978, § 24-1-15(G) (contagious diseases); NMSA 1978, § 24-1-15.1(H) (infectious forms of tuberculosis).

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

New Mexico courts must appoint counsel for a parent, guardian, or custodian accused of neglecting or abusing a child. NMSA 1978, § 32A-4-10(B) (“At the inception of an abuse or neglect proceeding, counsel shall be appointed for the parent, guardian or custodian of the child. The appointed counsel shall represent the parent, guardian or custodian who is named as a party until an indigency determination is made at the custody hearing. Counsel shall also be appointed if, in the court’s discretion, appointment of counsel is required in the interest of justice.”).

¹ Previously, NMSA 1978, § 43-2-9(B) (1977, repealed effective July 1, 2005) provided a right to counsel to any person whose commitment at a substance abuse program is sought. NM SA 1978, § 43-2-8(H), which previously required informing a person subject to substance abuse commitment of their right to counsel, was changed to refers to informing such a person of their right to “contact counsel.”

NMSA 1978, § 32A-5-16(E) requires that in proceedings to terminate parental rights in connection with adoption, “[t]he court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court’s discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys.” In *In re Darla D*, 2016 N.M. App. LEXIS 93 (N.M. App. 2016) (unpublished), the court cited to § 32A-5-16(E) and held that “the court’s failure to advise Mother that she would be entitled to appointed counsel-paid for by Petitioners-if she could establish indigency violated her rights under the Adoption Act, was in derogation of her due process rights, and constitutes fundamental error.” *Id.* at *16. The court conceded that the mother was represented by “largely pro bono counsel,” (*Id.* at *16) but added that “[w]hile pro bono legal representation is both commendable and important to legal proceedings of all sorts in New Mexico, Mother nonetheless was not given an opportunity for appointed counsel that was her right to accept or reject.” *Id.* at *17. The court quoted from *Chris L. v. Vanessa O.*, 320 P.2d 16 (N. M. App. 2013) for the proposition that “a court must advise a parent in termination proceedings under the adoption provisions of the Children’s Code that he or she is entitled to have counsel appointed if indigency can be established.” The court also observed that “Mother’s indigency was pointed out to the court at the first hearing,” making the trial court’s actions even less defensible.

In 1998 the New Mexico Court of Appeals explained in *New Mexico ex rel. Children, Youth & Families Dep’t v. Tammy S.*, 1999-NMCA-009, 126 N.M. 664, 974 P.2d 158 (1998) that the right to *effective* counsel (as guaranteed by the Sixth Amendment to the United States Constitution in criminal cases) extends to the statutory right to counsel in termination cases. *Id.* ¶ 20 (emphasis added) (observing that the majority of foreign jurisdictions approve of this extension, and citing Rule 16-107 NMRA, which is a rule of professional conduct addressing conflicts of interest); *see also New Mexico ex rel. Children, Youth & Families Dep’t v. Vanessa C.*, 2000-NMCA-025, ¶ 32, 128 N.M. 701, 997 P.2d 833 (stating that “[a] parent has the right to effective counsel in termination cases.”). Based on this principle, the Court of Appeals in *Tammy S.* held that “in a domestic violence situation where zealous advocacy in one respondent’s case may threaten to damage a co-respondent’s case, a court should appoint separate counsel.” *Tammy S.*, 1999-NMCA-009, ¶ 28 (remanding to district court for evidentiary hearing on whether mother was prejudiced in termination of parental rights case when court appointed one counsel to represent both her and father).

Federal Statutes and Court Decisions Interpreting Statutes

The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,² 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.

25 U.S.C. § 1912(b).

State Court Rules and Court Decisions Interpreting Court Rules

Rule 10-314 NMRA provides that “[a]t the first appearance of the respondent on an abuse or neglect petition or a termination of parental rights motion,” the respondent must be notified of the right to an appointed attorney if indigent. Rule 12-303(B) NMRA requires that unless the respondent retains private counsel in a termination of parental rights proceeding, “trial counsel shall be responsible for obtaining an order appointing appellate counsel.”

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

NMSA 1978, § 32A-5-16(E) requires that in proceedings to terminate parental rights in connection with adoption, “[t]he court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court’s discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys.” Section 32A-5-16(E) has been interpreted by New Mexico courts to apply to adoptions involving a non-consenting birth parent. See, e.g., *Coyne v.*

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(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.

Olson, No. 30,889, 2012 WL 2326042, at *1 (N.M. Ct. App. May 14, 2012) (unpublished) (citing Section 32A-5-16(E) for “providing a parent opposing termination or adoption with the right to counsel”); *In re Homer F.*, 146 N.M. 845, 851; 215 P.3d 783, 789 (interpreting Section 32A-5-16(E) in the context of a father contesting an adoption proceeding initiated by the child’s grandparents).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Thomas v. Thomas*, 1999-NMCA-135, ¶ 24, 128 N.M. 177, 991 P.2d 7, an appellate court ruled that neither the equal protection clause of the federal constitution nor the corresponding clause of the state constitution guaranteed litigants the right to appointed counsel in a custody or divorce case. Distinguishing its ruling from termination of parental rights cases, the court explained that custody is not “of the same fundamental nature as the potential loss of personal liberty or of access to one’s children.” *Id.* at 2.

In one case, the Court of Appeals quickly disposed of a claim for appointed counsel in a custody proceeding:

[A] party does not have the right to appointed counsel in civil cases. See *Bruce v. Lester*, 1999–NMCA–051, ¶ 4, 127 N.M. 301, 980 P.2d 84. The fact that Mother faced a potential change to her custody and visitation arrangements in this case, which she initiated, does not make this case analogous to a case in which the State seeks to terminate a parent’s parental rights. Mother does not provide us with any authority supporting her argument, and we are aware of none.

Walraven v. Smith, 32,842, 2013 WL 6662763 at *2 (N.M. App. 2013) (unpublished).

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

State Statutes and Court Decisions Interpreting Statutes

New Mexico courts must appoint an attorney for any child fourteen years or older who is the subject of an abuse or neglect proceeding; if younger than fourteen years, the child is appointed a guardian ad litem. NMSA 1978, § 32A-4-10(C). The statute adds that “[w]hen a child reaches fourteen years of age, the child’s guardian ad litem shall continue as the child’s attorney; provided that the court shall appoint a different attorney for the child if: (1) the child requests a different attorney; (2) the guardian ad litem requests to be removed; or (3) the court determines that the appointment of a different attorney is appropriate.”

NMSA 1978, § 32A-4-10(C) has been applied to the termination of parental rights context. *State of N.M. ex rel. CYFD v. John R.*, 203 P.3d 167, 171 (N.M. App. 2009).

NMSA 1978, § 32A-5-24(B) provides:

In all hearings regarding relinquishment of parental rights to the department, the child shall be represented by a guardian ad litem. If the child is fourteen years of age or older and in the custody of the department, the child's attorney appointed pursuant to the Abuse and Neglect Act shall represent the child in any proceedings for termination of parental rights under this section.

In proceedings brought by any party for permanent guardianship in the abuse/neglect context, NMSA 1978, § 32A-4-32 states that "[t]he court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship if the child is under the age of fourteen. The court shall appoint an attorney for the child in all proceedings for the revocation of permanent guardianship if the child is fourteen years of age or older at the inception of the proceedings."

Federal Statutes and Court Decisions Interpreting Statutes

The Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,³ 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."

25 U.S.C. § 1912(b).

The federal Child Abuse Prevention and Treatment Act (CAPTA) provides:

³ 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(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.

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).

D. Appointment of Counsel for Child—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

Regarding counsel for children in adoptions, § 32A-5-33 states in part, “Upon the motion of any party or upon the court’s own motion, the court may appoint a guardian ad litem for the adoptee or for any person found to be incompetent or a child who is a party to the proceeding. In any contested proceeding, the court shall appoint a guardian ad litem for the adoptee. The court may appoint the child’s attorney pursuant to the Abuse and Neglect Act if the child is fourteen years of age or older and in the custody of the department.”

For private guardianships, N.M. Stat. § 45-5-207(D) states, “If, at any time in the proceeding, the court finds the minor is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older”, while § 45-5-212(D) adds that for revocation proceedings, “[i]f at any time in the proceeding the court finds that the interest of the protected person is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.”

NMSA 1978, Section 40-4-8 gives judges the discretionary power to appoint an attorney as guardian *ad litem* (hereinafter, “GAL”) for children in private custody disputes “on the court’s motion or upon application of any party to appear for and represent the minor children. Expenses, costs and attorneys’ fees for the guardian ad litem may be allocated among the parties as determined by the court.”

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *New Mexico v. Rael*, 97 N.M. 640, 642 P.2d 1099 (1982), the New Mexico Supreme Court found no categorical constitutional right to counsel for indigent parties held in civil contempt for failure to comply with child support orders. The court stated that “the due process clause of the fourteenth amendment does not require the appointment of counsel in every case where an indigent faces the possibility of imprisonment if found to be in civil contempt for failure to comply with an order of support.” *Id.* at 1103. Further, the court determined that the trial court had failed to consider important factors—namely, “the indigent’s ability to understand the proceeding, the complexity of the legal and factual issues, and the defenses that might be presented”—that weigh on whether fundamental fairness requires the appointment of counsel to an indigent defendant under the fourteenth amendment, and remanded the case to the trial court for such a “case-by-case determination.” *Rael*, 97 N.M. at 645, 642 P.2d at 1104. In light of the remand on federal grounds, the Court declined to consider defendant’s state due process claim. *Id.* Notably, the court stated: “We do not consider whether an indigent is entitled to counsel in other stages of paternity and support actions or where the Department of Human Services is not acting as assignee of support rights of a welfare recipient.” *Id.* at 641-42.⁴

B. Paternity Proceedings

State Statutes and Court Decisions Interpreting Statutes

In proceedings to adjudicate the parentage of a child, “[t]he court shall appoint counsel for any party who is unable to obtain counsel for financial reasons if, in the court’s discretion, appointment of counsel is required in the interest of justice.” NMSA 1978, § 40-11A-641 (A) (2009). This provision is notable in that it extends the right to counsel to both parties in the litigation, not only the putative father. The court is responsible for payment of “reasonable compensation for services and related expenses” of court-appointed counsel. NMSA 1978, §§ 32A-1-19 (A)(1)–(2).

⁴ In *Turner v. Rogers*, 131 S.Ct. 2507 (2011), the U.S. Supreme Court held that the Fourteenth Amendment does not require a right to counsel in civil contempt cases, at least where the opponent is neither the state nor represented and the matter is not “especially complex”. The *Turner* Court reserved the question of situations where the state is the opponent. The state was the opponent in *Rael*.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *New Mexico v. Rael*, 97 N.M. 640, 642 P.2d 1099 (1982), discussed supra Part 5.A, in which the New Mexico Supreme Court found no constitutional right to counsel for indigent parties held in civil contempt for failure to comply with child support orders, the court noted: “We do not consider whether an indigent is entitled to counsel in other stages of paternity actions....” *Id* at 641-42.

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

No law could be located regarding the appointment of counsel for indigent litigants in civil proceedings involving judicial bypass of parental consent for a minor to obtain an abortion. However, this jurisdiction might be one that does not require parental consent.

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

State Statutes and Court Decisions Interpreting Statutes

In proceedings concerning a family in need of court-ordered services,⁵ courts may appoint counsel if it “would serve the interests of justice.” NMSA 1978, § 32A-3B-8(B).

E. Proceedings Involving Child Support

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *New Mexico v. Rael*, 97 N.M. 640, 642 P.2d 1099 (1982), discussed supra Part 5.A, in which the New Mexico Supreme Court found no constitutional right to counsel for indigent parties held in civil contempt for failure to comply with child support orders, the court noted: “We do not consider whether an indigent is entitled to counsel in other stages of ... support actions.....” *Id* at 641-42.

⁵ “Family in need of court-ordered services” means “the child or the family has refused family services or the department has exhausted appropriate and available family services and court intervention is necessary to provide family services to the child or family and the following circumstances exist: A. it is a family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school year; B. it is a family whose child is absent from the child's place of residence for a time period of twelve hours or more without consent of the child's parent, guardian or custodian; C. it is a family whose child refuses to return home and there is good cause to believe that the child will run away from home if forced to return to the parent, guardian or custodian; or D. it is a family in which the child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging neglect of the child is not in the child's best interests.” NMSA 1978, § 32A-3B-2.

F. Forfeitures

State Statutes and Court Decisions Interpreting Statutes

NMSA 1978, § 31-27-6(C) provides that in a civil forfeiture proceeding, “If the criminal defendant in the related criminal matter is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding.”

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 state⁶ and to all civil proceedings (including custody),⁷ 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.

50 USCS § 3931(b)(2).

Additionally, 50 USCS § 3932(d)(1), which also applies to all civil proceedings (including custody),⁸ specifies that a service member previously granted a stay may apply for an additional stay based on a continuing inability to appear, while § 3932(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.”

⁶ 50 USCS § 3912(a) states, “This Act [50 USCS §§ 3901] applies to-- ...(2) each of the States, including the political subdivisions thereof...”

⁷ 50 USCS § 3931 states, “This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.”

⁸ 50 USCS § 3932 (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.”