NEVADA

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NEVADA

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Preface

Important Information to Read Before Using This Directory

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

Terms of Use/Disclaimers

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

The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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to confirm whether a case is published and to familiarize themselves with all rules relating to the citation and use of unpublished or unreported cases.

Acknowledgments

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

1. SHELTER

Federal Statutes and Court Decisions Interpreting Statutes

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

2. SUSTENANCE

Federal Statutes and Court Decisions Interpreting Statutes

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination. While nearly all Title VII claims are brought in federal court, the U.S. Supreme Court has specified that state courts have concurrent jurisdiction with federal courts for Title VII claims. *Yellow Freight 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

For guardianship of adults, Nev. Stat. § 159.0485 (rewritten in 2017) specifies:

1. Upon the filing of a petition for the appointment of a guardian for a proposed protected person who is an adult, the court shall appoint an attorney for the proposed protected person unless the proposed protected person wishes to retain or has already retained an attorney of his or her own choice.

2. The court shall:

(a) If the proposed protected person resides in a county that has a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons who are adults and the program is able to accept the case, appoint an attorney who works for the organization operating the program to represent the proposed protected person. After such an appointment, if it is ascertained that the proposed protected person wishes to have another attorney represent him or her, the court shall appoint that attorney to represent the proposed protected person. An attorney appointed pursuant to this subsection shall represent the proposed [adult ward] protected person until relieved of the duty by court order.

(b) If the proposed protected person resides in a county that does not have a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons who are adults, or if such a program exists but the program is unable to accept the case, the court shall determine whether the proposed protected person has the ability to pay the reasonable compensation and expenses of an attorney from his or her estate. If the proposed protected person:
(1) Has the ability to pay the reasonable compensation and expenses of an attorney, the court shall order an attorney to represent the proposed protected person and require such compensation and expenses of the attorney to be paid from the estate of the proposed protected person.

(2) Does not have the ability to pay the reasonable compensation and expenses of an attorney, the court may use the money retained pursuant to subparagraph (2) of paragraph (a) of subsection 3 of NRS 247.305 to pay for an attorney to represent the proposed protected person.

3. If an attorney is appointed pursuant to paragraph (a) of subsection 2 and the proposed protected person has the ability to pay the compensation and expenses of an attorney, the organization operating the program for legal services may request that the court appoint a private attorney to represent the proposed protected person, to be paid by the proposed protected person.

4. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the protected person or proposed protected person all or part of the expenses associated with the appointment of the attorney.

For modification or termination of the guardianship, § 159.1905(2) specifies: “Upon the filing of the petition, the court shall appoint an attorney to represent the protected person if: (a) The protected person is unable to retain an attorney; or (b) The court determines that the appointment is necessary to protect the interests of the protected person.”

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

In any proceedings for the involuntary admission of an allegedly mentally ill person, the court “shall appoint counsel” to represent the person; appointed counsel “may be the public defender or his or her deputy.” Nev. Stat. § 433A.270(1). Appointed counsel’s fees “must be charged against the estate of the person for whom the counsel was appointed or, if the person is indigent, against the county where the person alleged to be a person with mental illness last resided.” § 433A.270(2). Likewise, in any proceedings for the involuntary admission of a “person with an intellectual disability or ... a related condition” to an “intellectual disability center,” the court is also required to appoint counsel for the person. § 435.126(3). “If the person is indigent, the counsel appointed may be the public defender.” Id. Appointed counsel’s fees “must be charged against the property of the person for whom the counsel was appointed. If the person is indigent, the compensation must be charged against the county in
which the person alleged to be a person with an intellectual disability or . . . a related condition last resided.” § 435.126(4).

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

In any proceeding involving the involuntary quarantining of a person allegedly infected with a communicable disease, the person has a right to counsel, “who may be the public defender or his or her deputy.” Nev. Stat. § 441A.660(1). Appointed counsel’s fees “must be charged against the estate of the person for whom the counsel was appointed or, if the person is indigent, against the county in which the application for involuntary court-ordered isolation or quarantine was filed.” § 441A.660(2). However, “if the person for whom counsel was appointed is challenging his or her isolation or quarantine or any condition of such isolation or quarantine and . . . succeeds in [the] challenge,” appointed counsel’s fees “must be charged against the county in which the application for involuntary court-ordered isolation or quarantine was filed.” Id.

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

The court may appoint an attorney to represent an indigent parent accused of child abuse or neglect. Nev. Stat. § 432B.420(1). Appointed counsel, “other than a public defender, . . . is entitled to the same compensation and payment for expenses from the county . . . for an attorney appointed to represent a person charged with a crime.” § 432B.420(3). For termination of parental rights (TPR) proceedings, the court “may appoint an attorney” for indigent parents. § 128.100(2). Appointed counsel “is entitled to the same compensation and expenses from the county . . . for attorneys appointed to represent persons charged with crimes.” § 128.100(3). Pursuant to the federal Indian Child Welfare Act (ICWA), discussed infra, courts must appoint counsel to represent indigent parents of an Indian child in TPR proceedings, or if the child is being considered for placement in foster care, and “[m]ay apply to the Secretary of the Interior for the payment of the fees and expenses of” appointed counsel. §
Pursuant to the ICWA, courts also must appoint counsel for indigent parents that are accused of child abuse or neglect of their Indian child, and and “[m]ay apply to the Secretary of the Interior for the payment of the fees and expenses of” appointed counsel. § 432B.420(2)(a), (2)(c).

Federal Statutes and Court Decisions Interpreting Statutes

The 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 [25 U.S.C. §] 13 . . .


State Court Decisions Addressing Constitutional Due Process or Equal Protection

Although in the late 1990s the Nevada Supreme Court issued two decisions that might have been read to suggest a per se due process right to counsel in TPR proceedings, see Matter of Daniels, 953 P.2d 1, 6-7 (Nev. 1998) (finding no right to counsel in dependency/removal proceedings but suggesting right might exist in TPR proceedings); Matter of Parental Rights Bow, 930 P.2d 1128 (Nev. 1997), the court revisited the issue in In re Parental Rights as to N.D.O., and made plain that no such right exists. 115 P.3d 223, 225 (Nev. 2005). In N.D.O., the parent had appealed the termination of her parental rights, claiming ineffective assistance of counsel. Id. The court “necessarily examine[d] when a constitutional right to counsel exists in the context of a parental rights termination proceeding, for without this constitutional right, no ineffective-assistance-of-counsel claim will lie.” Id. at 224. While recognizing the suggestive language in the earlier Daniels and Bow decisions, the N.D.O. court stated: “[W]e now clarify that no absolute right to counsel in termination proceedings exists in Nevada.” Id. at 225.

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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.” § 1912(a). These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law proceedings.
The N.D.O. decision did not evaluate the mother’s [indirect] right-to-counsel claim separately under the Nevada Constitution and the United States Constitution, nor did it cite McKague by way of explanation. The court also did not definitively state that the Nevada Constitution’s due process guarantee is coextensive with those in the federal Constitution. In fact, immediately after stating there was no absolute right to counsel in Nevada, the court offered only as proof the fact that “[o]ur statute contemplates a case-by-case determination of whether due process demands the appointment of counsel.” Id. at 225. However, the decision discussed Lassiter v. Dep’t of Soc. Servs. at length, and chose to evaluate whether the mother’s due process rights would be violated without counsel under the test that Lassiter adopted from Mathews v. Eldridge. The N.D.O. court found that both the mother and the government had significant interests in the case, but that there was “nothing in the record point[ing] to a high risk of an incorrect decision.” Id. at 227. Balancing these considerations, the court rejected the idea that the parent had a right to counsel in the first place and thus did not reach her original ineffective assistance of counsel claim. Id.

In Casper v. Huber, after dismissing the idea that there was a statutory right to appellate counsel in termination of parental rights cases, the court declined to rule on whether federal or state due process required the appointment of appellate counsel because “in our opinion the appeal is clearly frivolous and appointed counsel would not be of any use.” 456 P.2d 436, 437 (Nev. 1969).

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

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

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

For children, the court must appoint an attorney for a child when a parent is accused of child abuse or neglect, Nev. Stat. § 432B.420(2). Also, § 128.100(2) requires appointment of counsel for a child “in any proceeding for the termination of parental rights to a child who has been placed outside of his or her home pursuant to chapter 432B of NRS, or any rehearing or appeal thereon, or any proceeding for restoring parental rights to such a child”, and § 128.100(1) permits the appointment of counsel for children for “any proceeding for terminating

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2 452 U.S. 18 (1981) (finding no Fourteenth Amendment categorical right to counsel in termination of parental rights proceedings).
3 424 U.S. 319 (1976) (measuring the personal interest at stake, the risk of error, and the state’s interest).
parental rights, or any rehearing or appeal thereon, or any proceeding for restoring parental rights.”

**Federal Statutes and Court Decisions Interpreting Statutes**

The ICWA, which governs child welfare proceedings in state court, provides the following with regard to any removal, placement, or termination of parental rights proceeding:

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


The federal Child Abuse Prevention and Treatment Act provides:

A State plan 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[


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4 While the ICWA does not appear to have a definitive statement about jurisdiction, 25 U.S.C. § 1912(b) contemplates that state law may not provide for appointment of counsel. Additionally, subsection (a) states: “In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.” § 1912(a). These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law proceedings.
D. Appointment of Counsel for Child—Privately Initiated Proceedings

Nev. Stat § 128.100(1) permits the appointment of counsel for children for “any proceeding for terminating parental rights, or any rehearing or appeal thereon, or any proceeding for restoring parental rights.” Counsel appointed for a child “is entitled to the same compensation and expenses from the county . . . for attorneys appointed to represent persons charged with crimes.” § 128.100(3).

For guardianships of minors, Sec. 26(1)(a) of A.B. 319 (enacted in 2017) specifies that the court may appoint counsel for a minor in a guardianship, while subsection (1)(b) specifies that “[t]he attorney must represent the protected minor or proposed protected minor until relieved of that duty by court order,” subsection (2) governs compensation of counsel, and subsection (3) provides that “[a]n attorney who is appointed pursuant to subsection 1 may not serve as a guardian ad litem or an advocate for the best interests of a protected minor or proposed protected minor.” A.B. 319, § 26(1)-(3). Nev. 79th Leg. Assem. Reg. Sess. 2017.

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

The Nevada Supreme Court has taken a case-by-case approach to the appointment of counsel in contempt proceedings in family court “when the hearing may result in the imposition of a jail sentence for the nonpayment of child support.” Rodriguez v. Eighth Judicial District Court, 102 P.3d 41, 43 (Nev. 2004). After dismissing the Sixth Amendment argument, the court reviewed the due process positions taken by other states in civil contempt proceedings with the possibility of a prison sentence, which either supported an absolute right to counsel for indigent parties, rejected any right to appointed counsel, or allowed for the discretionary appointment of counsel on a case-by-case basis. Id. at 45-52. In the end, the Rodriguez court supported the discretionary model adopted by New Mexico5 that is consistent with Lassiter v. Dept’ of Soc. Servs.6 and relies on the balancing test articulated in Mathews v. Eldridge.7 Id. at 49-52. This approach is likely consistent with Turner v. Rogers.8 Because a defendant does not risk imprisonment for civil contempt unless a trial court has determined that a defendant both has the ability to pay and is willfully refusing to pay, the Rodriguez court determined that the

7 424 U.S. 319 (1976) (measuring the personal interest at stake, the risk of error, and the state’s interest).
8 564 U.S. 431 (2011) (Fourteenth Amendment does not require categorical right to counsel in civil contempt where opponent is neither the state nor represented, but counsel may be required in individual case if matter is especially complex).
defendant’s interest in personal freedom was not comparable to what was at stake in a criminal prosecution. *Id.* at 50. “The real issue before the trial court is not the contemnor’s ability to comply, but his unwillingness to do so.” *Id.* The government’s interest was significant, and there was little risk for error because “the legal and factual issues in a nonsupport hearing are rarely complex.” *Id.* at 51. Notably, the litigant raised both the federal and state constitutions, and the court appeared to hold under both. *Id.* at 48 n.22 (commenting that “[t]he language in Article 1, Section 8(5) of the Nevada Constitution mirrors the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution”).

**B. Paternity Proceedings**

**State Statutes and Court Decisions Interpreting Statutes**

Nev. Stat. § 126.201(1) provides that the court “may appoint counsel” for an indigent party in proceedings to determine paternity (and § 126.231 extends this provision to maternity proceedings):

At the pretrial hearing and in further proceedings, any party may be represented by counsel. If a party is financially unable to obtain counsel, the court may appoint counsel to represent that party with respect to the determination of the existence or nonexistence of the parent and child relationship and the duty of support, including without limitation the expenses of the mother’s pregnancy and confinement, medical expenses for the birth of the child and support of the child from birth until trial.

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

**State Statutes and Court Decisions Interpreting Statutes**

Nev. Stat. § 442.255 sets out the process necessary for a minor to follow when seeking to bypass the parental notification requirement to obtain an abortion. First, the minor has an “interview” with the judge, and there is no provision for appointing counsel for the interview. § 442.255(2). However, if a minor petitions the court due to being denied the waiver after the initial interview, § 442.2555(1) specifies that “the court shall, upon request by the minor if it appears that she is unable to employ counsel, appoint an attorney to represent her in the preparation of a petition, a hearing on the merits of the petition, and on an appeal, if necessary.”

**D. Probate Proceedings**
State Statutes and Court Decisions Interpreting Statutes

Nevada courts may appoint counsel to represent minors or the unborn in probate proceedings. Nev. Stat. § 136.200(1).

E. Juvenile Delinquency, Status Offenses, or Child in Need of Services Proceedings

State Statutes and Court Decisions Interpreting Statutes

A child alleged to be in need of services has a right to counsel throughout all stages of the proceedings. Nev. Stat. § 62D.030.

F. Education Proceedings

State Statutes and Court Decisions Interpreting Statutes

As discussed supra Part 5.E, Nevada provides a right to counsel for a child alleged to be in need of services, throughout all stages of the proceedings. Nev. Stat. § 62D.030. Since § 201.090(11) and its final defining comment include truancy within the definition of “child in need of supervision,” children in Nevada appear to have a right to counsel in truancy proceedings as well.
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\(^9\) and to all civil proceedings (including custody),\(^10\) provides:

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


Additionally, § 3932(d)(1), which also applies to all civil proceedings (including custody),\(^11\) 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.”

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\(^9\) 50 U.S.C. § 3912(a)(2) states that the SCRA’s provisions apply to “each of the States, including the political subdivisions thereof.”

\(^10\) 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.”

\(^11\) § 3932 applies to “any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section . . . is in military service or is within 90 days after termination of or release from military service; and . . . has received notice of the action or proceeding.” § 3932(a).