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

OHIO

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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 2012. The Directory does not seek to address all conceivable subsidiary issues in each jurisdiction, but some such issues were researched and addressed, including: notification of right to counsel; standards for waiver of right to counsel; standard of review on appeal for improper denial of counsel at trial; whether “counsel” for a child means a client-directed attorney or a “best interests” attorney/attorney ad litem; and federal court decisions finding a right to counsel. Similarly, the research did not exhaustively identify all law regarding the issue of compensation of appointed counsel in each jurisdiction, though discussion of such law does appear within some of the reports.

The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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to confirm whether a case is published and to familiarize themselves with all rules relating to the citation and use of unpublished or unreported cases.

Acknowledgments

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

1. SHELTER

Federal Statutes and Court Decisions Interpreting Statutes

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

State Court Decisions Addressing Constitutional Due Process or Equal Protection

The Ohio Supreme Court was presented with the question of whether there is a right to counsel in foreclosure proceedings, although it ultimately did not reach the question. See State ex rel. Hill v. Myers, 119 Ohio St.3d 1438, 893 N.E.2d 511 (Ohio 2008) (table decision). An elderly, low-income couple facing the loss of their home sought an order in mandamus to require the court of common pleas to appoint counsel at state expense for the foreclosure proceeding. Specifically, in their memorandum in support of the writ of mandamus, the Hills asserted that Article I, Sections 1, 2, 16 and 19 require the appointment of counsel to indigent defendants in foreclosure cases. Memorandum in Support of Petition for Mandamus, Hill v. Myers, No. 08-1141 (Ohio June 12, 2008) at 1. The Hills drew a parallel between the risks involved in foreclosure proceedings and those involved in circumstances where Ohio courts had already recognized a right to civil appointed counsel. Id. at 2-3. The Hills further contended that the interest in saving one’s home is a fundamental interest, “as important as the liberty interest that an indigent defendant has when facing the prospect of one day in jail.” Id. at 3. “This interest in the home is closely associated with the interest of parental rights which has universally required the appointment of counsel.” Id. While the writ petition applied the three-part balancing test from Matthews v. Eldridge, 424 U.S. 319 (1976), on which the U.S. Supreme Court relied in Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981), it cited to Lassiter only for the second prong of this test: the risk of an erroneous decision. Id. at 5. In September 2008, in a “merit decision without opinion,” the Ohio Supreme Court granted the Hamilton County prosecutor’s motion to dismiss, which had argued that (i) the action was moot because the Hills...
were already represented by counsel; and (ii) the petition did not meet the standard for a writ of mandamus.¹

2. SUSTENANCE

Federal Statutes and Court Decisions Interpreting Statutes

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

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

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


3. SAFETY AND/OR HEALTH

A. Domestic Violence Protection Order Proceedings

¹ According to the Court of Common Pleas’ motion to dismiss, in order for a writ of mandamus, (1) there must be a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; 3) there must be no adequate remedy at law; and (4) mandamus may not be used to control judicial discretion.
State Statutes and Court Decisions Interpreting Statutes

Ohio Rev. Code Ann. § 2151.34(O) states that for protection order proceedings in juvenile court, “[t]he court, in its discretion, may determine if the respondent is entitled to court-appointed counsel in a proceeding under this section” (emphasis added). “Respondent” is defined as a person 18 or under against whom a petition is filed. This discretionary appointment system seemingly conflicts with § 2151.352, which states that children have a right to counsel under all proceedings in juvenile court except those specifically listed in § 2151.352 (and none of these exceptions involves protection orders).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In re D.L., 189 Ohio App. 3d 154, 937 N.E.2d 1042 (Ohio Ct. App. 6th Dist. 2010), an Ohio court of appeals found a due process right to appointed counsel for respondent juveniles in civil protection order proceedings. In that case, a parent (on behalf of his son) sought a civil protection order against another juvenile (who was quasi-“represented” by his parent). The protection order was granted by a court of common pleas in a hearing at which neither side was represented by counsel. The court of appeals reversed, finding a due process right to appointed counsel without specifying the constitution (federal or state, or both) upon which it based its holding. Id. The court first noted that, because civil protection order proceedings are not criminal, ordinarily no due process right to counsel would apply.2 Next, the court acknowledged that Ohio court have found such a right in certain civil proceedings, such as those involving civil contempt. Id. at 159, 1045-46. Further, the court noted that “in all other cases dealing with children as parties, due process demands that a minor child receive appointed counsel or a guardian to represent him or her: delinquency actions, termination-of-parental-rights cases, and divorce actions when the child's welfare demands protection.” Id. at 159, 1046.

The court in In re D.L. concluded that it was aberrant to deny juveniles appointed counsel in civil protection hearings that “may lead to criminal sanctions.”3 Id. at 160-161,1047. The court also concluded that the juvenile had not waived his right to counsel, and that “[a]ppellant’s young age alone would indicate that he should have been appointed counsel.” Id. The opinion did not mention Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981), the presumption against appointed counsel, nor Mathews v. Eldridge, 424 U.S. 319, 335 (1976). The court in In re D.L. did not acknowledge that its finding of a right to appointed counsel for

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2 In fact, another Court of Appeals errantly cited to just this portion of D.L. as support for holding that there is no right to counsel in protection order proceedings, without acknowledging that D.L. went on to find such a right. Lutrell v. Younce, Slip Copy, 2011 WL 3890292 (Ohio App. 2011) (unpublished).

3 The reference to possible criminal sanctions was a reference either to the court noting earlier that the violation of a civil protection order is a criminal violation, or to the magistrate in the case telling the juvenile that the prosecutor might use evidence from the hearing to file criminal charges.
juveniles in civil protection order proceedings conflicts with the discretionary nature of Ohio Rev. Code Ann. § 2151.34(O) (governing protection orders, and discussed supra).

Prior to In re D.L., courts of appeals in Ohio had denied appointed counsel in a series of civil protection order cases that did not involve the right to counsel of a respondent juvenile. See, e.g, Butcher v. Stevens, 911 N.E.2d 928 (Ohio Ct. App. 2009) (finding no right to counsel for adult respondent in hearing on petition for domestic violence civil-protection order; defendant argued denial of continuance violated right to counsel, but court responds, “we are mindful of our previous holding in In re Florkey, which stated that ‘there is no generalized right to counsel in a civil action between individual litigants’”); Gomez v. Dyer, Slip Copy, 2008 WL 850127 (Ohio Ct. App. 2008) (holding that children of parties to protection order proceeding are not entitled to appointed counsel; court notes that “a civil protection order under R.C. 3113.31 is a civil proceeding, with no attendant right to counsel” and adds that proceeding did not take place in juvenile court, so juvenile court appointment statutes did not apply); Schottenstein v. Schottenstein, 2003 WL 22176786 (Ohio Ct. App. 2003) (unpublished) (same, and adding, “[a]ppellant has failed to specify any liberty interest that entitles [the child] to due process nor indicate in what manner [the child] was denied equal protection with others similarly situated. Further, an action brought, pursuant to R.C. 3113.31, is a civil proceeding ... and there is no constitutional right to appointment of counsel in a civil action.”)

B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings

State Statutes and Court Decisions Interpreting Statutes

Ohio Rev. Code Ann. § 2111.02(C)(7)(d)(i) and (ii) provide a right to appointed counsel for proceedings and appeals involving guardianships for alleged incompetents. In State of Ohio ex Rel McQueen, 986 N.E.2d 925 (Ohio 2013), the Ohio Supreme Court held that this statute extends to review proceedings, reversing a contrary decision by the Ohio Court of Appeals.

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Ohio statutes provide for appointed counsel for an indigent person who is involuntarily detained on mental health grounds. Ohio Rev. Code Ann. § 5122.05(C) states that:

(C) Any person who is involuntarily detained in a hospital or otherwise is in custody under this chapter, immediately upon being taken into custody, shall be informed and provided with a written statement that the person may do any of the following:... (2) Retain counsel and have independent expert evaluation of the person’s mental condition and, if the person is unable to obtain an attorney or independent expert
evaluation, be represented by court-appointed counsel or have independent expert
evaluation of the person’s mental condition, or both, at public expense if the person is
indigent;

Similarly, Ohio Rev. Code Ann. § 5123.71(B) states that “[a]ny person who is involuntarily
detained in an institution or otherwise is in custody under this chapter shall be informed of the
right to ... [r]etain counsel and have independent expert evaluation and, if the person is an
indigent person, be represented by court-appointed counsel and have independent expert
evaluation at court expense.” See also R.C. § 5122.15 (“(3) If the respondent is not represented
by counsel, is absent from the hearing, and has not validly waived the right to counsel, the
court shall appoint counsel immediately to represent the respondent at the hearing, reserving
the right to tax costs of appointed counsel to the respondent, unless it is shown that the
respondent is indigent. If the court appoints counsel, or if the court determines that the
evidence relevant to the respondent’s absence does not justify the absence, the court shall
continue the case. (4) The respondent shall be informed that the respondent may retain
counsel and have independent expert evaluation. If the respondent is unable to obtain an
attorney, the respondent shall be represented by court-appointed counsel. If the respondent is
indigent, court-appointed counsel and independent expert evaluation shall be provided as an
expense under section 5122.43 of the Revised Code.”)

Under Ohio Rev. Code Ann. § 5122.15(H), the court must hold a “full hearing” on
applications for continued commitment at least every two years following the ninety day
period, and the patient may seek a “full hearing” on continued commitment 180 days after the
previous one.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In an opinion pre-dating the U.S. Supreme Court’s decision in Lassiter v. Dep’t of Soc.
Servs., 452 U.S. 18 (1981), the Ohio Supreme Court invoked due process to recognize a right to
appointed civil counsel in civil commitment hearings under the federal constitution. See In re
Fisher, 39 Ohio St. 2d 71, 74, 313 N.E.2d 851, 854 (Ohio 1974). In so holding, the court
described in detail “the scope and gravity of the constitutional rights involved and the serious
deprivations of liberty resulting from involuntary civil commitment.” Id. at 82, 858. These
included the procedural infirmities associated with such proceedings (such as the unavailability
of appellate review) and the various statutory restrictions placed on the mentally disabled. See
id. at 78-82, 856-58. As the court explained, appointment of counsel was necessary in
commitment proceedings because “[t]here is no mandatory requirement that anyone protect
the rights of the individual.” Id. at 78, 856.

D. Sex Offender Proceedings
At one point, Ohio Rev. Code Ann. § 2950.09(B)(2) provided that in sexual offender adjudication cases (done under the old Megan’s Law), "the offender ... shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender . . . ." However, this statute has been repealed and replaced with the Adam Walsh Child Protection and Safety Act (AWA), which no longer requires the court to determine which category to apply to the offender. Instead, the new statute defines the classification based on the crime committed, with no involvement from the court. See R.C. §§ 2950.01(E)-(G).

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

Ohio’s juvenile code, which covers most juvenile court proceedings (including dependency and termination of parental rights), at Ohio Rev. Code Ann. § 2151.352 states: “A . . . child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152 of the Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person pursuant to Chapter 120 of the Revised Code except in civil matters in which the juvenile court is exercising jurisdiction pursuant to [certain enumerated provisions]4 of section 2151.23 of the Revised Code.” Section 2151.352 also provides:

If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the

4 These enumerated provisions include “division (A)(2) [determining custody of child not a ward of the state], (3) [writ of habeas corpus for custody of child], (9) [extension of temporary custody or approval of permanent custody], (10) [consent to marry], (11) [certain child support proceedings], (12) [certain funding or services for children], or (13) [parents with truant children]; (B)(2) [determining paternity of child born out of wedlock], (3) [Uniform Interstate Family Support Act actions], (4) [certain child support orders], (5) [fraud related to paternity], or (6) [relief from certain paternity judgments]; (C) [divorce involving children]; (D) [more divorce-related custody proceedings]; or (F)(1) [more custody and interstate compact issues] or (2) [divorce-related support orders] division (A)(2), (3), (9), (10), (11), (12), or (13); (B)(2), (3), (4), (5), or (6); (C); (D); or (F)(1) or (2) of section 2151.23 of the Revised Code.”
party is an indigent person. The court may continue the case to enable a party to obtain
counsel, to be represented by the county public defender or the joint county public
defender, or to be appointed counsel upon request pursuant to Chapter 120 of the
Revised Code. Counsel must be provided for a child not represented by the child's
parent, guardian, or custodian. If the interests of two or more such parties conflict,
separate counsel shall be provided for each of them.

In State ex rel. Asberry v. Payne, 693 N.E.2d 794, 796-97 (Ohio 1998), the court noted
that the statutory rights to counsel outlined in Ohio Rev. Code Ann. § 2151.352 “expand[]
beyond the federal and state constitutional requirements to afford the right to counsel at
juvenile proceedings in general.” However, the Asberry court was interpreting an older version
of the statute; the current version does not apply to all juvenile proceedings.

Ohio Rev. Code Ann. § 2151.353(B) (which governs abuse/neglect proceedings) clarifies
that “[n]o order for permanent custody or temporary custody of a child or the placement of a
child in a planned permanent living arrangement shall be made pursuant to this section unless
... the summons served on the parents contains a full explanation of their right to be
represented by counsel and to have counsel appointed pursuant to Chapter 120 of the Revised
Code if they are indigent.”

One court of appeals found there was no statutory right to counsel when appealing an
adverse termination of parental rights decision to the Supreme Court of Ohio. In the Matter of
discussed whether counsel was statutorily required for the by-right appeal, commenting that
“[t]he provision requiring appointment of counsel for indigent parties may [] reasonably be
read as being for ‘all stages of the [juvenile] proceedings.’ An appeal is not a stage of the
juvenile proceedings. It is a separate and distinct event governed by different rules and
different statutes.” Id.

Federal Statutes and Court Decisions Interpreting Statutes

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

In any case in which the court determines indigency, the parent or Indian custodian shall

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5 It is unclear whether a mistake was made in the writing of this statutory provision; as written, it seems to indicate
that counsel is required when a child is not represented by his or her actual parent (or guardian or custodian), as
opposed to the parent’s attorney.

6 Note that the Ohio Supreme Court Rules for the Reporting of Opinions (S.Ct.Rep.Op. 3.4) provides that “[a]ll
opinions of the courts of appeals issued after May 1, 2002 may be cited as legal authority and weighted as deemed
appropriate by the courts without regard to whether the opinion was published or in what form it was published.”
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.”


State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every . . . parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain any of the exceptions listed in § 2151.352. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

The Ohio Supreme Court, in a decision pre-dating Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981), cited due process grounds in finding a federal and state constitutional right to counsel in appeals of state-initiated actions involving the permanent, involuntary termination of parental rights. See State ex rel. Heller v. Miller, 61 Ohio St. 2d 6, 13-14, 399 N.E.2d 66, 70 (Ohio 1980) (“We hold that in actions instituted by the state to force the permanent, involuntary termination of parental rights, the United States and Ohio Constitutions’ guarantees of due process and equal protection of the law require that indigent parents be provided with counsel and a transcript at public expense for appeals as of right.”). The court reasoned that “the right of personal choice in family matters, including the right to live as a family unit, is a fundamental due process right.” Id. The court further stated that being represented by counsel was essential to protecting this right, because the litigant “cannot effectively appeal without . . . counsel.” Id. To deny litigants an effective right of appeal by on

7 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.
both their own and the child’s fundamental interests under the equal protection and due process clauses.” *Id.* The court relied on the largely equal protection rationales of the U.S. Supreme Court’s decisions in *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585 (1956), *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814 (1963), and *Mayer v. Chicago*, 404 U.S. 189, 92 S.Ct. 410 (1971). Notably, the court did not address the constitutional right to counsel at the trial level, because the parents “were, pursuant to R.C. 2151.352, in fact represented by appointed counsel at the trial level ....” *Id.* at 14, 71 (Holmes, J., dissenting).

In *In re Zhang*, 734 N.E.2d 379, 387 (Ohio App. 1999), an Ohio appellate court cited to *Heller* and commented that “Ohio law ... has established, especially in termination of parental rights cases, a more stringent standard than the federal Constitution mandates for determining the requirement for counsel.” See also *In re Baby Girl Baxter*, 479 N.E.2d 257, 260 (Ohio 1985) (“This court has held that the state must appoint counsel for indigent parents at parental termination proceedings”). The Ohio Supreme Court has held since *Lassiter* that temporary deprivations of custody do not create a right to counsel. *In re Miller*, 12 Ohio St. 3d 40, 465 N.E.2d 397 (Ohio 1984).

In *In re J.S.*, 184 Ohio App. 310, 920 N.E.2d 1011 (Ohio Ct. App. 6th Dist. 2009), the court of appeals found that a parent had waived his statutory right to counsel in a termination of parental rights case because he had failed to show up for the hearing, and R.C. 2151.352 states that a court only needs to determine whether a litigant is entitled to appointed counsel when he/she appears at the hearing. The court, however, found that the father’s Fourteenth Amendment right to counsel was violated because the trial court was aware that the father had difficulties securing transportation to the hearing and that “[t]he only evidence before the trial court at the beginning of the hearing indicated that appointed counsel might be necessary to protect appellant’s constitutional rights. The court needed additional facts to determine whether appellant was entitled to appointed counsel and whether he was truly indigent.” *Id.* at 317, 1016. Failing to make this inquiry, notwithstanding the father’s absence, was plain error, and the appellate court also summarily found the error to be “prejudicial” and remanded to the trial court. *Id.* A different result under the Fourteenth Amendment was reached in *In re G.S.*, Slip Copy, 2011 WL 2112436 (Ohio Ct. App. 2011) (mother’s failure to appear at custody proceeding or request appointed counsel made facts similar to *Lassiter* and justified similar conclusion).

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

**State Statutes and Court Decisions Interpreting Statutes**

As discussed supra Part 4.A, Ohio’s juvenile code at Ohio Rev. Code Ann. § 2151.352 provides that a “child’s parents or custodian[] or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or
Chapter 2152 of the Revised Code,” subject to some exceptions. Formerly, § 2151.352 granted a right to appointed counsel for parents in custody cases brought by private persons in juvenile court, but the statute was specifically amended in 2005 to exempt certain types of civil cases from its reach. See R.C. § 2151.352 (providing for appointed counsel “except in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(2), (3), (9), (10), (11), (12), or (13); (B)(2), (3), (4), (5), or (6); (C); (D); or (F)(1) or (2) of section 2151.23 of the Revised Code.”) Hence, at present, § 2151.352 specifies that an indigent person is not entitled to appointed counsel “in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(2) [determining custody of child not a ward of the state], (3) [writ of habeas corpus for custody of child], (9) [extension of temporary custody or approval of permanent custody] . . .; (C) [divorce involving children]; (D) [post-divorce custody proceedings]; or (F)(1) [custody and interstate compact issues]. . . of section 2151.23 of the Revised Code.”

With respect to guardianships of children, an Ohio appeals court commented that “[t]he magistrates … found no authority to appoint counsel for the parents because the motions filed do not seek to permanently divest the parents of their parental rights and are civil in nature; therefore, the parents were not entitled to counsel at state's expense. Further, there is no statutory authority for the appointment of counsel for parents in a guardianship proceeding.” In re S.H., 2013-Ohio-3708 (Ohio App. 2013). The parents in question apparently did not appeal that particular issue, so the Court of Appeals did not actually review the ruling from the magistrates.

State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every . . . parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain any of the exceptions listed in § 2151.352. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id. See also In re T.C.K., 2013-Ohio-3583 (Ohio App. 2013) (holding that appellant does not have “a right to appointed counsel in a private custody matter between a parent and a non-parent and in which the state does not seek a termination of parental rights,” and citing to language in Rule 4 about rule not providing a right where such right not guaranteed by constitution or statute).

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State Court Decisions Addressing Constitutional Due Process or Equal Protection

Courts of appeals in Ohio have ruled that there is no right to counsel in private custody proceedings. *In re L.S.*, 152 Ohio App. 3d 500, 511, 788 N.E.2d 696, 705 (Ohio Ct. App. 8th Dist. 2003). (“There is no constitutional right ... to effective representation by counsel in civil cases between individual parents involving visitation and residential-parent status”); *In re O.M.*, 2010 WL 3820512 (Ohio Ct. App. 2010) (unpublished) (denying request for appointed counsel, and relying on *L.S.*).

In *In re Adoption of Drake*, 2003 WL 231298, at *2 (Ohio Ct. App. 12th Dist. 2003) (unpublished), a court of appeals found no right to counsel for a mother in a contested adoption proceeding because “[t]he case was initiated by a third party, the child's stepparent, not the state. The case was instituted as an adoption petition in probate court, not a termination of parental rights in juvenile court .... We cannot find that the state's action in removing the child from Hall's home transformed the later adoption petition into one involving state action.” See also *In re A.N.B.*, Slip Copy, 2013 WL 2152179 (Ohio App. 12 Dist. 2013) (relying on *Drake* but adding that “[w]hile the appointment of counsel is not a requirement, we note that this does not foreclose appointment in a case where no other procedural safeguard is available and therefore appointment of counsel is necessary to protect a parent's fundamental rights;” court suggests use of depositions might satisfy due process as alternate procedural safeguard).

Similarly, in *In re Adoption of M.C.*, Slip Copy, 2011 WL 6372834 (Ohio Ct. App. 4th Dist. 2011) (stepfather adoption), the court ruled against the right to counsel in an adoption proceeding, although this holding was largely based on the biological father’s failure to fully brief the issue. The biological father argued that the trial court violated his constitutional right to appointed counsel and relied upon *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981). *Id.* at *2. The court of appeals distinguished *Lassiter* from the instant situation, explaining that “[t]he Fourteenth Amendment provides protection against ‘governmental—not private—action ... [and that] the Father advances no argument as to how state action exists in this case.” *Id.* Moreover, the court noted that the father had made “no effort to explain how *Lassiter*, which adopted a case-by-case approach to the right to counsel issue in parental termination proceedings initiated by the state, creates a categorical rule that procedural due process requires appointment of counsel in adoptions initiated by private parties”. *Id.* at *3. The court explained that its decision was based in part on the fact that the biological father had “failed to advance any relevant authority for his claim that a categorical, procedural due process based right to appointed exists for indigent parents initiated by a private party. If an

9 It is worth noting that one unpublished probate court decision found to the contrary and distinguished *Drake*. *In the Matter of the Adoption of Bryan Matthew Wiggins*, No. 503410 (Ohio Probate Court, Franklin County, 2006).
argument exists to support Father’s assigned error, it is not the Court’s duty to root it out, particularly when the alleged error involves a constitutional issue of first impression in this Court.” *Id.*

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

**State Statutes and Court Decisions Interpreting Statutes**

Ohio’s juvenile code, which covers most juvenile court proceedings (including dependency and termination of parental rights), at Ohio Rev. Code Ann. § 2151.352 states: “A child . . . is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152 of the Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person pursuant to Chapter 120 of the Revised Code except in civil matters in which the juvenile court is exercising jurisdiction pursuant to [certain enumerated provisions] of section 2151.23 of the Revised Code.” Section 2151.352 also provides:

If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. The court may continue the case to enable a party to obtain counsel, to be represented by the county public defender or the joint county public defender, or to be appointed counsel upon request pursuant to Chapter 120 of the Revised Code. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

In *State ex rel. Asberry v. Payne*, 693 N.E.2d 794, 796-97 (Ohio 1998), the court noted that the statutory rights to counsel outlined in Ohio Rev. Code Ann. § 2151.352 “expand[] beyond the federal and state constitutional requirements to afford the right to counsel at juvenile proceedings in general.” However, the *Asberry* court was interpreting an older version of the statute; the current version does not apply to all juvenile proceedings.

In 2004, the Ohio Supreme Court clarified the statutory right to counsel of juveniles in proceedings to terminate parental rights under Ohio Rev. Code Ann. § 2151.352. Specifically, the Court explained that the juvenile may have a right to appointed counsel separate from that provided to his or her parents “in certain circumstances.” The court presiding over the proceeding has the authority to make a case-by-case determination whether independent counsel for the juvenile is necessary, based on the maturity of the juvenile and whether the juvenile’s guardian *ad litem* can serve as both guardian *ad litem* and attorney without conflict. *In re Williams*, 101 Ohio St. 3d 398, 400, 403, 805 N.E.2d 1110, 1111, 1113 (Ohio 2004).

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10 See supra note 4.
Federal Statutes and Court Decisions Interpreting Statutes

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

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


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

A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including— ...(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes— ...(xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad

11 Note that several appellate districts have found that a parent appealing an adverse termination of his or her parental rights must raise the issue of the child’s lack of counsel at the trial level to preserve it for appellate review. See In re N.G., Slip Copy, 2012 WL 2369354 (Ohio Ct. App. 2012); In re R.H., Slip Copy, 2011 WL 6917545 (Ohio Ct. App. 2011). However, some courts have found that (in general) a parent cannot waive the issue of the children’s right to counsel because such a result would unfairly deny the children’s right to due process. See In re Moore, 158 Ohio App. 3d 679, 821 N.E.2d 1039 (Ohio Ct. App. 7th Dist, 2004). In In re N.G., the court held that the reasoning of Moore did not apply to the appellant-mother’s situation because the mother had failed to demonstrate that the child’s lack of counsel had affected the outcome of the termination proceedings and she had “standing to raise the issue of her children’s right to counsel only insofar as it impact[ed] her own parental rights.” 2012 WL 2369354, at *4.

12 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.
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).

**State Court Rules and Court Decisions Interpreting Court Rules**

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every child . . . the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain any of the exceptions listed in § 2151.352. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id.

Ohio Juv. R. 4(C)(1) also provides that “[w]hen the guardian ad litem is an attorney...the guardian may also serve as counsel to the ward providing no conflict between the roles exist.”

In 2012, the Ohio Supreme Court modified Juvenile Rule 3 to specify that when juveniles have a right to counsel, it is un-waivable in certain circumstances and requires consultation with an attorney prior to waiver in other circumstances.  

**D. Appointment of Counsel for Child—Privately Initiated Proceedings**

**State Statutes and Court Decisions Interpreting Statutes**

As discussed supra Part 4.C, Ohio’s juvenile code at Ohio Rev. Code Ann. § 2151.352 provides that “[a] child . . . is entitled to representation by legal counsel at all stages of the proceedings

13 Rule 3 provides in part: “ (A) A child’s right to be represented by counsel may not be waived in the following circumstances: ... (3) when there is a conflict or disagreement between the child and the parent, guardian, or custodian; or if the parent, guardian, or custodian requests that the child be removed from the home. (B) If a child is facing the potential loss of liberty, the child shall be informed on the record of the child’s right to counsel and the disadvantages of self-representation....(D) Any waiver of the right to counsel shall be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child’s age; intelligence; education; background and experience generally and in the court system specifically; the child’s emotional stability; and the complexity of the proceedings. The Court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem, before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child’s right to counsel. (E) Other rights of a child may be waived with permission of the court.”
proceedings under this chapter or Chapter 2152 of the Revised Code,” subject to certain exceptions. Specifically, § 2151.352 specifies that there is no right to counsel “in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(2) [determining custody of child not a ward of the state], (3) [writ of habeas corpus for custody of child], (9) [extension of temporary custody or approval of permanent custody] . . ; (C) [divorce involving children]; (D) [post-divorce custody proceedings]; or (F)(1) [custody and interstate compact issues]. . . of section 2151.23 of the Revised Code.”

State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every child . . . the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain any of the exceptions listed in § 2151.352. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id. See also In re T.C.K., 2013-Ohio-3583 (Ohio App. 2013) (holding that the child does not have “a right to appointed counsel in a private custody matter between a parent and a non-parent and in which the state does not seek a termination of parental rights,” and citing to language in Rule 4 about rule not providing a right where such right not guaranteed by constitution or statute).

Ohio Civ. R. 75(B)(2) provides for a discretionary appointment of legal counsel for a child-party in a custody action: “When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs.”

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Statutes and Court Decisions Interpreting Statutes

Ohio Rev. Code Ann. § 2705.031(C)(2) states that for contempt cases based either on child support or visitation, the accused “has a right to counsel, and that if indigent, the accused must apply for a public defender or court appointed counsel within three business days after receipt of the summons.”

State Court Decisions Addressing Constitutional Due Process or Equal Protection
A number of Ohio cases have addressed the question of whether indigent civil contemnor s have a constitutional right to counsel, and there is a split on the matter. In In re Calhoun, 47 Ohio St. 2d 15, 16-17, 350 N.E.2d 665, 666-667 (Ohio 1976), a case preceding Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981), the Ohio Supreme Court held there was no right to counsel in contempt proceedings, and focused on the criminal/civil distinction as well as the fact that “the ‘adverse’ party, the mother of the children, was not represented by counsel.” But in In re Contemnor Caron, 110 Ohio Misc. 2d 58, 744 N.E.2d 787 (C.P. 2000), a court of common pleas held a right to counsel exists in civil contempt proceedings, finding that Lassiter had implicitly overruled Calhoun. It noted that despite Lassiter’s focus on incarceration as the key consideration (as opposed to the civil/criminal distinction relied upon in Calhoun), a number of Ohio state and federal appellate courts had continued to follow Calhoun, whereas other Ohio appellate courts found instead that Lassiter implicitly overruled Calhoun.

Other courts of appeals subsequent to Caron have also found a right to counsel in the civil contempt context. See Evans v. Evans, 2003 WL 22681463 (Ohio Ct. App. 10th Dist. 2003) (unpublished) (relying on Caron); Poptic v. Poptic, 2006 WL 1493262, at *3 (Ohio Ct. App. 12th Dist. 2006) (unpublished) (same); Walters v. Murphy, 2004 WL 2757598 (Ohio Ct. App. 5th Dist. 2004) (unpublished) (finding right to counsel on appeal of contempt finding, and rejecting “holding keys to the jailhouse door” theory typically used to deny appointed counsel, pointing instead to “the complexity of the laws relating to support” as well as the state representative’s expertise in such proceedings and decisions of federal courts); Strizak v. Strizak, Slip Copy, 2012 WL 1929338 (Ohio App. 7 Dist. 2012) (“An indigent defendant is entitled to court-appointed counsel in contempt proceedings where he or she faces the possibility of a jail sentence”); Segovia v. Likens, 179 Ohio App.3d 256, 266 (2008) (finding a Fourteenth Amendment right to counsel for contempt hearing but not the purge hearing, which was more similar to parole hearing); Burton v. Hootman, 2007 WL 404359 (Ohio Ct. App. 2007) (unpublished) (finding Fourteenth Amendment right to counsel at visitation rights contempt hearing).

14 It is unclear why many of these cases spent so much time on the constitutional question, given the presence of R.C. § 2705.031(C)(2), which confers a statutory right to counsel in contempt proceedings related to failure to pay child support or comply with a visitation order. A number of the cases do not even mention the statute, even though they are cases that should fall under the statute. It may be that some of these cases preceded the statute, but a number of them definitively do not. Or it could be that the litigants did not request counsel within the three-day period required by the statute.


These decisions supporting a right to counsel in contempt proceedings are of questionable validity after *Turner v. Rogers*, 131 S.Ct. 2507 (2011) (Fourteenth Amendment does not require categorical right to counsel in civil contempt, at least where opponent is neither the state nor represented and matter is not "especially complex"), with respect to cases within *Turner*’s purview, since they did not rely on the Ohio Constitution and since they often relied on an interpretation of *Lassiter* that was rebuffed by *Turner*. However, one appellate court has suggested the decisions might survive in part. In *Crain v. Crain*, Slip Copy, 2012 WL 6737836 (Ohio App. 2012), an Ohio appellate court was faced with a situation where a civil contemnor was denied counsel at trial because the trial judge relied on *Turner* to say: "I'm going to deny your request for counsel at this time. There's a recent U.S. Supreme Court decision that came down on contempt citations regarding child support, and the decision of the justices is that obligors that are facing jail time in civil contempts are not entitled to court appointed counsel. So we'll proceed today without Court appointed counsel." On appeal, the 2nd District Court of Appeals stated: "[W]hile *Turner* does not categorically require counsel to be appointed for persons facing criminal contempt convictions for nonpayment of child support, a reading of the opinion demonstrates that neither does it categorically require, as stated by the magistrate, the denial of appointed counsel. Instead, a court must determine whether there are procedural safeguards in place that adequately protect the obligor. There was no such determination in this case. The magistrate's denial of counsel was, therefore, error." Further, the appellate court noted that *Turner* only applies to situations where the government is not a party, whereas "[i]n this case, an agency of the State, CSEA, brought the contempt action. The agency was represented by counsel. Thus, this action is in the nature of the government action that *Turner* declined to address, as opposed to the private-party action that was at issue in the *Turner* case. Again, this is an indication that the magistrate's reliance upon *Turner* was misplaced."\(^1\)

Additionally, rather than conduct a "harmless error" test, the *Crain* court concluded: "A total deprivation of the right to counsel constitutes structural error," and also that the error was "both plain and structural, and was therefore not waived by her failure to have objected to the magistrate's decision. In fact, the need to preserve error at the magistrate's hearing by objecting to the magistrate's decision is something that a layperson would not be expected to know without the assistance of counsel." Thus, the court reversed and held that "[o]n remand, the trial court must either assign Protsman counsel, find that she had the financial ability to retain counsel, or find that she waived or forfeited her right to counsel."

In a related matter, the Ohio Supreme Court in *Liming v. Damos*, 979 N.E.2d 297 (Ohio 2012), held that there is no right to counsel for a civil contemnor in his/her purge hearing. In\(^1\)

\(^1\) The appellate court also pointed out that entirely separate from *Turner*, an Ohio statute specifies that civil contemnorrs have a right to counsel and must apply for a public defender within 3 business days, and the trial judge in this case made no attempt to find out if the defendant had tried to secure the services of a public defender within the specified time period.
Liming, a father was alleged to be in contempt for failure to pay child support. At the contempt proceeding, where he was represented by counsel, the judge found him in contempt but suspended the 30-day jail sentence on the condition that the father purge the contempt by meeting certain requirements (such as paying his monthly support requirement). The father apparently failed to meet those requirements, and at the subsequent purge hearing, the trial court refused to appoint counsel and required the father to serve 10 of the 30 days of the jail sentence. The father first argued that the 10 day sentence imposed upon him was a criminal sanction. On appeal, the Ohio Supreme Court held that the proceeding was civil in nature, not criminal (thus, no Sixth Amendment right to counsel attached); although it conceded that “[t]he question is more complex than it first appears.” Id at 301. The court noted that the defendant had counsel for the original contempt proceeding and that “[t]he only issue left for the purge hearing is whether the contemnor complied with the purge requirements.” Id at 302. It then concluded that “if the original contempt sanction is civil, a purge hearing retains the civil nature of that proceeding.” Id.

The Liming court then examined the due process clause and the U.S. Supreme Court’s ruling in Turner v. Rogers, 131 S.Ct. 2507 (2011) (Fourteenth Amendment does not require categorical right to counsel in civil contempt, at least where opponent is neither the state nor represented and matter is not “especially complex”), but countered that “[w]hile Turner is instructive, it does not answer the precise question before us, as we are not concerned with due process rights for the initial contempt proceeding, but rather, for the purge hearing.” Id at 305. The court next applied the Mathews v. Eldridge, 424 U.S. 319, 335 (1976), factors and noted that, “[u]nlike the father in Turner … Liming’s personal liberty was already conditioned on his continued compliance with the purge conditions. An indigent parent’s right to appointed counsel diminishes as his interest in personal liberty also diminishes.” It also found that “the nature and scope of a purge hearing are straightforward and limited” because most of the important issues are decided at the initial contempt proceeding. Id at 306. Finally, as to the state’s interest, the court held: “The government has a strong interest in ensuring that parents financially support their children and in resolving these matters as quickly as possible. Otherwise, the state may have to step in and provide aid. Moreover, requiring the court to appoint counsel in every case in which there is the potential that the contemnor will be incarcerated for violating the purge conditions would add significant fiscal and administrative burdens on the state.” Id.

B. Paternity Proceedings

State Statutes and Court Decisions Interpreting Statutes

While Ohio Rev. Code Ann. § 2151.352 grants a right to counsel for most juvenile court proceedings, it further specifies there is no right to counsel “in civil matters in which the juvenile court is exercising jurisdiction pursuant to division . . . (B)(2) [determining paternity of
Ohio Rev. Code Ann. § 3111.07(A) specifies that in paternity proceedings, “[s]eparate counsel shall be appointed for the child if the court finds that the child’s interests conflict with those of the mother.”

State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right with respect to paternity proceedings than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain any of the paternity-related exceptions listed in § 2151.352 and discussed supra. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In State ex rel. Cody v. Toner, 8 Ohio St. 3d 22, 24, 456 N.E.2d 813, 815 (Ohio 1983), the Ohio Supreme Court found a federal and state constitutional right to counsel for the putative father in state-initiated paternity actions in which the complainant-mother and her child are recipients of public assistance. See State ex rel. Cody v. Toner, 8 Ohio St. 3d 22, 24, 456 N.E.2d 813, 815 (Ohio 1983). The court did not cite Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981), but it employed the three-part balancing test from Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976), on which the U.S. Supreme Court relied in Lassiter. The court concluded that those factors — the significance of the private interest affected, the risk of harm to that interest if no counsel were appointed, and the burden of that additional safeguard on the state — warranted the appointment of counsel in cases in which that right is not otherwise provided for by constitution or statute. See Toner, 8 Ohio St. 3d at 23, 456 N.E.2d at 814-15 (citing Mathews, 424 U.S. at 335).

The Cody v. Toner court first noted that the interests at stake — “the creation of a parent-child relationship” as well as “the putative father’s pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance” — were substantial. Id. at 23 814. Regarding the second factor, the court stated, “[e]mphasizing the fact that the paternity case below was initiated at the state’s insistence and prosecuted at the state’s expense, we realize that appellant is presented with a formidable task if he should be required to defend himself.” Id. at 23-24, 815. Quoting its prior observations in State ex rel. Heller v. Miller, 61 Ohio St. 2d 6, 13-14, 399 N.E.2d 66, 70 (Ohio
1980) (discussed supra Part 4.A regarding right to counsel in termination of parental rights cases) regarding the likely ineffectiveness of a pro se appeal, the court stated that “[t]his reasoning is applicable, if not more compelling, with regard to cases at the trial level.” Id. The court explained that in light of the particular circumstances of paternity cases, which implicate statutory rights to certain types of blood tests and a “likelihood that expert witnesses will be called to testify,” it “appears that one unknowledgeable of his rights and unskilled in the art of advocacy could easily go astray in conducting his defense.” Id. The court continued, “It can only be assumed that court-appointed counsel would provide adequate protection against these dangers.” Id. Because the court found that the state’s “financial stake in providing appellant with court-appointed counsel during the paternity proceedings is hardly significant enough to overcome the private interests involved,” id., it held that the state was obligated to appoint counsel.

An appellate court has subsequently ruled that the complainant in a paternity case does not have a right to counsel, or at least not for the appeal. Armstrong v. Hall, 33 Ohio App. 3d 1, 2-3, 514 N.E.2d 424, 426-27 (Ohio Ct. App. 3rd. Dist. 1986) (per curiam) (noting that mother had counsel for trial, and finding application of Mathews factors did not weigh in favor of appointing counsel since mother’s liberty not at stake; court added, though, that “Because the establishment of a family relationship is at stake here, the child's guardian ad litem should be appointed as her counsel to safeguard the child's interest. If counsel is appointed for the child, the mother would undoubtedly benefit because their interests are similar.”)

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

State Statutes and Court Decisions Interpreting Statutes

Ohio Rev. Code Ann. § 2151.85(B)(2) states that in judicial proceedings for minors seeking a waiver of the parental consent requirement for abortion, “[i]f the complainant has not retained an attorney, the court shall appoint an attorney to represent her.” The same statute also requires appointment of a GAL for the minor, and adds that “[i]f the guardian ad litem is an attorney admitted to the practice of law in this state, the court also may appoint him to serve as the complainant's attorney.” Notably, a Court of Common Pleas struck down both § 2151.85 (the judicial bypass provision) and 2919.12(B)(1) (the abortion restrictions statute) due to an irreconcilable conflict between the statute and court rules regarding issues of parental notice. In re Doe, 57 Ohio Misc. 2d 20 (C.P. 1990).

D. Proceedings Involving Parental Consent Requirement for a Minor to Marry

State Statutes and Court Decisions Interpreting Statutes
While Ohio Rev. Code Ann. § 2151.352 grants a right to counsel for most juvenile court proceedings, it further specifies there is no right to counsel “in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A) (10) [consent to marry] . . . of section 2151.23 of the Revised Code.”

State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain the exception related to proceedings involving consent to marry that is listed in § 2151.352 and discussed supra. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id.

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

State Statutes and Court Decisions Interpreting Statutes

While Ohio Rev. Code Ann. § 2151.352 grants a right to counsel for most juvenile court proceedings, it further specifies there is no right to counsel “in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(12) [involving “An agency represented on a county family and children first council that disagrees with the council’s decision concerning the services or funding for services a child is to receive from agencies represented on the council”] or (13) [parents with truant children] . . . of section 2151.23 of the Revised Code.”

State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does not contain any of the exceptions related to truancy or children in need of services that are listed in § 2151.352 and discussed supra. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id.
State Court Decisions Addressing Court’s Inherent Authority

In In re C.S., 115 Ohio St. 3d 267, 282, 874 N.E.2d 1177, 1191 (Ohio 2007), the Ohio Supreme Court stated that, “[i]n a delinquency case, a judge, acting as parens patriae, has the inherent authority to appoint counsel for the juvenile to determine whether he should waive his rights. We decline, however, to require a judge to do so in each case.”

F. Proceedings Involving Child Support

State Statutes and Court Decisions Interpreting Statutes

While Ohio Rev. Code Ann. § 2151.352 grants a right to counsel for most juvenile court proceedings, it further specifies there is no right to counsel “in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(11) [certain child support proceedings], . . . (B) . . . (3) [Uniform Interstate Family Support Act actions], (4) [child support orders for children not a ward of any other court of the state], . . . or (F) . . . (2) [divorce-related support orders] of section 2151.23 of the Revised Code.”

State Court Rules and Court Decisions Interpreting Court Rules

At first blush, Ohio St. Juv. P. Rule 4 appears to provide a broader right than Ohio Rev. Code Ann. § 2151.352 (discussed supra), as it states that “[e]very party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding.” The rule does contain any of the child support-related exceptions listed in § 2151.352 and discussed supra. However, the rule also states that “[t]his rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.” Id.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

Ohio courts have specifically rejected the right to counsel in the context of child support hearings. Burnes, 700 N.E.2d at 1261 (no right to counsel with respect to court-ordered transfer of property to satisfy child support obligation); Geauga County Dept. of Human Serv. v. Hall, 68 Ohio Misc. 2d 75, 647 N.E. 2d 579 (C.P., 1995) (no right to counsel to contest required reimbursement to county of payments made prior to establishment of paternity; “to require the court to appoint counsel for indigent defendants for purposes of determining child support

18 Specifically, (A)(11) governs the following: “Subject to divisions (G), (K), and (V) of section 2301.03 of the Revised Code, to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code ...”
after the parent-child relationship has been established would impose a significant hardship on the court and would hinder the court's ability to adequately provide counsel in situations in which the court is already under an obligation to provide counsel”).

**G. Proceedings Involving Only Monetary Loss to Litigant**

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

Ohio courts generally have rejected claimed rights to counsel in civil cases where the personal liberty of the litigant was not at risk and any loss would have been purely monetary. *See, e.g., State ex rel. Jenkins v. Stern*, 33 Ohio St. 3d 108, 110, 515 N.E.2d 928, 930 (Ohio 1987) (no right to counsel in action under Victims of Crime Act seeking monetary compensation for attorney services in a prior proceeding); *Perotti v. Ohio Dept. of Rehab. And Corr.*, 61 Ohio App. 3d 86, 91, 572 N.E.2d 172, 176 (Ohio Ct. App. 10th Dist. 1989) (in case involving prisoner allegations of medical malpractice and excessive use of force, court states that “[o]nly under certain circumstances is it appropriate to appoint counsel to an indigent party” and relies on *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18 (1981) regarding lack of counsel where physical liberty not threatened); *State ex rel. Montgomery v. Maginn*, 770 N.E.2d 1099, 1102 (Ohio Ct. App. 12th Dist. 2002) (no right to counsel in state-initiated action seeking civil penalties for hazardous waste violations, stating that “[a]n indigent defendant has a right to appointed counsel in a civil case ‘only when, if he loses, he may be deprived of his physical liberty’”).

**H. Forfeiture Proceedings**

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

A few courts have addressed the right to counsel in forfeiture proceedings. In *State v. Meeks*, Slip Copy, 2012-Ohio-4098, 2012 WL 3893588 (Ohio App. 2012), an Ohio Court of Appeals, relying on *Scott v. Illinois*, 440 U.S. 367 (1979) (no right to counsel under Sixth Amendment unless actual incarceration occurs), held that even where a forfeiture is considered criminal, there is no constitutional right to counsel because there is no threat of incarceration. Since there was no constitutional right to counsel, it was not possible to assert an ineffective assistance claim regarding retained counsel. *See also In re Forfeiture of Prop. of Rhodes*, Slip Copy, 2013-Ohio-3046, 2013 WL 3776420 (Ohio App. 2d Dist. 2013) (agreeing with *Meeks* and stating that “[i]t is a well-settled legal principle that there is no right to counsel in a civil action.”)

**I. Proceedings Under the Americans with Disabilities Act (ADA)**

In *Smith v. Ohio Dep’t of Rehab. and Corr.*, 661 N.E.2d 771, 774 (Ohio Ct. App. 10th Dist. 1995), the court held there was no right to counsel for a civil claim against the state under the
Americans With Disabilities Act, even though the plaintiff was a blind inmate. The plaintiff had sued the prison on the grounds that he had been denied Braille classes and other appropriate services. The court concluded, “[u]nless there is a showing of exceptional circumstances justifying the appointment of counsel, an individual plaintiff is not ordinarily entitled to a court-appointed attorney in a civil action”). The court relied on Perotti v. Ohio Dept. of Rehab. And Corr., 61 Ohio App. 3d 86, 91, 572 N.E.2d 172, 176 (Ohio Ct. App. 10th Dist. 1989) (in case involving prisoner allegations of medical malpractice and excessive use of force, court states that “[o]nly under certain circumstances is it appropriate to appoint counsel to an indigent party” and relies on holding from Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981) re: lack of counsel where there is no threat to physical liberty).
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),\(^{19}\) provides:

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


Additionally, 50 App. U.S.C. § 522(d)(1), which also applies to all civil proceedings (including custody),\(^{21}\) specifies that a service member previously granted a stay may apply for an additional stay based on a continuing inability to appear, while § 522(d)(2) states: “If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.”

State Court Decisions Addressing Court’s Inherent Authority

One case has addressed the inherent power of the courts to appoint counsel. See *In re C.S.*, 115 Ohio St. 3d 267, 282, 874 N.E.2d 1177, 1191 (Ohio 2007), discussed supra Part 5.E (“In a delinquency case, a judge, acting as parens patriae, has the inherent authority to appoint counsel for the juvenile to determine whether he should waive his rights. We decline, however, to require a judge to do so in each case”). In addition, when appointing counsel is constitutionally mandated, the court has the discretion to determine whether to appoint a specific attorney. *State ex rel. Kirtz v. Corrigan*, 61 Ohio St. 3d 435, 575 N.E.2d 186 (Ohio 1991).

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\(^{19}\) 50 App. U.S.C.A. § 512(a) states, “This Act [sections 501 to 515 and 516 to 597b of this Appendix] applies to-- ... (2) each of the States, including the political subdivisions thereof…”

\(^{20}\) 50 App. U.S.C. § 521(a) states, “This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.”

\(^{21}\) 50 App. U.S.C. § 522(a) applies to “any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section-- (1) is in military service or is within 90 days after termination of or release from military service; and (2) has received notice of the action or proceeding.”