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

OREGON

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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The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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).

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.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Graves v. Adult & Family Services Div. 76 Or.App. 215 (Ct. App. 1985), review denied, 300 Or. 605 (1986), a mentally ill litigant argued that he had a state and federal due process right to counsel at an administrative hearing to contest the termination of his unemployment benefits. He pointed to the U.S. Supreme Court decision in Goldberg v. Kelly, 397 U.S. 254, 267 (1970), requiring the process due in pre-termination proceedings. In Graves, the state argued that the claimant had sufficiently understood the proceedings and therefore did not need counsel, but in addition to questioning this contention, the court commented, “ex post facto determinations are necessarily difficult, and it is well nigh impossible to discern from the record what difference adequate representation would have made in a given case . . . .” 76 Or.App. at 223. The court then applied the Lassiter v. Department of Social Services, 452 U.S. 18, 25 (1981), factors, including the presumption against counsel except where physical liberty is at stake, and found that his interest in the benefits were “commanding”, given that they were his “‘means to obtain essential food, clothing, housing and medical care[,] * * * the very means by which to live.’” Id. (quoting Goldberg, 397 U.S. at 264). The court also noted that while appointment of counsel for the claimant might force the state to pay for counsel for itself as well as the claimant, the same was true if the claimants had retained counsel, and additionally the state had an interest in avoiding mentally ill people going into expensive institutions as the result of being denied benefits. Id. at 224. Finally, in analyzing the risk of erroneous deprivation, the court rejected the claimant’s contention that mentally ill claimants were per se unable to represent themselves, commenting, “Many mentally ill persons, with psychiatric therapy and medication and with financial assistance, are able to function reasonably well.” Id. Therefore, the court held, it would depend on the particular litigant.

The Graves court concluded that “mentally ill persons may have a right to counsel, determinable on a case-by-case basis by the AFSD hearings officer.” Id. at 225. It noted that since the proceedings are not adversarial, the hearing officer should attempt to assist the mentally ill claimant, which in turn would “obviate the necessity of appointing counsel at the outset of every instance . . . .” Id. It went on to describe this secondary holding:

[W]hen a claimant is mentally ill, is not represented by counsel and appears to be unable to address the issues involved in the hearing, the hearings officer must develop the record adequately to determine whether the claimant is entitled to benefits, not just decide the case on an inadequate record. If reasonably necessary, he must call witnesses on the applicant’s behalf or make arrangements for the applicant to call them. If the hearings officer is unable to get sufficient information from the applicant to develop an adequate record by the hearing process, counsel must be appointed.
ld. at 227-28 (internal citations omitted). The court then remanded the instant case back to the lower court to determine whether counsel should be appointed, especially in light of the fact that the hearing officer had taken a passive role in terms of helping the claimant.

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

The court has discretion to appoint counsel for a respondent or protected person in an adult protective proceeding. Or. Rev. Stat. Ann. §§ 125.025(3)(b), 125.080(4). Because the guardianship statute (Or. Rev. Stat. Ann. § 125.300 et seq.) falls within the Protective Proceedings chapter, it appears that this authority extends to guardianship proceedings as well. Or. Rev. Stat. Ann. § 125.090 specifies that the same procedures for guardianship establishment proceedings apply to review proceedings, so the discretionary appointment of counsel would likely apply as well.

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

In proceedings regarding involuntary commitment of a mentally ill person, that person has a right to appointed counsel if indigent. Or. Rev. Stat. Ann. § 426.100(3)(b). The Oregon courts have clarified that under Or. Rev. Stat. § 426.100, the trial court does not have to advise an allegedly mentally ill person of his or her right to retain private counsel provided that the court has already appointed counsel based on the determination that the individual lacked the resources to retain private counsel. State v. J.C., 172 Or.App. 745, 749 (Ct. App. 2001). The judge is responsible for issuing a citation to the allegedly mentally ill individual, informing the person of their right to have legal counsel appointed if they cannot afford it. Or. Rev. Stat. Ann. § 426.090; see also Or. Admin. R. 309-033-0250(2) (whoever takes allegedly mentally individual into custody is responsible for informing of rights regarding appointment of counsel pursuant to Or. Rev. Stat § 426.100). If an individual decides to appeal a determination that he or she is mentally ill under Or. Rev. Stat. § 426.130, that individual has a right to counsel for the appeal if indigent. Or. Rev. Stat. Ann. § 426.135.
State Court Decisions Addressing Constitutional Due Process or Equal Protection

In State v. Collman, 9 Or.App. 476, 483 (Ct. App. 1972), a case that pre-dated Lassiter v. Department of Social Services, 452 U.S. 18, 25 (1981) (finding no Fourteenth Amendment categorical right to counsel in termination of parental rights proceedings), an appeals court held that Fourteenth Amendment due process required appointed counsel prior to any mental health commitment. The court relied on the U.S. Supreme Court’s decision in In Re Gault, 387 U.S. 1 (1967), as well as a number of federal court decisions and the fact that “involuntary incarceration” was at stake.

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


4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

For parents in dependency proceedings, counsel is appointed “whenever the nature of the proceedings and due process so require.” Or. Rev. Stat. Ann. § 419B.205(1). The statute goes on to list factors for the court to consider, such as “[t]he duration and degree of invasiveness of the interference with the parent-child relationship that possibly could result from the proceeding,” the complexity of the issues and evidence, the nature of the contested allegations and evidence, and the effect the ruling will have on subsequent proceedings (such as termination of parental rights). Id. For example, in State ex rel. Juv. Dept. of Multnomah Cnty v. Jackson, 207 Or.App. 414, 416 & 418-19 (Ct. App. 2006), the court of appeal found that the father in a juvenile court dependency proceeding was not entitled to court appointed counsel at his review hearings, pointing to the fact that the father only had a right to counsel when facing a proceeding at which counsel was necessary. The court concluded that the father’s “interest in continuing to attend the review hearings” was not a sufficient reason to
entitle the father to appointment of counsel. Thus, at the proceeding in question, he was not entitled to appointment of counsel.

Indigent parents in termination of parental rights cases are entitled to appointed counsel upon request. Or. Rev. Stat. Ann. § 419B.518. Moreover, Oregon courts have clarified that the right to counsel under § 419B.518 “includes a right to adequate counsel.” In re K.A.S., 225 Or.App. 115, 137 (Ct. Appl. 2009). See also State v. N.L., 237 Or.App. 133, 142 (Ct. App. 2010); State ex rel Juv. Dept. v. Geist, 310 Or. 176, 185–87 (1990).

Federal Statutes and Court Decisions Interpreting Statutes

The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,¹ provides:

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding....Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.”


State Court Decisions Addressing Constitutional Due Process or Equal Protection

In State v. Jamison, 251 Or. 114, 117 (1968), a case that pre-dated Lassiter v. Department of Social Services, 452 U.S. 18, 25 (1981) (finding no Fourteenth Amendment categorical right to counsel in termination of parental rights proceedings), the Supreme Court of Oregon held that “where the parent in a termination proceeding is indigent, counsel must be supplied at public expense.” The court did not address which constitution it was interpreting, but in a later case concluded that Lassiter overruled Jamison, making it fairly certain that Jamison was based on the Fourteenth Amendment only. State ex rel Juv. Dept. of Multnomah Cnty. v. Geist, 310 Or. 176, 188 (Or. 1990). See also State ex rel Juv. Dept. of Multnomah Cnty. v. Grannis, 67 Or.App. 565, 574 (Ct. App. 1984) (following Lassiter but adding that “[w]e

¹ 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.
specifically endorse the recommendation in Cleaver that, when trial courts deny an indigent parent's request for appointed counsel, they should explain the bases for the denial to expedite the appellate court's task on review;” court finds trial court erred in failing to appoint counsel in dependency case, but that error was harmless because mother was eventually represented at plenary hearing).

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes


State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Zockert v. Fanning, 310 Or. 514 (1990), a case involving the state equal protection provision, petitioners attempted to adopt a minor on the basis of consent by the mother and abandonment by the father (and Or. Rev. Stat. Ann. § 109.324 waives the consent requirement for a natural parent where there is abandonment). The father appeared to contest the adoption and, after being denied several requests for an appointed counsel, lost his parental rights. In rejecting the father’s requests for appointed counsel, the trial court noted that the case-at-hand was a civil proceeding as opposed to a criminal proceeding. The father’s appeal relied on the argument that federal constitutional guarantees and Article I, § 20 of the Oregon Constitution required the Oregon courts to provide him with appointed counsel. His argument was that Or. Rev. Stat. Ann. § 419.525(2) (repealed 1993) provided counsel in parental termination proceedings in juvenile courts, and that denying appointment of counsel in a proceeding similar to those held under Or. Rev. Stat. Ann. § 419.525(2) resulted in unequal treatment. The court agreed and held he was entitled to appointed counsel, but remanded the case to the trial court based on other matters. In its holding, the court stated: “The pioneers who adopted the Oregon Constitution clearly had in mind that assistance of counsel was among the privileges of Oregon citizenry.” 310 Or. at 519. It relied in part on the fact that the proceedings at issue could result in a “permanent loss of all parental rights.” Id. at 520. And, the noted: “The state is involved similarly in both proceedings. A state agency, Children's Services Division, plays a significant role in adoptions under ORS 109.310(4) and 109.316, and also serves the juvenile court under chapter 419.” Id at 522. In Hunt v. Weiss, 169 Or.App. 317, 322 (Ct. App. 2000), the court of appeals extended Zockert to involuntary adoptions attempting to bypass consent based on the incarceration or mental disability of the birth parent (as per Or. Rev. Stat. Ann. § 109.322).
C. Appointment of Counsel for Child—State-Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

In dependency cases, the court must appoint counsel for the child if requested. Or. Rev. Stat. Ann. § 419B.195 ("Whenever requested to do so, the court shall appoint counsel to represent the child or ward in a case filed pursuant to ORS 419B.100"), & 419B.875(2)(b). As for termination of parental rights cases, the court of appeals observed in 1991 that while there is an explicit provision for appointing counsel for parents in termination proceedings, the statutes at the time (which have since been repealed) only provided for discretionary appointment of counsel for children in termination proceedings. State ex rel. Juv. Dept. of Benton Cnty., Children's Serv. Div. v. Silence, 105 Or.App. 149, 152 (Ct. App. 1991).

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

2 While the ICWA does not appear to have a definitive statement about jurisdiction, 25 U.S.C. § 1912(b) refers to state law not providing for appointment of counsel. Additionally, 25 U.S.C. § 1912(b) states: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." These provisions, plus the fact that child welfare proceedings typically occur in state court, suggest that ICWA applies in state law proceedings.
has in effect and is operating a statewide program, relating to child abuse and neglect that includes— ... (xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings.”

42 U.S.C. § 5106a(b)(2).

D. Appointment of Counsel for Child—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

The court may, on its own initiative (and must, if requested by the child), appoint counsel for children in cases involving a) domestic relations; b) custody or support of an out-of-wedlock child; or (c) a petition by a person with an emotional tie to a child for intervention in a child custody, placement, or guardianship proceeding. Or. Rev. Stat. Ann. §§ 107.425(6). See also In re Marriage of Thomason, 174 Or.App. 37, 44 (Ct. App. 2001) (explaining that court’s ability to appoint counsel is limited to specific situations enumerated in statute; to hold otherwise “would be a limitless grant of authority to appoint counsel for a child at any time—even upon the court’s own motion—and to impose the costs on the child's parents.”).

In adoptions of people who are 18 or older, the court has the discretion to appoint counsel for both the petitioner and the person to be adopted. Or. Rev. Stat. Ann. § 109.329(4).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In Matter of D., 24 Or.App. 601 (Ct. App. 1976), the court reversed its own precedent and held that children in contested adoption proceedings (and generally in proceedings involving the severing of the parent-child relationship) do not have an absolute right to counsel. Only two years prior, the same court had held in State ex rel. Juvenile Department v. Wade, 19 Or.App. 314, 323 (Ct. App. 1974), that children had a categorical right to independent counsel in such proceedings, owing to the consistent potential for conflicts of interest between the parents and their children. However, in Matter of D., the court held that:

the rule set forth in Wade is needlessly inflexible and has in application failed to serve the purposes for which it was designed; we are now satisfied that due process does not, in fact, require the presence of independent counsel in every case and that the implementation of a rule to that effect will, in many cases, fail to enhance the
protection of the interests of children while unnecessarily complicating proceedings already involving difficult and complicated issues.

24 Or.App. at 607. The court justified its change in direction by arguing that some children were too young to properly utilize a client-directed attorney, while in other cases, the child’s best interest could be adequately protected by other parties to the litigation. Id. at 609. The court concluded that its new rule would “permit[] the trial court to determine on a case-by-case basis whether separate counsel for the child is required in any given termination or adoption proceeding.” Id. at 610. Neither Matter of D. nor Wade made clear which constitution they were addressing, although both relied heavily on U.S. Supreme Court precedent.

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Statutes and Court Decisions Interpreting Statutes

O.R.S. § 33.055(8) governs civil contempt proceedings (referred to as “remedial sanctions”) and states: “A defendant is entitled to be represented by counsel. A court shall not impose on a defendant a remedial sanction of confinement unless, before the hearing is held, the defendant is: (a) Informed that such sanction may be imposed; and (b) Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.”

B. Paternity Proceedings

State Statutes and Court Decisions Interpreting Statutes

The court also may, on its own initiative (and must, if requested by the child), appoint counsel for children in cases involving paternity. Or. Rev. Stat. Ann. § 109.072(5).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In State ex rel. Adult & Family Services Division v. Stoutt, 57 Or.App. 303 (Ct. App. 1982), the litigant attempted to establish a right to appointed counsel in a paternity case and raised both the state and federal constitutions. The Oregon Court of Appeals adopted the United States Supreme Court’s approach in Lassiter v. Department of Social Services, 452 U.S. 18, 25 (1981), and questioned whether the issues and procedures therein were such that “the presence of counsel . . . could not have made a determinative difference.” Lassiter, 452 U.S. at 32-33. The Oregon Court of Appeals explained that, while some paternity cases present complex questions of fact or law, the case-at-hand did not present such complexities and, as in
Lassiter, an attorney would have had minimal effect on the outcome of the proceedings, resulting in no due process right to appointed counsel. 57 Or.App. at 311.

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

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

D. Proceedings Involving Claims by or Against Prisoners

State Statutes and Court Decisions Interpreting Statutes


State Court Decisions Addressing Court’s Inherent Authority

In Sands v. Purcell, 504 P.2d 768 (Or. App. 1972), a court of appeals was confronted with a situation where the trial court had appointed counsel for an inmate absent statutory authority, and appointed counsel was seeking compensation. The appellate court held simply that “there was no basis for the court's order that attorney fees at public expense be allowed herein” and distinguished cases to the contrary from other jurisdictions as ones that involved either criminal cases or situations where there was a provision for appointing counsel.

E. Attorney Disbarment Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In re Conduct of Harris, 334 Or. 353 (2002) (per curiam), an attorney in a disbarment proceeding argued that he had a right to counsel under both the Sixth and Fourteenth Amendments. After first holding that the proceeding in question was not criminal (and thus not subject to Sixth Amendment protections), the court turned to the due process question. The court cited Lassiter and noted that there was no physical liberty threat at issue, and therefore found no compelling reason to appoint counsel. Id. at 364. In an earlier case, the Supreme Court of Oregon had declined to address the issue of whether there was a right to counsel in attorney disbarment proceedings, explaining that even if there were such a right, the litigant in that particular case was not indigent and so the right to appointed counsel—if there was one at all—would not apply. In re Conduct of Devers, 328 Or. 230, 234 (1999).
State Court Decisions Addressing Court’s Inherent Authority

In re Conduct of Harris, 334 Or. 353 (2002) (per curiam), an attorney disbarment case discussed supra, the court declined the invitation to use its inherent power to appoint counsel, commenting: “The routine appointment of counsel in lawyer disciplinary matters might or might not be a better policy than that contained in the current procedures. Those procedures, however, are based upon rules that the Bar’s Board of Governors has adopted and that this court has approved. If those rules are to be changed in the manner that the accused advocates, that change ‘must await the full debate that is contemplated by the process for adopting and amending’ them.” Id. at 365.
Law Addressing Authorization or Requirement to Appoint Counsel in Civil Proceedings Generally

Federal Statutes and Court Decisions Interpreting Statutes

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

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


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

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3 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...”

4 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.”

5 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.”