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

VERMONT

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The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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

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

“Counsel shall be appointed” in proceedings relating to involuntary guardianship, from initial proceedings through appointment of a guardian or dismissal of the petition (although counsel must be requested if it is after the initial establishment). See 14 V.S.A. § 3065(a) (regular guardianships); 18 V.S.A. § 9308 (guardianships for developmentally disabled individuals). “For indigent respondents, the court shall maintain a list of pro bono counsel from the private bar to be used before appointing nonprofit legal services organizations to serve as counsel.” Id. at § 3065(c).

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

In preliminary hearings to determine whether an individual may be involuntarily admitted as a patient, such “individual has the right to be present and represented by legal counsel,” 18 V.S.A. § 7510, although the statute makes no mention of appointment. Persons subject to commitment or judicial review for reasons of mental health have a right to appointed counsel under 18 V.S.A. § 7111. This right extends to “any proceeding before, or notice to, a court of this state involving a patient [qualified for treatment as a mentally ill or mentally retarded individual].” Id.

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

Vermont provides for the right to counsel prior to involuntary sterilization. “If the [sterilization] petition states that the respondent is unable to pay for counsel, the court shall appoint counsel to be paid by the state or set a hearing for a determination of respondent’s ability to pay for counsel.” 18 V.S.A. § 8710.

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

For dependency cases, the Public Defender Act (“PDA”) states that counsel “shall be assigned” in “proceedings arising out of a petition brought in a juvenile court when the court deems the interests of justice require representation of . . . [the] parents or guardian . . ., including any subsequent proceedings arising from an order therein.” 13 V.S.A. § 5232(3).¹ See also 33 V.S.A. § 5306(d)(5) (in notice of temporary care hearing, there must be notice to “an attorney to represent the parent,” and “[t]he attorney may be court-appointed in the event the parent is eligible”).²

Regarding termination proceedings, 13 V.S.A. § 5232 only requires appointment in juvenile court proceedings “when the court deems the interests of justice” require it for the parents.³ There is no separate termination statute; instead, termination is treated as one type

¹ The Vermont Supreme Court has said, “as a matter of legislative intent, that at least so far as the right to assistance of counsel is concerned, juvenile proceedings generally have been placed by the Legislature in the same category with criminal offenses, without distinction as to whether the juvenile proceedings do, or do not, involve an act otherwise criminal.” In re A.C., 134 Vt. 284, 287 (1976). Additionally, there is no clear provision in § 5232 that would allow for appointment of counsel at state expense for kin who have been granted custody under the statute. While Section 5232 allows the court to appoint counsel for the guardian of the child at state expense, T. 33 V.S.A. Section 5102(12) now defines “guardian” to mean “a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont probate court or a similar court in another jurisdiction.” Therefore, it appears that a relative who is granted custody of the child in the juvenile proceeding would have to retain counsel at their own expense if, for example, they want to file a motion for modification of the disposition order. Pamela A. Marsh, Esq. & Kathryn A. Piper, Esq., The Practical Implications of the Newly Enacted Vermont Juvenile Judicial Proceedings Act (JIPA), 35 Vt. B.J. 42, 44 (Spring 2009).

² Vt. R. Fam. P. Rule 2(c) states that “Counsel shall be assigned at the temporary care hearing or prior to the preliminary hearing”, but while this may be a reference to appointing counsel for all parents, it may simply mean that if counsel is to be assigned, it should be done at those times.

³ Note that the Vermont Juvenile Law and Practice Manual published by the Defender General’s office states, “In all phases of CHINS matters, the parents of a juvenile who is the subject of a Juvenile Court petition are entitled to be represented by an attorney. If the parents are unable to afford private legal representation, they may apply to
of disposition for a dependency petition. See 33 V.S.A. §§ 5318(a)(5). Additionally, Vt. R. Fam. P. Rule 3 says the procedures specified in Rule 2 (which include appointment of counsel) also apply to termination proceedings. Consequently, any counsel that is assigned for the dependency for the parent would continue through the termination phase. The Vermont Supreme Court has also stated: “Although in theory the appointment of counsel under § 5232(3) [] remains discretionary, in practice counsel are uniformly appointed to represent needy parents in termination proceedings from trial through appeal.” In re S.C., --- A.3d ---, 2014 WL 92238 (Vt. 2014). Moreover, “[b]y administrative order, this Court has also ensured continued representation of aggrieved parents on appeal, by providing that an appeal from a termination judgment is not considered a separate proceeding and thus does not require a separate application for the services of appellate counsel at state expense.’ A.O. 4, § 4(c)(1).” In re S.C., 2014 WL 92238 at ¶ 5 (also holding that appellate counsel cannot withdraw from appeal based on counsel’s belief that there is no non-frivolous argument to advance on appeal).

In In re G.F., 181 Vt. 593, 599 (2007), a case involving dependency and termination of parental rights, the Vermont Supreme Court interpreted Vermont’s statutory provisions for judicial discretion to appoint counsel in juvenile court cases, 13 V.S.A. § 5232(3). After opining that the only grounds proffered by the father for why he deserved counsel was “that he wanted custody of his children,” the court concluded that the family court was not in a position to make an informed judgment that the interests of justice required counsel in the initial dependency proceeding as required by 13 V.S.A. § 5232(3). Id. at 598.

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 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

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


State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In re G.F., 181 Vt. 593, 599 (2007), a case involving dependency and termination of parental rights, the Vermont Supreme Court asserted that in the instant case, it could not balance the Mathews v. Eldridge, 424 U.S. 319 (1976), interests discussed in Lassiter v. Department of Social Services, 452 U.S. 18 (1981) (personal interest at stake, risk of error, and state’s interest), in order to determine whether due process required appointment of counsel for the father in the dependency proceeding, since those interests were not adequately presented in the matter. Moreover, the threat faced by the unrepresented indigent was mitigated by the fact that the father ultimately had counsel appointed when faced with termination of his parental rights. Id. Therefore, the court held that declining to appoint counsel earlier was not erroneous. Id.

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

In any proceeding under the Adoption Act that may result in termination of parental rights, Vermont requires appointment of an attorney for any indigent or incompetent person unless the person declines representation. 15A V.S.A. § 3-201. Moreover, in an adoption relinquishment proceeding, “[a] parent who is a minor is competent to execute a consent or relinquishment if the parent has had the advice of an attorney who is not representing an adoptive parent or the agency to which the parent’s child is relinquished. The attorney shall be present when the consent or relinquishment is executed.” 15A V.S.A. § 2-405.

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

State Statutes and Court Decisions Interpreting Statutes

For dependency cases, the Public Defender Act (“PDA”) states that counsel “shall be assigned” in “proceedings arising out of a petition brought in a juvenile court when the court deems the interests of justice require representation of . . . the child . . ., including any subsequent proceedings arising from an order therein.” 13 V.S.A. § 5232(3). While § 5232(3)

5 The Vermont Supreme Court has said, “as a matter of legislative intent, that at least so far as the right to assistance of counsel is concerned, juvenile proceedings generally have been placed by the Legislature in the same category with criminal offenses, without distinction as to whether the juvenile proceedings do, or do not, involve an act otherwise criminal.” In re A.C., 134 Vt. 284, 287 (1976). Additionally, there is no clear provision in § 5232...
makes appointment discretionary for children, 33 V.S.A. § 5112 states, “[t]he court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters.” Dependency proceedings are part of juvenile judicial proceedings, as per 33 V.S.A. § 5102(14), and a child is a “party” to a dependency proceeding as per 33 V.S.A. 5102(22).

Regarding termination proceedings, 13 V.S.A. § 5232 only requires appointment in juvenile court proceedings “when the court deems the interests of justice” require it for the child.⁶ There is no separate termination statute; instead, termination is treated as one type of disposition for a dependency petition. See 33 V.S.A. §§ 5318(a)(5). However, Vt. R. Fam. P. Rule 3 says the procedures specified in Rule 2 (which include appointment of counsel) also apply to termination proceedings. Consequently, any counsel that is assigned for the dependency for the child would continue through the termination phase, and given that 33 V.S.A. § 5112 guarantees counsel to children for the dependency phase, it appears they should also have a right to counsel at the termination stage.

**Federal Statutes and Court Decisions Interpreting Statutes**

The Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,⁷ 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

that would allow for appointment of counsel at state expense for kin who have been granted custody under the statute. While Section 5232 allows the court to appoint counsel for the guardian of the child at state expense, T. 33 V.S.A. Section 5102(12) now defines “guardian” to mean “a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont probate court or a similar court in another jurisdiction.” Therefore, it appears that a relative who is granted custody of the child in the juvenile proceeding would have to retain counsel at their own expense if, for example, they want to file a motion for modification of the disposition order. Pamela A. Marsh, Esq. & Kathryn A. Piper, Esq., *The Practical Implications of the Newly Enacted Vermont Juvenile Judicial Proceedings Act (JIPA)*, 35 Vt. B.J. 42, 44 (Spring 2009).

⁶ The Vermont Juvenile Law and Practice Manual published by the Defender General’s office states, “In all phases of CHINS matters, the parents of a juvenile who is the subject of a Juvenile Court petition are entitled to be represented by an attorney. If the parents are unable to afford private legal representation, they may apply to the Juvenile Court for appointment of a public defender at greatly reduced or no cost. See Administrative Order No. 32.” [http://dgsearch.no-ip.biz/juvenile/FINAL%20JUVENILE%20MANUAL.pdf](http://dgsearch.no-ip.biz/juvenile/FINAL%20JUVENILE%20MANUAL.pdf).

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.
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 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

In any proceeding under the Adoption Act that may result in termination of parental rights, Vermont requires appointment of an attorney for any minor unless the minor declines representation. 15A V.S.A. § 3-201. Moreover, in an adoption relinquishment proceeding, “[a] parent who is a minor is competent to execute a consent or relinquishment if the parent has had the advice of an attorney who is not representing an adoptive parent or the agency to which the parent's child is relinquished. The attorney shall be present when the consent or relinquishment is executed.” 15A V.S.A. § 2-405.

In divorce proceedings, the court “may appoint” counsel to represent the interests of a dependent child or minor regarding child support and the allocation of parental rights, 15 V.S.A. § 594(a), but “shall appoint” an attorney for a minor child before the minor child is called as a witness in such proceedings. Id. at § 594(b). However, the refusal to appoint counsel for a child was not found to be an abuse of discretion in a divorce action where a guardian ad litem was
appointed and there was no indication that the guardian ad litem failed to represent the child's best interests. *Putnam v. Putnam*, 689 A.2d 446, 450 (Vt. 1996).

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

Relying in part on *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), the Vermont Supreme Court held on multiple occasions that the Due Process Clause of the Fourteenth Amendment of the United States Constitution includes a right to the appointment of counsel in a civil proceeding where an indigent defendant faces “actual imprisonment.” *Choiniere v. Brooks*, 163 Vt. 625, 626 (1995); *Russell v. Armitage*, 166 Vt. 392, 397 (1997). Although the United States Supreme Court had not expressly held counsel is required in civil contempt proceedings with a possibility of incarceration, the Vermont Supreme Court determined that it was compelled to find such a right to counsel consistent with United States Supreme Court decisions on related matters. *Russell*, 166 Vt. at 397.8

In *Choiniere*, a mittimus (arrest warrant) was issued by the family court after the defendant failed to pay child support. 163 Vt. at 625. The Vermont Supreme Court asserted that “the Due Process Clause of the Fourteenth Amendment does not distinguish between the ‘criminal’ or ‘civil’ nature of incarceration proceedings.” *Id.* (internal citations omitted). Since the mittimus ordered the incarceration of a defendant who had not been afforded the benefit of counsel, the court vacated the incarceration order and ordered the family court to appoint counsel for the defendant. *Id.* at 626. The Vermont Supreme Court encountered a similar scenario in *Russell*, where a parent was held in civil contempt for failing to pay child support. 166 Vt. at 394. At the first hearing before the family court, the court did not appoint counsel for the parent but held him to be in civil contempt, and ordered him to comply with the child support order. *Id.* at 395. At a later hearing, the Office of Child Support (“OCS”) moved for incarceration, at which point the court, pursuant to the PDA, appointed a public defender to represent the parent. *Id.* at 396. The *Russell* court held that a litigant is entitled to counsel at

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8 The *Russell* court cited the following cases in support of its interpretation: *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (“no person may be imprisoned for any offense . . . unless he was represented by counsel at trial”); *Scott v. Illinois*, 440 U.S. 363, 373-74 (1979) (the Sixth Amendment right to counsel extended only to those criminal defendants faced with “actual imprisonment,” not simply “fines or the mere threat of imprisonment”); *In re Gault*, 387 U.S. 1, 41 (1967) (a child has a right to counsel in juvenile delinquency proceedings that may result in commitment to an institution); *Gagnon v. Scarpelli*, 411 U.S. 778, 789 n.12 (1973) (such proceedings, while denominated civil, are “functionally akin to a criminal trial”).
stages of the civil proceedings where a defendant is at risk of losing his liberty but that all due process requires a “full opportunity” to demonstrate, with the assistance of counsel, why defendant should not be incarcerated prior to incarceration. *Id.* at 400-01. The court then reasoned that since “the [trial] court did not consider incarcerating the defendant without providing him another opportunity . . . to challenge his ability to comply with the child support order . . . with the aid of counsel,” he was not at risk for incarceration and therefore not entitled to counsel at the first proceeding. *Id.*

As a result of *Turner v. Rogers*, 131 S.Ct. 2507 (2011) (Fourteenth Amendment does not require right to counsel in civil contempt, at least where opponent is neither the state nor represented and matter is not “especially complex”), *Russell* and *Choiniere* are of questionable precedential value for cases within the scope of *Turner’s* holding.9

**State Court Decisions Addressing Court’s Inherent Authority**

In *Russell v. Armitage*, 697 A.2d 630 (Vt. 1997), the court addressed whether the PDA precluded the assignment of public defenders to civil contempt proceedings. The court concluded that the PDA “does not authorize courts to assign civil contempt proceedings to the Defender General even where the trial court considers ordering incarceration” *Id.* at 403; nonetheless, the court denied the public defender’s motion to withdraw, citing the court’s inherent power to provide counsel where it is constitutionally required, even if not reached by statutory authority. *Id.* at 402 (citing Vt. A. O., Rule 4 § 1). The court acknowledged that it had power to require attorneys to “serve and protect the vital interests of uncounselled litigants where circumstances demand it.” *Id.* (citing *Caron*, 131 Vt. at 55).10 The court, however, admonished that trial courts may not “routinely” assign public defenders to all civil contempt proceedings against indigent litigants because of the burden it would place on the public defenders’ caseload and the inequity of requiring public defenders (as opposed to other

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9 *Russell* and *Choiniere* specifically rejected the case-by-case approach to the appointment of counsel adopted by the United States Supreme Court in *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981) and in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), in the context of civil contempt proceedings that may result in incarceration. *Russell*, 166 Vt. 398 n1. The court reasoned that the neither *Lassiter* nor *Gagnon* would support a case-by-case rule in the above case. “*Lassiter* is clearly distinguishable because the defendant’s physical liberty was not there at issue [and] *Gagnon* is not applicable because the two factors important to the Court therein -- the conditional liberty interest of a probationer or parolee and the informality of revocation proceedings -- are not present here.” *Id.*

10 Although not made clear in the *Russell* opinion, the phrase “to serve and protect the vital interests of uncounselled litigants where circumstances demand it” seems to only apply in a criminal context or when a liberty interest is at stake. The section of *Caron* quoted relied upon a case where the PDA was used in the context of appointing a guardian ad litem for a minor accused of a felony. See also *In re Mears*, 198 A.2d 27, 31 (Vt. 1964) (stating “The power to assign counsel to represent respondents appearing before courts charged with crime is inherent, and at least as broad as the court’s criminal jurisdiction.”)
Vermont lawyers) to bear the entire burden of representing individuals in these kinds of cases. *Id.* at 404-05. The court noted, in closing that, “[o]nly the Legislature may provide a comprehensive plan addressing the need for legal counsel in civil contempt proceedings.” *Id.* at 405.

**B. Paternity Proceedings**

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

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

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

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

*State Court Rules and Court Decisions Interpreting Court Rules*

Vt. R. Fam. P Rule 6(b) states that “[i]n proceedings under 33 V.S.A. Chapter[] … 53 [children in need of care of supervision], the court shall assign counsel pursuant to Administrative Order No. 32 to represent the child unless counsel has been retained by that person.”

**E. Marriage Dissolution/Divorce Proceedings**

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

In *Morissette v. Morissette*, 463 A.2d 1384, 1387 (Vt. 1983), a divorce case involving primarily property interests, the plaintiff had been represented by eight different attorneys at one point, and had consulted with an additional attorney who was not licensed in Vermont. She argued that “she was denied her constitutional right to effective legal counsel because of the pervasive involvement of an attorney not admitted to practice before the courts of Vermont.” The Vermont Supreme Court noted, with respect to a divorce case, that “in civil cases a plaintiff has no constitutional right to have counsel provided.”. *See also Prior v. Prior*, 2006 WL 5838206 (Vt. 2006) (unpublished) (divorce, and citing *Morissette*).

**F. Proceedings Involving Claims by and Against Prisoners**
State Court Decisions Addressing Constitutional Due Process or Equal Protection

In In re Chapman, 581 A.2d 1041, 1043 (Vt. 1990), the Vermont Supreme Court found that “[t]here is no federal constitutional right to counsel on post-conviction review, a proceeding which is not part of the criminal proceeding itself and is considered to be civil in nature.” See also In re Bailey, 2009 VT 122, P9 (Vt. 2009)); Crannell v. Valerio, 2006 WL 5847263 (Vt. 2006) (unpublished) (finding no right to counsel in Rule 75 challenge to Defender General’s handling of criminal case, and relying upon Chapman).
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\(^\text{11}\) and to all civil proceedings (including custody),\(^\text{12}\) 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),\(^\text{13}\) 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.”

\(^{11}\) 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...”

\(^{12}\) 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.”

\(^{13}\) 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.”