AMERICAN BAR ASSOCIATION

Directory of Law Governing Appointment of Counsel in State Civil Proceedings

NORTH DAKOTA

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NORTH DAKOTA

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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 2017. The Directory does not seek to address all conceivable subsidiary issues in each jurisdiction, but some such issues were researched and addressed, including: notification of right to counsel; standards for waiver of right to counsel; standard of review on appeal for improper denial of counsel at trial; whether "counsel" for a child means a client-directed attorney or a "best interests" attorney/attorney ad litem; and federal court decisions finding a right to counsel. Similarly, the research did not exhaustively identify all law regarding the issue of compensation of appointed counsel in each jurisdiction, though discussion of such law does appear within some of the reports.

The Directory attempts to identify as "unpublished" any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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to confirm whether a case is published and to familiarize themselves with all rules relating to the citation and use of unpublished or unreported cases.

Acknowledgments

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

Law Addressing Authorization or Requirement to Appoint Counsel in Specific Types of Civil Proceedings

1. SHELTER

Federal Statutes and Court Decisions Interpreting Statutes

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

2. SUSTENANCE

Federal Statutes and Court Decisions Interpreting Statutes

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

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

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

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

3. SAFETY AND/OR HEALTH

A. Domestic Violence Protection Order Proceedings

No law could be located regarding the appointment of counsel for indigent litigants in domestic violence protection order proceedings.

B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings

State Statutes and Court Decisions Interpreting Statutes

In guardianship proceedings, "[u]pon the filing of a petition, the court shall . . . appoint an attorney to act as guardian ad litem[.]" N.D. Cent. Code Ann. § 30.1-28-03(3). The statute further explains that:

> The duties of the guardian ad litem include: a. Personally interviewing the proposed ward; b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available, including the right to retain an attorney to represent the proposed ward; c. Advocating for the best interests of the proposed ward. The appointed attorney serving as legal guardian ad litem may not represent the proposed ward or ward in a legal capacity; d. Submitting a written report to the court containing the guardian ad litem's response to the petition; and e. Reviewing the visitor's written report submitted in accordance with subdivision h and i of subsection 6 and discussing the report with the proposed ward.

§ 30.1-28-03(4). In cases involving an appointment of a conservator or other protective order because of minority, "[i]f, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to serve as guardian ad litem for the minor, giving consideration to the choice of the minor if fourteen years of age or older." § 30.1-29-07(1). The statute notes that:

> The duties of a guardian ad litem include: a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language,

> mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person; b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity; c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship; d. Interviewing the person seeking appointment as conservator; e. Obtaining any other relevant information; f. Submitting a written report to the court containing the guardian ad litem's response to the petition; and g. Attending the hearing unless excused by the court for good cause.

Id. The same right to the appointment of an attorney as a guardian ad litem also exists in cases involving an appointment of a conservator or other protective order for reasons other than minority. § 30.1-29-07(2). Another provision, § 30.1-28-07(3), says that for modification/termination of guardianship, "the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court." It is unclear whether the "same procedures" language applies only to the visitor's actions (which would not incorporate the appointment of counsel provisions) or to whole proceedings.

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Every respondent under the Commitment Procedures Chapter of the North Dakota Century Code is entitled to legal counsel before commitment for mental illness. N.D. Cent. Code Ann. § 25-03.1-13 (2005). Counsel shall be appointed if an appearance by an attorney has not been entered within twenty-four hours of the filing of a petition for commitment and at the county's expense if the respondent is indigent. *Id*. More specifically, there is the right to counsel before involuntary commitment hearings and any court-ordered examination, especially if the person is indigent. § 25-03.1-09. Also, if such a person poses an immediate serious risk of harm to others, themselves, or property, they may be taken into custody, but must be advised of the right to counsel. §§ 25-03.1-25; 25-03.1-26. Furthermore, if an order of involuntary commitment is appealable, the court must notify the respondent of their right to counsel. § 25-03.1-29. *See also* § 25-03.1-31 (right to counsel in procedure to extend commitment). In *In Interest of T.H.*, 482 N.W.2d 615, 624

(N.D. 1992), the high court held that "the Mental Health Act contemplates that counsel be made available to advise and assist an involuntary patient during a periodic review if the patient desires."

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Rashid v. J.B.,* 410 N.W.2d 530, 532 (N.D. 1987), the court held that indigent litigants in civil commitment proceedings were entitled to counsel. Recognizing the commitment as a "massive curtailment of liberty" (a cite to *Vitek v. Jones*, 445 U.S. 480, 491 (1980)), the court noted that "the constitutional safeguards afforded criminal defendants are generally extended to those involved in civil commitment proceedings …. One such procedural safeguard provided in mental health proceedings is the right to counsel." *Id*. The court then found that the statutory right to counsel had been created "[i]n accord with the fourteenth amendment of the federal Constitution[.]" *Id*.

D. Sex Offender Proceedings

State Statutes and Court Decisions Interpreting Statutes

Before commitment under North Dakota Century Code § 25-03.3-09 (2005), a sexually dangerous individual is entitled to legal counsel who shall be appointed if an appearance by an attorney has not been entered within twenty-fours hours of the filing of a petition. N.D. Cent. Code Ann. § 25-03.3-09. If that respondent is indigent, then the respondent is appointed counsel according to written notice from the state's attorney of their right to a preliminary hearing and a commitment hearing. § 25-03.3-10. Also, if an appealable order is entered, then the court must notify the respondent of the right to appeal and right to counsel. § 25-03.3-19.

E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings

State Statutes and Court Decisions Interpreting Statutes

When someone known to have HIV is a danger to the public health, a state health officer may issue an order requiring that person to: be examined; report to a qualified doctor or health worker for counseling on the disease; or "cease and desist from specified conduct that endangers the health of others." N.D. Cent. Code Ann. § 23-07.4-01 (2005). The person subject to that order is "entitled to representation by legal counsel during any hearing to review the issuance of the order," but it is not clear whether this includes the right to appointed counsel if indigent. These same rights exist if the procedures under § 23-07.4-01 are exhausted and the court orders that the individual be taken into custody. § 23-07.4-02. Similarly, the procedure for the continued quarantine of a person with a communicable disease (beyond an initial

temporary quarantine that is done without notice) requires that notice be provided stating that the quarantined individual has the right to counsel, including appointed counsel if indigent. § 23-07.6-03.

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

The Uniform Juvenile Court Act provides indigent parties with appointed counsel "at custodial [and], post-petition, and informal adjustment stages of proceedings under this chapter" (although the next sentence clarifies that only indigent children are entitled to appointed counsel at the informal adjustment stage). N.D. Cent. Code Ann. § 27-20-26. Proceedings occurring under the Uniform Juvenile Court Act include terminations of parental rights (except by adoption) and deprived child proceedings. § 27-20-03. Even if a parent consents to a termination (or initiates it themselves), they have a right to counsel. § 27-20-45(5).

State Court Rules and Court Decisions Interpreting Court Rules

A parent is entitled to notice of the right to appointed counsel if indigent in termination of parental rights cases. N.D.R.Ct 8.12.

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

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

> the Secretary [of the Interior] upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to [25 U.S.C. §] 13.

25 U.S.C. § 1912(b).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *In re Adoption of K.A.S.*, 499 N.W.2d 558, 563 (N.D. 1993), the North Dakota Supreme Court invoked the state equal protection clause in examining a statute that allowed termination of the parental rights of an indigent parent without providing appointed counsel. *K.A.S.* was litigated after *Lassiter v. Dep't of Soc. Servs,* 452 U.S. 18 (1981), but the court avoided *Lassiter* altogether by declining to address either the federal or state due process clauses and instead focusing on the state equal protection clause. *Id.* The court noted that there were three statutes that allowed for involuntary termination of parental rights: 1) the Uniform Juvenile Court Act (N.D. Cent. Code § 27-20-45); 2) the Uniform Parentage Act (N.D. Cent. Code § 14-17-24);[2] and 3) the Revised Uniform Adoption Act. *Id.* at 560. While the first two unambiguously required the appointment of counsel, the third was vague and the trial court construed it to not require counsel. *Id.* at 561. The court explained that the state's equal protection clause envisioned that similarly situated persons should receive similar treatment. *Id.* at 564. However, the court noted that the purposes of the clause are not fulfilled when persons in different positions receive unequal treatment, particularly when state action involves fundamental rights. *Id.* at 563-64. *K.A.S.* explained that "the ultimate termination of parental right . . . has been described as a punishment more severe than many criminal sanctions." *Id.* at 563 (internal quotations omitted).

The *K.A.S.* court found that a fundamental right was at stake in adoption proceedings, and applied strict scrutiny to the state classification. *Id.* at 564. The North Dakota Supreme Court explained:

> Deciding the appropriate standard of review is straightforward in this case. It is beyond question in this jurisdiction that parents have a fundamental constitutional right to parent their children which is of the highest order. We have specifically recognized that the right to enjoy "'the domestic relations and the privileges of the family and the home'" is embraced by the liberty and pursuit of happiness guarantees contained in Article I, Section 1 of the North Dakota Constitution. Thus, providing court-appointed counsel or not to a parent facing termination of parental rights affects a fundamental right and in the case of not providing counsel, impairs the exercise of that fundamental right. We,

[2] Note that the Uniform Parentage Act was subsequently repealed in 2005.

> therefore, apply strict scrutiny to the classification because it impairs a fundamental right, and when we use strict scrutiny, we do not defer to the legislative choice of classification but, instead, subject the classification "to close analysis in order to preserve substantive values of equality . . . ."

Id. at 564-65 (internal citations and quotations omitted). The court found that there was sufficient state action at issue to trigger equal protection, notwithstanding the fact that the state was not a party to the litigation. *Id.* at 565. The court found that the state was heavily involved indirectly in any adoption proceeding, first through the use of its courts:

> Adoption, not recognized under the common law, is wholly a creature of statute. . . . Only a court may issue a final decree of adoption and then, only if it determines that statutory grounds for doing so have been satisfied. . . . Resort to the judicial process by the parties in this adoption proceeding was not voluntary; it was the only way the parties could accomplish their respective objectives.

Id. at 566 (citations omitted). The court also pointed out that the court clerk prepared the application for birth record and forwarded the adoption decree to the state Department, and the court was "required to ensure the legislatively mandated confidentiality of the proceedings and records." *Id.* Moreover, state agencies were "involved throughout the proceedings," since the statute required the petitioner to name the state or a county social service board as a party, and as named party the state could participate fully in all proceedings. *Id.*

In *In re Adoption of J.D.F.*, 761 N.W.2d 582, 586-87 (N.D. 2009), the court construed *K.A.S.* to apply to "any proceedings to terminate the parental-child relationship *against their will*." (emphasis added). Thus, it would not apply to parents who are relinquishing their rights or otherwise consenting.

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

The Revised Uniform Adoption Act provides the right to counsel for a parent who consents to the adoption of a minor during all stages of the proceeding to terminate the parent-child relationship if the minor is to be placed for adoption by a child-placing agency. N.D. Cent. Code Ann. § 14-15-19.1 (2005). Prior to the termination proceedings, the court shall inform the parent of the right to counsel provided by this section. *Id*. Furthermore, if indigent, the court shall order (upon the parent's request) that a state's attorney serve as free legal counsel to the parent. *Id*.

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

State Statutes and Court Decisions Interpreting Statutes

The Uniform Juvenile Court Act provides indigent parties with appointed counsel "at custodial, post-petition, and informal adjustment stages of proceedings under this chapter" (although the next sentence clarifies that only indigent children are entitled to appointed counsel at the informal adjustment stage). N.D. Cent. Code Ann. § 27-20-26. Proceedings occurring under the Uniform Juvenile Court Act include terminations of parental rights (except by adoption) and deprived child proceedings. § 27-20-03. A child's right to counsel in juvenile proceedings only arises for a child who is either not represented by the child's parent or guardian or where the child's interests conflict with those of the parent. § 27-20-26(1).

Federal Statutes and Court Decisions Interpreting Statutes

The Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,[3] provides the following with regard to any removal, placement, or termination of parental rights proceeding:

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

25 U.S.C. § 1912(b).

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 . . . an assurance in the form

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

> of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes . . . provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings.

42 U.S.C. § 5106a(b)(2)(B)(xiii).

D. Appointment of Counsel for Child—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

Appointment of counsel for children in Adoption Act proceedings is on a case-by-case basis. N.D. Cent. Code § Ann. 14-09-06.4, which governs the parent-child relationship, states in relevant part:

> In any action when the parenting rights and responsibilities concerning the child is contested, either party to the action may petition the court for appointment of a guardian ad litem to represent the child concerning parenting rights and responsibilities. The court may appoint a guardian ad litem or investigator on its own motion.

N.D. R. Ct. 8.7 clarifies: "To qualify as a guardian ad litem under N.D.C.C. § 14-09-06.4, a person must be an attorney licensed in the state of North Dakota."

For proceedings governing private guardianships of children, N.D. Cent Code § 30.1-27-07(4) states: "If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years or older." § 30.1-27-12(3) has identical appointment language for removal or resignation of the guardian.

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Peters-Riemers v. Riemers*, 663 N.W.2d 657, 665 (N.D. 2003), the court held that defendants subjected to contempt motions are entitled to counsel if they are indigent:

> [T]he argument that incarceration is conditional and the defendant holds the keys to the jailhouse door does not apply to diminish the defendant's liberty interest ... A defendant found in contempt and incarcerated does not hold the keys to the jailhouse door if the defendant cannot pay ... Although a defendant should not be jailed if truly indigent, this fact only highlights the need for assistance of counsel in establishing indigency to ensure the defendant is not improperly incarcerated.

The court cited several federal cases, and then noted that "[t]hese cases reflect the right to counsel when a defendant faces potential incarceration in a contempt proceeding is premised on the federal constitution." *Id.* The court also held that the trial court is obligated to notify the contemnor of this right (citing similar decisions from other jurisdictions), and held that "[t]he requirement applies whether the contempt motion is brought by the state or by a private party, because the potential deprivation of physical liberty is the same in either case." *Id*. at 664-65. The court did not say whether it was finding the right to counsel under the state or federal constitution in the instant case, but the implication is that the decision was a ruling on the federal constitution (given that the court relied mostly on federal court decisions and did not mention the state constitution). Further, the court held that "[w]hen a trial court has failed to inform a pro se defendant of his constitutional right to appointed counsel in a contempt proceeding in which the defendant faces potential incarceration, we will not attempt to discern whether the error was harmless." *Id*. at 665. *See also State v. Gruchalla*, 467 N.W.2d 451, 453 (N.D. 1991) (holding, based on Sixth Amendment, that "indigent defendants in civil contempt proceedings should be granted counsel at state expense when, if they lose, they will likely be deprived of their physical liberty."). However, the holdings of both *Gruchalla* and *Peters-Riemers* are in doubt after *Turner v. Rogers*, 564 U.S. 431 (2011) (Sixth Amendment does not apply to civil contempt proceedings, and 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 scope.

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. Proceedings Involving Claims by or Against Prisoners

State Court Decisions Addressing Court's Inherent Authority

In *Ennis v. Schuetzle*, 488 N.W.2d 867, 869 (N.D. 1992), where an inmate argued that the court had the inherent authority to appoint counsel in his case involving prison sanctions for violations of rules, the court held that "[u]nless a liberty interest or a fundamental right may be adversely affected, a prisoner has no inherent right to counsel at public expense for civil litigation if he is allowed to plead and appear personally." *See also Ennis v. Dasovick*, 506 N.W.2d 386, 393 (N.D. 1993) ("even if courts have inherent authority to appoint counsel in civil matters, we find no abuse of discretion in the trial court's refusal to do so. Ennis is an experienced litigant. The motions and briefs he has filed in this and other actions evidence his ability to present his claim. He has demonstrated familiarity with procedural rules and legal principles.").

Law Addressing Authorization or Requirement to Appoint Counsel in Civil Proceedings Generally

Federal Statutes and Court Decisions Interpreting Statutes

As part of the federal Servicemembers Civil Relief Act (SCRA), which applies to each state,[4] 50 U.S.C. § 3931 applies to all civil proceedings (including custody)[5] and 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.

§ 3931(b)(2).

Additionally, § 3932, which also applies to all civil proceedings (including custody),[6] specifies that a service member previously granted a stay may apply for an additional stay based on a continuing inability to appear, while subsection (d)(2) states: "If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding."

[4] 50 U.S.C. § 3912(a)(2) states: "This chapter applies to . . . each of the States, including the political subdivisions thereof[.]"

[5] Subsection 3931(a) states: "This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance."

[6] Section 3932 "applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section . . . (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." § 3932(a).