

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

IDAHO

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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 March 2016. 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The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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.

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

State Court Decisions Addressing Constitutional Due Process or Equal Protection

Hughen v. Highland Estates, 48 P.3d 1238 (Idaho 2002), involved an employment dispute where the employee requested the court to appoint counsel in the dispute before the industrial commission review involving unemployment benefits. *Id.* at 1238-39. The Supreme Court of Idaho cited *State Department of Law Enforcement v. One 1990 Geo Metro*, 889 P.2d 109, 117 (Idaho Ct. App. 1995) and *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981), and held that “[i]n civil cases, where personal liberty is not threatened, there exists a rebuttable presumption that the claimant is not entitled to appointed counsel.” *Hughen*, 48 P.3d at 1240, *citing Lassiter*, 452 U.S. 18, 26-27 (1981), and *Geo Metro*, 889 P.2d at 117 (internal quotation marks omitted). The Court found that the plaintiff failed to provide any evidence to overcome the presumption, and thus the Court agreed with the lower court’s decision in denying the request for appointed counsel based on due process considerations. *Id.* The Court did not state which constitution it was addressing.

3. SAFETY AND/OR HEALTH

A. Domestic Violence Protection Order Proceedings

State Statutes and Court Decisions Interpreting Statutes

Idaho Code Ann. § 39-6306(1) states that upon the filing of a protection order, “[i]f the court finds that it is necessary for both parties to be represented by counsel, the court shall enter appropriate orders to ensure that counsel is retained. The order entered may require either the petitioner or respondent, or both, to pay for costs of counsel.” Moreover, “[i]f either party is represented by counsel at a hearing seeking entry of a protection order, the court shall permit a continuance, if requested, of the proceedings so that counsel may be obtained by the other party.” *Id.*

B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings

State Statutes and Court Decisions Interpreting Statutes

Under Idaho’s Uniform Probate Code section titled “Protection of Persons Under Disability and Their Property – Guardians of Incapacitated Persons,” once a petition for a hearing on incapacity (i.e., establishment of guardianship) is filed and a date for hearing is set, and “unless the allegedly incapacitated person has counsel of his own choice, [the court] shall appoint an attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem.” Idaho Code Ann. § 15-5-303(b). Idaho Code Ann. § 15-5-307(c) specifies that “Before removing a guardian, accepting the resignation of a guardian, or ordering

that a ward's incapacity has terminated, 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 “following the same procedures” language only applies to the visitor’s observations or to the whole termination process.

For persons who lack the capacity to make informed decisions about treatment for themselves due to mental illness, the Idaho Code gives the right to an attorney once a petition is filed to appoint a guardian who will handle treatment decisions. The statute provides:

Upon receipt of such petition and certificates, the court shall appoint a time and place for hearing not more than seven (7) days from receipt of such certificates and thereupon give written notice to the proposed patient. The notice shall include a copy of the petition and certificates and notice of the proposed patient’s right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney.

Idaho Code Ann. § 66-322(e). The statute also establishes that “[a]n opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code.” Idaho Code Ann. § 66-322(f).

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

For those mentally ill persons who are subject to a commitment proceeding which could result in a court order of commitment to a state institution or facility, the Code states: “[a]n opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel.” Idaho Code Ann. § 66-329(7). In situations in which the proceeding could result in the commitment of a developmentally disabled individual to a state institution or facility, the language of the statute closely mirrors that for mentally ill persons. See Idaho Code Ann. § 66-406(7) (“[a]n opportunity to be represented by counsel shall be afforded to every respondent, and if neither the respondent nor others provide counsel, the court will appoint the counsel.”)

The Child Protective Act gives children the right to counsel in juvenile commitment and treatment proceedings:

Every child has the right to counsel to represent him at all proceedings under this chapter and to obtain the advice of an attorney at any time regarding his status under this chapter, at his or his parents' expense. When a child has not retained an attorney and is unable to do so, or the child and his parents are unable to afford one, and proceedings under this chapter have been initiated in court, the court shall appoint an attorney to represent him in court proceedings.

Idaho Code Ann. § 16-2429(1).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *True v. State Department of Health and Welfare*, 645 P.2d 891 (Idaho 1982), the plaintiff, who was challenging the constitutionality of her re-hospitalization, claimed that her due process rights were violated during the hospitalization hearing. The Supreme Court of Idaho ruled in her favor, requiring more due process safeguards¹ prior to her re-hospitalization, and specifically held that at the re-hospitalization hearing, “the patient is to be afforded the right to counsel.” *Id.* at 903. The majority opinion made no mention of *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981) (finding no absolute Fourteenth Amendment right to counsel in termination of parental rights proceedings), but it appeared to base its decision on the Fourteenth Amendment.² *See, e.g., id.* at 895.

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

The Idaho Code section dealing with health and safety includes a provision that allows “any interested person” to “alleg[e] that [an individual] meets the requirements for

¹ Specifically, the court found that “a patient who has been conditionally released from institutional hospitalization possesses a liberty interest which is entitled to due process safeguards.” *True*, 645 P.2d at 894.

² Although the court articulated the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), (measuring personal interests at stake, risk of error, and state’s interest), it did not unambiguously rely on that test. *See True*, 645 P.2d at 895.

sterilization.” Idaho Code Ann. § 39-3904. Once a petition for sterilization is filed, counsel must be provided:

Persons subject to this chapter shall have counsel at all stages of the proceedings provided for in this chapter. Unless independently provided for by the persons subject to this chapter, counsel shall be appointed by the district court which shall also conduct an investigation to determine whether or not the person has funds in trust or otherwise to pay reasonable compensation to counsel. If the investigation discloses that the person is without such funds, the court shall order that counsel be paid reasonable compensation at public expense.

Idaho Code Ann. § 39-3905.

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

Idaho Code Ann. § 16-1613(1) provides parents or guardians in abuse/neglect proceedings only a right to privately retained counsel,³ stating that “[i]f the parent or guardian is without counsel, the court shall inform them of their right to be represented by counsel and to appeal from any disposition or order of the court.” However, in *In re Doe Children*, the Court of Appeals of Idaho concluded that it was prevented from addressing, on the merits, a claim of violation of Due Process for failure to appoint counsel for shelter care hearings because the parent failed to support his claim with an argument explaining “how his lack of counsel prejudiced him during the parental termination proceedings.” *In re Doe Children*, 365 P.3d 420, 426 (Idaho Ct. App. 2015) (warning trial courts, however, not to ignore importance of appointing counsel as required by rule and cautioning against allowing parents to proceed without representation in any stage of a Child Protection Act proceeding without a knowing and voluntary waiver of the right to counsel).

³ *In re Doe Children*, 365 P.3d 420 (Idaho Ct. App. 2015) (“While neither I.C. § 16-1611(3) nor I.C. § 16-1615 expressly provide a right to court-appointed counsel for parents who cannot afford counsel, unlike I.C. § 16-2009 in the parental termination setting, Idaho Juvenile Rule 37 grants the parent a right to court-appointed counsel if the parent is financially unable to pay for legal representation during the CPA proceedings.”) Note also that a) Idaho Code Ann. 16-1618 used to refer to the court having the power to “appoint independent counsel for a parent if the proceedings are complex, counsel is necessary to protect the parent's interests adequately and such interests are not represented adequately by another party,” but this language was deleted in 2001; and b) Idaho Code Ann. § 16-1614 specifically refers to appointment of counsel for the child and makes no mention of appointment for the parents.

In situations involving potential termination of parental rights, the parent or guardian “shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of his right to have counsel, and if counsel is requested and the parent or guardian is financially unable to employ counsel, counsel shall be provided.” Idaho Code Ann. § 16-2009.

The Child Protective Act also states that when children are taken into shelter care, “[e]ach of the parents or custodian from whom the child was removed shall be given notice of the shelter care hearing. Such notice shall include the time, place, and purpose of the hearing; and, that such person is entitled to be represented by legal counsel.” Idaho Code Ann. § 16-1615(2).

Federal Statutes and Court Decisions Interpreting Statutes

The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,⁴ 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.”

25 U.S.C. § 1912(b).

State Court Rules and Court Decisions Interpreting Court Rules

With regard to abuse/neglect proceedings, Idaho Juv. R. 37(c) states, “[t]he parent(s), guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian, or legal custodian if it finds that they are financially unable to pay for such legal services, unless representation is competently and intelligently waived.”

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(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.

Where there is notice of an emergency removal proceeding, that notice to the parent or guardian “shall contain a notification of right to counsel and right to court appointed counsel.” Idaho Juv. R. 32(c).

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

In situations involving potential termination of parental rights, the parent or guardian “shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of his right to have counsel, and if counsel is requested and the parent or guardian is financially unable to employ counsel, counsel shall be provided.” Idaho Code Ann. § 16-2009. While adoptions are conducted under Chapter 15 and not Chapter 20 (where § 16-2009 lies), there are some arguments that this provision would apply to adoptions too. I.C. § 16-2007(1) states that for a termination of parental rights proceeding,

[t]he petitioner shall give notice to any person entitled to notice under section 16-1505, Idaho Code [Notice of Adoption Proceedings], the authorized agency having legal custody of the child and the guardian ad litem of the child and of a parent. The petitioner shall give notice to the Idaho department of health and welfare if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho.

This suggests the adoption and termination proceedings are intertwined. Additionally, I.C. § 16-2004 states that a petition for termination may be filed by “a. Either parent when termination is sought with respect to the other parent. b. The guardian of the person or the legal custodian of the child or person standing in loco parentis to the child. c. An authorized agency. d. Any other person possessing a legitimate interest in the matter.” The fact that private parties can utilize Chapter 20 termination procedures is suggestive that there is not a strong state/private termination procedures dichotomy, although it is not dispositive: in some states, private parties can choose between filing a termination petition within the child welfare code and filing an adoption petition. Finally, I.C. § 16-1509 (Release of child’s parents from obligation -- Termination of rights of parents and children) provides, “Unless the decree of adoption otherwise provides, ... all rights of such child from and through such natural parents including the right of inheritance, are hereby terminated unless specifically provided by will.” This reference to “termination” suggests that the adoption is considered a “termination of parental rights” procedure.⁵

⁵ These same arguments could be applied to consent/relinquishment proceedings which take place under the same title. See I.C. 16-2005(4).

However, for guardianships, there is no provision relating to appointment of counsel for parents for either private guardianships or guardianship conducted in conjunction with a Child Protective Act proceeding. According to Chapter 12 of the Idaho Child Protective Manual, which discusses proceedings under the CPA, many protections available in CPA cases are not available in guardianship proceedings, including the right to court-appointed counsel.

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

State Statutes and Court Decisions Interpreting Statutes

Idaho's Child Protective Act (which includes both abuse/neglect and termination of parental rights proceedings),⁶ states:

- (1) In any proceeding under this chapter for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child.
- (2) In any proceeding under this chapter for a child twelve (12) years of age or older, the court:
 - (a) Shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or
 - (b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel
- (3) Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

Idaho Code Ann. § 16-1614.

Federal Statutes and Court Decisions Interpreting Statutes

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

⁶ Termination of parental rights are carried out pursuant to I.C. § 16-1624, which is also part of the same chapter as the Child Protective Act, and the provisions specified above apply to all proceedings under Chapter 16.

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 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.”

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— ... (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).

State Court Rules and Court Decisions Interpreting Court Rules

With regard to abuse/neglect proceedings, “[t]he court may appoint separate counsel for the child or children under the age of twelve (12) in appropriate cases. The court may consider the nature of the case, the child's age, maturity, intellectual ability, ability to direct the

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(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.

activities of counsel and other factors relevant to the appropriateness of appointing counsel for the child.” Idaho Juv. R. 37(a).

Additionally, Rule 37 specifies that the guardian ad litem appointed for a child receives counsel as well:

[T]he court... shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. . . . Notice of the right to be represented by counsel, and at public expense where financial inability exists on the part of the child ... should be given at the earliest possible time.

Idaho Juv. R. 37(a), (d).

D. Appointment of Counsel for Child—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

“There is no provision for appointment of counsel to represent a child in adoption proceedings that were not consolidated with proceedings to terminate the parental rights of the child's parents.” *In re John Doe I*, 367 P.3d 136, 143 n.3 (Idaho 2016).

Regarding guardianships of children, Idaho Code § 15-5-207(5) states:

The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

In addition, § 15-5-212(3) (Resignation, removal, modification or termination proceedings) provides that if a court determines “that the interests of the ward 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 (14) or more years of age.” I.C. § 15-5-407(a) states that for conservatorship proceedings, “If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it must appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.”

With regard to the representation of children in divorce actions, Idaho Code Ann. § 32-704(4) states:

The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his or her support, custody, and visitation, but only in those instances where the court deems legal representation necessary beyond any court ordered and court related services previously authorized for the particular case. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county in which the action is pending.

5. MISCELLANEOUS

A. Civil Contempt Proceedings

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

B. Paternity Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In 1999, the Idaho Court of Appeals applied *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981) (rebuttable presumption against Fourteenth Amendment due process right to appointed counsel exists when indigent litigant's personal liberty is not at stake), and *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (measuring personal interests at stake, risk of error, and state's interest), to paternity decisions in *State Department of Health & Welfare v. Conley*, 971 P.2d 332 (Idaho Ct. App. 1999). The court did not clarify which constitution it was addressing. *Id.* at 336-37. In that case, the Department filed a petition to establish paternity, and order support, from the putative father of a child born to a mother living in Oregon. *Id.* at 334. The putative father dismissed his attorney after DNA results confirmed he was the father, and then requested court-appointed counsel as an indigent party. *Id.* The lower court, after noting the father's indigent status, concluded that "there was no authority, statutory or constitutional, requiring the appointment of counsel in paternity actions," and denied the father's motion. *Id.* The father appealed. *Id.* The Idaho Supreme Court articulated the factors from *Lassiter* and *Mathews v. Eldridge*, then stated, "After applying the *Eldridge* test to paternity proceedings generally, and Conley's case specifically, we hold that no right to appointed counsel attaches in paternity proceedings for several reasons." *Id.* at 336. The court

concluded that the defendant had no right to counsel in this matter because the defendant asserted no interest in establishing a relationship with the child at issue. *Id.* at 336. Instead, the court reasoned that the paternity test was an issue of finance and therefore no liberty interest was at issue, plus the interest at stake was less than in a termination case for which the U.S. Supreme Court had found no automatic right to counsel. *Id.* The Court also held that the financial burden on the state “could be significant and is a determination properly left to the discretion of the legislature rather than this Court.” *Id.* Finally, the Court held that “the risk of erroneous determinations of paternity is already limited by highly accurate blood tests.” *Id.*

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

State Statutes and Court Decisions Interpreting Statutes

Idaho Code Ann. § 18-609A(3) specifies that in a judicial proceeding in which a minor seeks to obtain a waiver of parental consent to obtain an abortion, and when the pregnant minor participates in the court proceedings on her own behalf, “[t]he court shall provide her with counsel unless she appears through private counsel.”

D. Proceedings Involving Claims by and Against Prisoners

In *Dopp v. Idaho Comm’n of Pardons & Parole*, 162 P.3d 781, 784 (Idaho Ct. App. 2007), the Idaho Court of Appeals stated that, “[b]ecause habeas corpus actions are civil in nature, the Sixth Amendment right to counsel does not attach.”

E. Civil Forfeiture Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

The 1995 decision of *State Department of Law Enforcement v. One 1990 Geo Metro* utilized both the standard in *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981) (rebuttable presumption against Fourteenth Amendment due process right to appointed counsel exists when indigent litigant’s personal liberty is not at stake), and the balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (measuring personal interests at stake, risk of error, and state’s interest), although it is not clear which constitution (state or federal) the court was interpreting. 889 P.2d 109, 117 (Idaho Ct. App. 1995). The case involved a forfeiture action for two automobiles by the state, and the owner’s action to reclaim the property. *Id.* at 111. The court found that forfeiture of property in this instance was not within the personal liberties protected under *Lassiter*, but noted that the appellant could renew his claim for appointment of counsel upon remand. *Id.* at 117. Further, while noting that there had been significant developments in the area of jury trials in forfeiture cases, the court addressed a

series of federal, state, and sister state decisions regarding the constitutional implications of civil forfeitures, and reexamined the excessive fines clause of the Eighth Amendment to the U.S. Constitution. *Id.* The court noted the decision in *Idaho Department of Law Enforcement v. Free*, 885 P.2d 381 (Idaho 1994), where it had found that the claimants to forfeiture property under Idaho Code Ann. § 37-2744A were entitled to a jury trial because it was an excessive fine, and because “that right existed at common law when the Idaho Constitution was adopted.” *Free*, 885 P.2d at 427. The *Geo Metro* court then quoted a Pennsylvania case⁸ that granted the right to counsel in forfeiture cases, because those cases “create legal complexities that increase the risk of erroneous deprivation of property.” *Geo Metro*, 889 P.2d at 117. In dicta, the *Geo Metro* court further stated, “[w]e imply no agreement or disagreement with any of the foregoing decisions from other jurisdictions; we mention them only because they may have bearing in the event that Mitchell renews his request for appointed counsel following remand.” *Id.* In addition, the court stated, “[a]s the district court correctly observed, there is no general rule that due process requires the appointment of counsel in civil cases where the personal liberty of an individual is not at stake,” and reaffirmed that “in cases where personal liberty is not threatened, there exists a rebuttable presumption that the claimant is not entitled to appointed counsel.” *Id.* According to the court, the “presumption may be overcome by application of the balancing test enunciated by the United States Supreme Court in *Mathews v. Eldridge*.” *Id.*

⁸ *Commonwealth v. \$9,847.00 U.S. Currency*, 637 A.2d 736 (Pa. Commw. Ct. 1994). Note that this case is no longer good law in Pennsylvania. Upon appeal, the Pennsylvania Supreme Court stated: “The sole issue in this case is whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides a constitutional right to the appointment of counsel in civil forfeiture proceedings brought under the Controlled Substances Forfeitures Act. Because civil forfeiture does not implicate a person's liberty interest and only implicates a person's property interest, we hold that there is no right to appointment of counsel in civil forfeiture proceedings.” *Commonwealth v. \$9,847.00 U.S. Currency*, 704 A.2d 612, 613 (Pa. 1997) (footnote omitted).

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 state⁹ and to all civil proceedings (including custody),¹⁰ provides:

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

50 App. U.S.C. § 3931(b)(2).

Additionally, 50 App. U.S.C. § 3932(d)(1), which also applies to all civil proceedings (including custody),¹¹ specifies that a service member previously granted a stay may apply for an additional stay based on a continuing inability to appear, while § 3932(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.”

⁹ 50 App. U.S.C.A. § 3912(a) states, “This chapter applies to-- ...(2) each of the States, including the political subdivisions thereof...”

¹⁰ 50 App. U.S.C. § 3931(a) states, “This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.”

¹¹ 50 App. U.S.C. § 3932(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.”

Annex of Unpublished Cases

Regarding Appointment of Counsel for Parent—Privately Initiated Proceeding:

In *Doe v. Doe*, No. 40913, 2013 WL 6009546 (Idaho Ct. App. Aug. 30, 2013) (unpublished), the petitioners, who were the birth mother and stepfather of the child, sought to terminate of the father’s parental rights (on the grounds of abandonment) and to have the child’s stepfather adopt the child. According to the appellate court’s opinion, the magistrate realized during the proceeding that he not advised the father that, pursuant to I.C. § 16-2009, the father had a right to counsel and if he could not afford one, counsel would be provided. The magistrate did so and the father declined. Later, the father requested a continuance, which the magistrate granted on the condition that the father accept appointed counsel, which he did. However, at no point did the appellate court analyze the applicability of § 16-2009 to adoption proceedings; rather, it seemed to accept the magistrate’s conclusion that the statute applied.