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TO: Juvenile/DR Court Judges, Public Defenders, Bar Associations

FROM: David H. Bodiker *DHB*

SUBJECT: Limitations in the assignment of counsel in juvenile court.

Recently passed House Bill 66 contains language which amends O.R.C. §2151.352, limiting the right to counsel, at government expense, under O.R.C. 120 et seq., in certain civil matters that may be heard in Juvenile Court. This amendment was promulgated by the County Commissioners Association to negate the expansion of right to counsel for indigents as held in Asberry v Payne, 82 Ohio St.3d 44. The types of cases described in the amendment will no longer be categorized under the auspices of the criminal defense funding.

Effective September 29, 2005, indigent defendants will not be entitled to a public defender or assigned counsel (and the county will not receive reimbursement if assigned by the judge) in the following cases heard in Juvenile/Domestic Relations Courts:

- (1) Actions to determine the custody of any child not a ward of another Ohio court; [O.R.C. 2151.23(A)(2)]
- (2) Habeas Corpus involving the custody of a child; [O.R.C. 2151.23(A)(3)]
- (3) Temporary custody and surrender proceedings filed pursuant to O.R.C. 5103.15; [O.R.C. 2151.23(A)(9)]
- (4) Consent to Marry filed pursuant to O.R.C. 3101.04; [O.R.C. 2151.23(A)(10)]
- (5) Support proceedings not ancillary to the types of cases listed, or as filed under O.R.C. 3115, Uniform Interstate Family Support Act; [O.R.C. 2151.23(A)(11)]
- (6) Proceedings held pursuant to O.R.C. 121.38. (determining which agency funds services for youth in abuse, neglect, dependency, unruly, delinquent, or juvenile traffic offender cases; [O.R.C. 2151.23(A)(12)]

- (7) Violations of O.R.C. 3321.38 (failing to send child to school); [O.R.C. 2151.23(A)(13)]
- (8) Paternity proceedings pursuant to O.R.C. 3111.01 through 3111.18; [O.R.C. 2151.23(B)(2)]
- (9) Support/paternity proceedings; [O.R.C. 2151.23(B)(3-6)]
- (10) Action for divorce or legal separation; [O.R.C. 2151.23(C)]
- (11) Actions relating to the custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted; [O.R.C. 2151.23(D)]
- (12) Actions relating to child custody and support matters under O.R.C. sections 3109.04 (allocation of parental rights), proceedings pursuant to the Uniform Child Custody Jurisdiction & Enforcement Act, O.R.C. 3127.01 to 3127.53; proceedings pursuant to the Interstate Compact on Placement of Children O.R.C. 5103.20 to 5103.28 and 3109.05 (child support); [O.R.C. 2151.23(F)(1-2)]

Attorney certifications will continue to be paid if the appointment of counsel was prior to September 29, 2005 and are filed timely. Any assignment to these categories of cases dated September 29, 2005 and later will not be eligible for state reimbursement. (Exceptions will be made for substitution of Counsel where the first attorney was appointed prior to September 29, 2005 and in certain cases where the applicant was assigned an attorney prior to September 29, 2005 and the respondent does not get the opportunity to request assigned counsel until after September 29, 2005 in the same case. Reasonable/timely nunc pro tunc orders that make the appointment retroactive to the applicant's date of assigned counsel prior to September 29, 2005 will be recognized for the first few months of this transition if equal protection issues are a concern).

Public Defender offices should consult with their County Commissioners or Public Defender Commission if necessary regarding this issue.

None of the above affects Juvenile Rule 4 (B) through (G) regarding the appointment of a GAL for a child or incompetent adult.

It has also come to our attention that some cases originally started as an abuse/dependency/neglect proceeding are frequently reopened by the court under the same case number, although the State is no longer a party. We consider these types of cases (such as grandmother and dad fighting over custody after Job and Family Services has closed their file), CUSTODY cases with no right to assigned counsel (or reimbursement) since State action is not an issue at that time. How a particular court docket its cases does not change the true nature of the legal issue in front of the court for purposes of assigned counsel and reimbursement.