

APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS
IN CIVIL PATERNITY CASES

Introduction:

There is no statutory right to counsel for an indigent defendant in a civil paternity suit and the Supreme Court of North Carolina has held that there is no *per se* constitutional right to counsel in such a proceeding. See *Wake County, ex rel. Carrington v. Townes*, 306 N.C. 333, 335, 293 S.E.2d 95, 97 (1982). However, the Supreme Court also held that “due process affords . . . a *qualified* entitlement to appointed counsel as determined by the trial court on a case-by-case basis.” *Id.* Thus, it is a question of law for the presiding judge to decide whether a particular indigent defendant is constitutionally entitled to appointed counsel in a civil paternity case.

In determining whether a particular indigent defendant has a constitutionally protected interest that triggers the right to due process, the court should apply the balancing test set forth by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976). The three prongs of the *Mathews* test generally are: 1) the nature of the private interest at stake; 2) the nature of the government’s interest, including the cost to the State of providing a particular form of process; and 3) the likelihood of error if that form of process is not provided. See also *Lassiter v. Department of Social Services*, 425 U.S. 18, 101 S. Ct. 2153 (1981).

The *Carrington* Court specifically noted its belief that “with appropriate guidance from the trial court . . . , an indigent defendant could generally present his own defense to the ‘charge’ of paternity well enough without the aid of appointed counsel, although the unique circumstances of a particular case could indicate otherwise.” *Carrington*, 306 N.C. at 340, 293 S.E.2d at 100. When a motion for appointment of counsel is made, “the trial court should proceed with an evaluation of the vital interests at stake on both sides and a determination of the degree of actual complexity involved in the given case and the corresponding nature of defendant’s peculiar problems, if any, in presenting his own defense without appointed legal assistance. The judge must then weigh the foregoing factors against the overall and strong presumption that the defendant is not entitled to the appointment of counsel in a proceeding which does not present an immediate threat to personal liberty.” *Id.* at 340-41, 293 S.E.2d at 100.

IDS Policy:

If a judge concludes that due process requires appointment of counsel for a particular indigent defendant in a civil paternity case, IDS will pay for the representation pursuant to G.S. 7A-498.3(a)(1) (providing that IDS shall be responsible for providing counsel and related services in cases in which an indigent person is subject to a deprivation of a constitutionally protected interest and is entitled by law to legal representation). In such a case, the Court must enter an Order specifically finding a constitutional right to appointed counsel, and that Order must be attached to counsel’s fee application.

Questions:

If you have questions about this policy or its application in a specific case, please contact:

- ✓ IDS’ Parent Representation Coordinator, Wendy Sotolongo, at (919) 354-7230 or Wendy.C.Sotolongo@nccourts.org; or

✓ IDS' Assistant Director, Whitney B. Fairbanks, at (919) 354-7200 or Whitney.B.Fairbanks@nccourts.org.

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Authority:

G.S. 7A-498.3; *Wake County, ex rel. Carrington v. Townes*, 306 N.C. 333, 293 S.E.2d 95 (1982).