

OFFICE OF THE PARENT DEFENDER

The Office of the Parent Defender provides and promotes high quality legal representation for parents affected by the child welfare system (DSS) and parents facing contempt in child support and other civil proceedings.

APPOINTMENT OF COUNSEL FOR NON-PARENT RESPONDENTS IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS

Introduction:

G.S. 7B-602 provides that, where a juvenile petition alleges abuse, neglect, or dependency, the respondent parents have a right to appointed counsel if they are indigent. The General Assembly has not extended that statutory right to other named respondents in abuse, neglect, or dependency cases – such as guardians, custodians, or caretakers – and the North Carolina appellate courts have not squarely addressed the question of whether such named respondents are ever constitutionally entitled to appointed counsel at State expense.

IDS believes it is a question of law for the presiding judge to decide whether a particular indigent non-parent respondent is constitutionally entitled to appointed counsel. If a court were to determine that an indigent non-parent respondent has a constitutionally protected interest that triggers the right to due process, the court most likely would apply the balancing test set forth by the United States Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976), to determine whether due process requires appointed counsel or whether some other process is sufficient. The three prongs of the *Matthews* 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 *Lassiter v. Department of Social Services*, 425 U.S. 18, 101 S.Ct. 2153 (1981) (applying the *Matthews* test to hold that trial courts should assess the constitutional right to appointed counsel in termination of parental rights proceedings on a case-by-case basis).

Judges should use AOC -J-211 to record their findings.

IDS Policy:

If a judge concludes that due process requires appointment of counsel for a particular indigent non-parent respondent in an abuse, neglect, or dependency proceeding, 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).

Questions:

If you have question about this policy or its application in a specific case, please contact the Parent Defender at (919) 354-7230 or parentdefender@nccourts.org.