

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

TEXAS

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The Directory attempts to identify as “unpublished” any court decisions not published within an official or unofficial case reporter. Discussion of unpublished cases appears only for those jurisdictions where court rules currently permit their citation in briefs or opinions. Limitations on the use of unpublished opinions vary by jurisdiction (e.g., whether unpublished cases have value as precedent), and such limits were not exhaustively researched.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

State Statutes and Court Decisions Interpreting Statutes

Tex. Gov't Code Ann. §§ 25.0020 and 26.010 provides that, on written application of a party, a court may appoint “any qualified attorney who is willing to provide pro bono services” to represent someone who was in possession of their residence at the time of eviction and qualifies for *in forma pauperis* status. § 25.0020. The statute requires the court to notify parties of the right to make this request. § 26.010(e). The statute also specifies that the attorney may not receive fees unless such fees are provided for “by contract, statute, common law, court rules, or other regulations;” the county is explicitly exempt from having to pay such fees. § 26.010(d).

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).

3. SAFETY AND/OR HEALTH

A. Domestic Violence Protection Order Proceedings

State Statutes and Court Decisions Interpreting Statutes

Tex. Fam. Code Ann. § 81.007 states that “[t]he county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications under this subtitle” This provision seems to indicate that the district attorney (“DA”) would have discretion as to which petitions to file, and in fact one court noted that it “authoriz[es] a county attorney or criminal district attorney to file an application for protective order” *Ford v. Harbour*, 2009 WL 679672, at *6 (Tex. App.—Houston [14th Dist.] 2009) (unpublished). However, a different court of appeals cited to this provision to note (in dicta) that “a petitioner for a protective order is statutorily guaranteed counsel.” *Striedel v. Striedel*, 15 S.W.3d 163, n.2 (Tex. App.—Corpus Christi 2000).

Tex. Fam. Code Ann. § 91.003, which governs notice to victims about filing a protective order, states that “you have the right to . . . [a]pply to a court for an order to protect you. You may want to consult with a legal aid office, a prosecuting attorney, or a private attorney.” Moreover, Tex. Fam. Code Ann. § 81.005 states that “[t]he court may assess reasonable attorney's fees against the party found to have committed family violence or a party against whom an agreed protective order is rendered under Section 85.005 as compensation for the services of a private or prosecuting attorney or an attorney employed by the Department of Protective and Regulatory Services.” These provisions appear to contradict the statement in § 81.007 that the DA initiates all protective orders. At least one court has reconciled the apparent contradiction by holding that “the Family Code, while authorizing a county attorney or criminal district attorney to file an application for protective order, also permits an applicant to retain a private attorney if they choose and the applicant may then seek the assessment of reasonable attorney's fees against the respondent.” *Ford v. Harbour*, 2009 WL 679672, at *6.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Lopez v. State*, 2003 WL 23015072, at *3 (Tex. App.—Tyler 2003) (unpublished), a court of appeals found no right to counsel for the respondent in a protective order proceeding under the Fourteenth Amendment. The court cited to *Lassiter v. Dept. of Soc. Serv.*, 452 U.S. 18 (1981), and stated: “The [United States Supreme] Court considers a mere threat of imprisonment a different kind of penalty from actual imprisonment.” *Id.* at *2.

In *Cox v. Simmons*, 2007 WL 2409746 (Tex. App.—Amarillo 2007) (unpublished), a different court of appeals addressed the same question of the respondent’s right to counsel in a protective order proceeding. After noting that the question “has not yet been decided by the courts of this State,” the court concluded: “Ultimately, the decision on whether due process requires the appointment of counsel for an indigent party to a proceeding involving a family violence protective order is a matter for the trial court to determine in its discretion on a case by case basis.” *Id.* at *1. See also *Aguilar v. Sierra*, --- 2012 WL 6632526 (Tex. App.—Fort Worth 2012) (unpublished) (commenting that “even if Jayson had requested counsel, Jayson does not have the automatic right to appointment of counsel in this case because it is a civil protective order proceeding in which Serina sought to have Jayson restrained but not imprisoned,” and citing to *Cox* and *Lopez*).

However, in *Striedel*, 15 S.W.3d at 167, a different court addressed the question of whether a respondent in a protective order proceeding should have a right to counsel, even though the respondent himself had not raised the question on appeal. The court noted:

This action was instituted and prosecuted by the State and appellee has received the benefit of the State’s resources in that regard. As in all other situations in which appointed counsel is available, appellant faces the possible deprivation of his liberty inasmuch as he is unable to be in places he would otherwise be allowed and must enroll in a counseling program which may have otherwise been unnecessary. Additionally, he faces incarceration for his failure to abide by the terms of the order.

The court further stated that, “unlike any other ‘civil’ proceeding in which injunctive relief is sought, a petitioner for a protective order is statutorily guaranteed counsel,” and cited to Tex. Fam. Code Ann. § 81.007(a), as discussed *supra*. *Id.* at n.2. Although the court did not rule on the question of the respondent’s right to counsel, it concluded that “[i]n the event of a retrial of this matter, we recommend that the trial court give additional consideration to appellant’s right to appointed counsel.” *Id.* at 167.

State Court Decisions Addressing Court’s Inherent Authority

In *Lopez v. State*, 2003 WL 23015072, at *3, a court of appeals found no right to counsel for the respondent in a protective order proceeding under the Fourteenth Amendment. The court cited *Travelers Indem. Co. of Conn. v. Mayfield*, 923 S.W.2d 590 (Tex. 1996), for the proposition that “the Texas Supreme Court has never held that a civil litigant must be represented by counsel in order for a court to conduct its fundamental, constitutional function.” *Id.* The court then noted that “the application for protective order asked that Lopez be restrained, not imprisoned” and that Lopez would only be in danger of imprisonment if he violated the protective order. *Id.* at *3. The court also found it was not an “exceptional circumstance” that his testimony in the protective order proceeding could be used against him in his upcoming criminal trial (which was based on the same allegations). *Id.*

B. Conservatorship, Adult Guardianship, or Adult Protective Proceedings

State Statutes and Court Decisions Interpreting Statutes

Texas courts must appoint an attorney ad litem to represent the proposed ward in any guardianship proceedings of adults or minors based on mental health, including the termination of guardianships. Tex. Estates Code Ann. §§ 1054.001, 1202.101. In *In re Guardianship of Glasser*, 297 S.W.3d 369, 377 (Tex. App.—San Antonio 2009), a court found that this statutory provision authorized the judge to appoint more than one attorney for a proposed ward if the judge deemed it necessary.

C. Civil Commitment or Involuntary Mental Health Treatment Proceedings

State Statutes and Court Decisions Interpreting Statutes

Counsel must be appointed where court-ordered mental health care services are to be provided. Tex. Health & Safety Code Ann. § 574.003.

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Ex parte Ullmann*, 616 S.W.2d 278, 283 (Tex. App.—San Antonio 1981), one court of appeals relied on decisions from federal courts to hold that “[t]he subject of an involuntary civil commitment proceeding has the right to effective assistance of counsel at all significant stages of the commitment process.” *See also, Chrisman v. Chrisman*, 296 S.W.3d 706, 707 (Tex. App.—El Paso 2009) (stating that proceedings involving termination of parental rights or involuntary civil commitment warrant the “effective assistance of counsel”).

D. Sex Offender Proceedings

State Statutes and Court Decisions Interpreting Statutes

Tex. Health & Safety Code § 841.005 states that in cases involving the commitment of sexually violent persons, “the Office of State Counsel for Offenders shall represent an indigent person subject to a civil commitment proceeding under this chapter. If for any reason the Office of State Counsel for Offenders is unable to represent an indigent person . . . at a civil commitment proceeding under this chapter, the court shall appoint other counsel to represent the indigent person.”

E. Involuntary Quarantine, Inoculation, or Sterilization Proceedings

No law could be located regarding the appointment of counsel for indigent litigants in civil proceedings involving involuntary quarantine, inoculation, or sterilization.

4. CHILD CUSTODY

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

State Statutes and Court Decisions Interpreting Statutes

Courts are required by statute to appoint counsel for parents (including certain alleged fathers) in actions by governmental agencies seeking to terminate parental rights (“TPR”) or install a temporary managing conservator of a child. Tex. Fam. Code Ann. § 107.013(a).¹ See also Tex. Fam. Code Ann. § 262.102(d), 262.201(a-1) (requiring notice to parent of right to counsel in when managing conservator sought). A 2015 amendment to § 107.013 requires the court to notify the parent of this right at the parent’s first appearance, while a new provision, § 107.0141, permits appointment of a temporary attorney ad litem “for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under Chapter 262 and ending on the court's determination of whether the parent is indigent before commencement of the full adversary hearing.”

Texas courts have recognized that it is reversible error to completely fail to appoint counsel for indigent parents in *government* actions seeking to terminate parental rights. *In re M.J.M.L.*, 31 S.W.3d 347, 354 (Tex. App.—San Antonio 2000). However, the courts have said that the timing of exactly when counsel is appointed for the parents is a matter of judicial discretion. *Id.* (“[T]he Legislature did not set forth any time frame or procedure by which trial courts must appoint counsel ... The more open-ended language of section 107.013(a)(1) directly

¹ Notably, in *In re G.J.P.*, 314 S.W.3d 217, 222–24 (Tex. App.—Texarkana 2010), a Texas Court of Appeals held that while the right to counsel in TPR cases is an incorporation of constitutional principles and therefore protected by the right to effective assistance, the right to counsel in temporary conservatorship cases was not constitutionally based and therefore not entitled to the same protection.

contrasts with the preceding section which mandates the appointment of an attorney ad litem for children involved in termination proceedings' "immediately after the filing [of the suit], but before the full adversary hearing' ... Presumably, if the Legislature wished to impose a similar deadline for appointment of counsel for indigent parents, it would have done so. We decline to read such a deadline into the statute."); *In the Interest of S.R.*, 452 S.W.3d 351, 371—72, (Tex. App.—Houston [14th Dist.] 2014) ("The clerk's record does indicate that the Father was unrepresented at the time of the adversary hearing, but the clerk's record does not reflect whether he filed the request for counsel before or after the adversary hearing. . . . The court in *J.M.* stated that 'when a parent files an answer contesting the termination and requests appointment of counsel, the trial court must, at a minimum, conduct an inquiry into whether the parent is indigent and, if the court finds that the parent is indigent, must appoint counsel.' . . . In today's case, the Father did not file an answer contesting the termination before requesting appointment of an attorney ad litem to represent his interests. In *J.M.*, the mother proceeded to trial without an attorney. Thus, *J.M.* does not support the Father's contention that the trial court erred in this case. . . . Here, the Father signed a written request for appointment of counsel, with information supporting his indigence claim, on December 13, 2012. Counsel was appointed the same day. Assuming the Father's documents were sufficient to trigger the process for mandatory appointment of an attorney ad litem, the trial court completed that process promptly upon receiving the Father's documents. We hold the trial court did not err in appointing counsel for the Father after the adversary hearing"); *In re A.A.L.A.*, 2015 Tex. App, LEXIS 9640 at *24-25, *27 (Tex. App.—Houston [14th Dist.] Sept. 15, 2015) ("In this case, appellant requested a lawyer, but the trial court did not appoint one for almost ten months. Given our assumption in *S.R.* that the request for a lawyer triggers the trial court's duty to appoint one, we likewise assume in this case that the trial court erred in not appointing counsel for nearly ten months. However, we conclude that the trial court's error is not reversible, because it probably did not lead to the rendition of an improper judgment or prevent appellant from presenting his case on appeal ... Appellant's lawyer had nearly nine months to prepare for trial ... Appellant asserts he lost time in which he could have been working to satisfy the service plan and communicating with the Department about his desire to parent his children. However, it is undisputed that the Department knew appellant wanted to complete the service plan and be involved with his children ... Moreover, appellant's rights were not terminated for failure to complete the service plan.")

The Supreme Court of Texas held in *Interest of P.M.*, 2016 Tex. LEXIS 236 (Tex. 2016) (per curiam), that the statutory right to counsel for parents in state-initiated cases involving termination of parental rights or appointment of a conservator extends to both the appeal to the Court of Appeals and the discretionary appeal to the Supreme Court of Texas. The high court examined the statute in question, Tex. Fam. § 107.016(2), which provides that "an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of: (A) the date the suit affecting the parent-child relationship is dismissed; (B) the date all appeals in relation to any

final order terminating parental rights are exhausted or waived; or (C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record." The court held:

We have not addressed whether a right to counsel on appeal includes a right to counsel to bring a petition for review in this Court. But we have indicated generally, in other contexts, that exhaustion of appeals includes review sought in this Court. A few statutes appear to take the same view. We see no reason to depart from that view here. To the contrary, the right to counsel is as important in petitioning this Court for review, and in our considering the issues, as in appealing to the court of appeals. *P.M.*, 2016 LEXIS 236 at *7.

In the case, the mother's appointed counsel moved to withdraw after the appeal to the Court of Appeals based on disagreements between her and the mother. The court admonished:

Once appointed by the trial court, counsel should be permitted to withdraw only for good cause and on appropriate terms and conditions. Mere dissatisfaction of counsel or client with each other is not good cause. Counsel's obligation to the client may still be satisfied by filing an appellate brief meeting the standards set in *Anders v. California* and its progeny. In light of our holding, however, an *Anders* motion to withdraw brought in the court of appeals, in the absence of additional grounds for withdrawal, may be premature. Courts have a duty to see that withdrawal of counsel will not result in foreseeable prejudice to the client. If a court of appeals allows an attorney to withdraw, it must provide for the appointment of new counsel to pursue a petition for review. In this Court, appointed counsel's obligations can be satisfied by filing a petition for review that satisfies the standards for an *Anders* brief. While an appellate court may be equipped to rule on a motion to withdraw in many instances, it may decide instead, as the court of appeals did in this case with a motion unrelated to any *Anders* claim, to refer the motion to the trial court for evidence and a hearing. An appellate court must ordinarily refer the matter of appointment of replacement counsel to the trial court. *Id.*

The high court concluded that in the instant case, withdrawal was not based on "mere dissatisfaction" between attorney and client, and so withdrawal was not improper. But it then directed the trial court to appoint counsel to represent the mother in the appeal to the high court. See also *In re K.K.*, 180 S.W.3d 681, 684 (Tex. App.—Waco 2005) ("the right to effective counsel extends to the appellate level.").

Texas courts have routinely rejected claims that the statutory right to appointed counsel in termination of parental rights actions requires courts to appoint counsel some meaningful period *before* the hearing on revoking parental rights. In *In re M.J.M.L.*, the court of appeals rejected a claim that the trial court's failure to appoint counsel for the indigent mother until six

months *after* the parental termination suit was filed violated the statute providing for appointment of counsel for indigent parents. 31 S.W.3d at 354 (legislature’s requirement that counsel for child be appointed “immediately after the filing” contrasted with language for parental counsel, which did not specify timing). Similarly, in *In re J.M.C.*, the court of appeals concluded that the trial court had adequately complied with the statute requiring appointment of attorney ad litem for the indigent parent by appointing counsel for the mother only when she appeared before the trial court for the first time at the permanency hearing itself. 109 S.W.3d 591, 597 (Tex. App. 2003) (citing *In re M.J.M.L.*). The Texas Supreme Court has stated that “the rights of the natural parents are not absolute; protection of the child is paramount” and the statute’s remedial purpose is to protect abused and neglected children, not the parents. *In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003). *But see, In re S.K.A.*, 236 S.W.3d 875, 892 (Tex. App.—Texarkana 2007) (in examining delay in appointing counsel, court comments, “consistent with the requirement that counsel in parental rights termination cases be constitutionally effective, it would seem a ‘useless gesture’ to require the appointment of constitutionally effective counsel but when properly requested not require such counsel’s appointment before the critical time at which a procedural bar is imposed.”)

In 2003, the Texas Supreme Court held in *In re M.S.*, 115 S.W.3d 534 (Tex. 2003), that ineffective assistance claims are available to parents who had statutorily-appointed counsel in parental-rights termination suits. *Id.* at 544. The court, in entertaining the due process claim brought under federal law, held that (1) an ineffective assistance claim is cognizable; and (2) the *Strickland* criminal standards would apply.² *Id.* at 544–45. That standard imposes an extraordinarily high burden on the claimant—to establish counsel’s deficiency in light of an objective reasonableness standard and then to show “there is a reasonable probability that, but for counsel’s unprofessional error(s), the result of the proceeding would have been different.”

² The Supreme Court of the United States articulated the two-pronged standard for evaluating ineffective assistance claims in criminal cases in *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Id. at 550 (quoting *Strickland*, 664 U.S. at 687).³ However, see *In re G.J.P.*, 314 S.W.3d 217, 223–24 (Tex. App.—Texarkana 2010) (in conservatorship case, court denies ineffective assistance claim; “We believe the superior courts have reserved the constitutional remedy afforded by proof of deficient professional performance to claims involving the potential loss of liberty or permanent deprivation of the parental rights”).

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

³ Since the Texas Supreme Court decided *In re M.S.*, however, only two appellate courts have concluded that a parent’s appointed representation fell below the standard of reasonableness and caused prejudice. See *Brice v. Denton*, 135 S.W.3d 139, 142 (Tex. App.—Waco 2004). The ineffective assistance claim in *Brice* was brought by an incarcerated parent who was appointed counsel in an action brought by the mother of his children to terminate his parental rights. *Id.* The court held that, where counsel was appointed the day of the hearing, which the inmate was unable to attend, and where counsel failed to seek a continuance, failed to consult with his client prior to the hearing, and indeed never requested to consult with his client, the father had been denied effective assistance of counsel. *Id.* at 141–2. See also, *In re V.V.*, 349 S.W.3d 548, 590–91 (Tex. App.—Houston 2010) (parent’s counsel was as ineffective as “potted plant,” so court assumes prejudice and reverses termination of parental rights). But all other ineffective assistance claims for appointments made in parental-rights termination cases have resulted in a finding that counsel’s performance was not “ineffective.” See, e.g., *In re S.A.S.*, 200 S.W.3d 823 (Tex. App.—Beaumont 2006) (mother’s attorney’s failure to object to jury instruction that allowed jury to consider mother’s noncompliance with reunification plan as grounds for termination of parental rights did not constitute deficient performance that prejudiced her). Additionally, one court of appeals determined that there is no right to claim ineffective assistance when a temporary conservator is appointed for the children. *In re G.J.P.*, 314 S.W.3d at 223–24 (“if the constitutional right to set aside a decision of a court for ineffectiveness of counsel exists for conservatorship and custody disputes, would that same right not also apply to actions under Rule 308a? We believe the superior courts have reserved the constitutional remedy afforded by proof of deficient professional performance to claims involving the potential loss of liberty or permanent deprivation of the parental rights.”)

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(b) 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.

title.”

25 U.S.C. § 1912(b).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In re J.R.P., 55 S.W.3d 147, 151 (Tex. App.—Corpus Christi 2001), the court citing *Lassiter* for the proposition that there is no automatic due process right to counsel in a state-initiated termination of parental rights proceeding. The court added, “The record reflects that Monica did not request counsel at the time the original petition was filed and upon request, received appointed counsel immediately upon her request, and was represented by appointed counsel for approximately eighteen months prior to the final termination hearing and twenty-two months before the judgment terminating her parental rights was signed. Based on the facts and our analysis set out above, we conclude the trial court did not violate Monica’s constitutional rights by not immediately appointing counsel after the filing of the original petition.” *Id.*

in *Brown v. McLennan County Children’s Protective Services*, 627 S.W.2d 390 (Tex. 1982), the Texas Supreme Court held that there was no due process right to counsel for a parent prior to voluntarily relinquishing her parental rights. The court commented:

The cause before this Court is not one where the State is actively interfering with the integrity of the family. Brown voluntarily gave consent to the termination of her parental rights by executing an affidavit of relinquishment. This termination is not comparable to the forced taking of parental rights by the State. The affidavit before this Court is clear and unambiguous. There is no allegation that Brown misunderstood the terms or effects of her execution. There is also no allegation of how an attorney would have been of assistance under these facts. Beyond that, Brown’s asserted right to an attorney has never before been recognized and we hold there is no such right under these circumstances.

Id. at 394. See also *Turner v. Roberson*, 2013 Tex. App. LEXIS 6175, *10 (Tex. App. Dallas May 17, 2013) (no right to counsel in protective order proceeding implicating custody).

B. Appointment of Counsel for Parent—Privately Initiated Proceedings

State Statutes and Court Decisions Interpreting Statutes

In suits where “the best interests of a child are at issue, *other than* a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child,” the court’s power to appoint counsel for the parents is

permissive. Tex. Fam. Code § 107.021(a) (emphasis added) (court may appoint attorney ad litem, amicus attorney, or guardian ad litem).⁵

State Court Rules and Court Decisions Interpreting Court Rules

Tex. R. Civ. P. 308a permits the court to appoint an attorney to represent a person claiming violation of an order “for child support or possession of or access to a child.” The fee for the attorney is a discretionary matter for the court. Notably, Rule 308a does not provide for paying these appointed attorneys for support/visitation violations “[e]xcept by order of the court” and then any fee shall only “be adjudged against the party who violated” the support or possession order in question. *Id.*

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *In re V.R.P.*, 2005 WL 1552641, at *2 (Tex. App.—San Antonio 2005) (unpublished), an incarcerated father appealed the termination of his parental rights on the grounds that he had not been appointed counsel. After finding he had no statutory right to counsel since the termination was not being pursued by the state, the court also found he had no due process right either because the allegations supporting the petition had already been adjudicated in the criminal process. *Id.* The court also noted that no expert witnesses had testified and there were no troublesome points of law (factors from the *Lassiter v. Dept. of Soc. Serv.*, 452 U.S. 18 (1981), test, which it cited), and concluded, “perhaps most significantly, the termination in this case was not sought by the State.” *Id.* See also, *Howell*, 710 S.W.2d at 735; *Chrisman v. Chrisman*, 296 S.W.3d 706, 707 (Tex. App.—El Paso 2009) (finding that there is no right to counsel in divorce proceedings).

In Interest of A.B.B., 482 S.W.3d 135, 140 (Tex. App.—El Paso), the court held that there is no effective assistance claim available when counsel is retained in a private termination proceeding.

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

State Statutes and Court Decisions Interpreting Statutes

Children in state-initiated suits involving termination of parental rights or an attempt to be named conservator of the child have a right to counsel. Tex. Fam. Code Ann. § 107.012.

⁵ Given that § 107.021(b) has language that makes it clear it specifically applies to children, § 107.021(a) most likely applies to either just parents or both parents and children. Additionally § 107.013 (which involves appointment of counsel for parents in state-initiated proceedings) also refers to appointment of an “attorney ad litem,” so the use of this term does not suggest it is intended for use only for appointment of counsel for the child.

Federal Statutes and Court Decisions Interpreting Statutes

The Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,⁶ 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).

D. Appointment of Counsel for Child—Privately Initiated Proceedings

⁶ 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.

State Statutes and Court Decisions Interpreting Statutes

The court must appoint an “amicus attorney” or attorney ad litem for the child in a private TPR case “unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests” Tex. Fam. Code Ann. § 107.021(a-1).

In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint one of the following:

- (1) an amicus attorney;
- (2) an attorney ad litem; or
- (3) a guardian ad litem.

Tex. Fam. Code Ann. § 107.021(a).

5. MISCELLANEOUS

A. Civil Contempt Proceedings

State Statutes and Court Decisions Interpreting Statutes

Texas law states that that “[a]n indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement” Tex. Code Crim. Proc. 1.051(c). Although this is part of the criminal code, this particular language is not limited to criminal cases, and in fact it has been applied in the civil contempt context. See *Matter of B.A.M.*, 980 S.W.2d 788, 790 n.4 (Tex. App. 1998). See also Tex. Fam. Code § 157.163 (in enforcement proceedings, “(b) If the court determines that incarceration is a possible result of the proceedings, the court shall inform a respondent not represented by an attorney of the right to be represented by an attorney and, if the respondent is indigent, of the right to the appointment of an attorney ... (i) The scope of the court appointment of an attorney to represent the respondent is limited to the allegation of contempt or of violation of community supervision contained in the motion for enforcement or motion to revoke community supervision.”)

State Court Rules and Court Decisions Interpreting Court Rules

Tex. R. Civ. P. 308a permits the court to appoint an attorney to represent a person claiming violation of an order for child support. Notably, Rule 308a does not provide for paying these appointed attorneys for support violations “[e]xcept by order of the court” and then any

fee shall only “be adjudged against the party who violated” the support or possession order in question. *Id.*

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Ex parte Walker*, 748 S.W.2d 21, 22 (Tex. App. 1988), the Dallas Court of Appeals found a Fourteenth Amendment right to counsel in civil contempt proceedings. The court relied entirely on the United States Supreme Court’s ruling in *Lassiter v. Dept. of Soc. Serv.*, 452 U.S. 18 (1981), commenting that the right to counsel “extends to every case in which the litigant may be deprived of his personal liberty if he loses.” *Id.* at 22. See also, *Ex parte Wilson*, 559 S.W.2d 698, 701 (Tex. App. 1977) (not reaching question due to lack of information as to whether contemnor was indigent, but noting that “contempt proceedings, whether criminal or civil, are criminal in nature and, accordingly, should conform as nearly as practicable to a criminal proceeding,” and finding contemnor’s arguments for right to counsel “persuasive”); *Ex parte Davis*, 344 S.W.2d 153, 156—57 (Tex. 1961) (contemnor in proceeding for failure to pay child support raised due process challenge under federal and state constitutions; court notes proceeding is “quasi-criminal in nature A longer period for preparation, the presence of counsel and the receipt of additional evidence might not have led to a different judgment, but due process required that a reasonable opportunity for exerting those influences on the court’s judgment be afforded”); *Ex parte Young*, 724 S.W.2d 423, 424 (Tex. App. 1987) (finding right to counsel based on risk of incarceration, and citing to *Lassiter*).

Most of these contempt cases relied entirely on *Lassiter* for an absolute right to counsel, and these cases are of questionable validity after *Turner v. Rogers*, 564 U.S. 431, 448 (2011) (Fourteenth Amendment does not require 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. However, in *Ex parte Lopez*, 710 S.W.2d 948 (Tex. App. 1986), *overruled on other grounds*, *Ex parte McIntyre*, 730 S.W.2d 411 (Tex. App. 1987), the court found the contempt hearing lacked adequate procedures to determine indigency and noted that “[t]he State has thrown its weight behind the complaining party,” and that the *Turner* court suggested that counsel might be required in such circumstances (*Lopez*, however, also relied on a Texas Supreme Court ruling of dubious applicability to civil cases⁷ in order to find a right to counsel in the first place).⁸ See also *Deramus v. Thornton*, 333 S.W.2d 824, 829

⁷ In *Ex parte Heister*, 572 S.W.2d 300, 302-03 (Tex. 1978), the Texas Supreme Court held that constitutional due process includes assistance of counsel, if requested, in civil contempt proceedings, but a) the case involved a contemnor who had an attorney and who was just seeking a continuance so that his counsel could be present; b) it apparently involved a contempt proceeding between two private parties; and c) it was quoting directly from a U.S. Supreme Court case that applied specifically to criminal contempt, not civil contempt.

⁸ Additionally, in *Ex Parte Wilson*, the plaintiff was the state, although the court did not rely on that fact for its reasoning.

(Tex. 1960) (case involved indirect contempt for violation of injunction, but not issue of right to counsel; court comments that “[c]ontempt proceedings are generally criminal in their nature whether they grow out of criminal or civil actions. It follows then that the proceedings should conform as nearly as practicable to those in criminal cases.”)

B. Paternity Proceedings

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In *Blake v. Blake*, 878 S.W.2d 209, 212 (Tex. App.1994), a court of appeals found no right to counsel in paternity cases, noting as per *Lassiter v. Dept. of Soc. Serv.*, 452 U.S. 18 (1981), that not even the irrevocable termination of parental rights had been found to create a federal constitutional right to counsel. The court held that “a child’s interest in establishing paternity overrides the interests of the alleged father,” that the government had a “valid pecuniary interest in establishing support for the child to keep him off the welfare rolls,” that the “risk of an erroneous decision in this particular case is extremely negligible” due to blood testing that had a 99.87% probability of accuracy, and that “appellant was not threatened with the loss of his personal liberty in this purely civil action.” *Id.*

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

State Statutes and Court Decisions Interpreting Statutes

In cases where a minor seeks judicial waiver of the parental notification and consent requirements for an abortion, the court “shall appoint an attorney to represent the minor” if the minor has not retained an attorney, and also must appoint a guardian ad litem to represent the child’s best interests. Tex. Fam. Code Ann. § 33.003(e). A 2015 amendment to § 33.003(e) prohibits the judge from appointing the same attorney to serve as both GAL and child’s counsel.

D. Proceedings Involving Claims by or Against Prisoners

State Statutes and Court Decisions Interpreting Statutes

In *Gibson v. Tolbert*, 102 S.W.3d 710 (Tex. 2003), an inmate plaintiff had sued a prison doctor for malpractice after being assigned to hard labor by the doctor despite suffering from severe back problems. 102 S.W.3d at 711. Tolbert asked the trial court to appoint counsel, but the court did not rule on the motion. *Id.* at 712. On appeal, the intermediate appellate court concluded that this was an exceptional case and the trial court should have appointed counsel pursuant to the general appointment statute at Tex. Gov’t Code Ann. § 24.016 (discussed *infra*). *Id.* The high court reversed, holding that “[i]nmate suits against prison personnel, rather than

rare and unusual, are common The mere fact that an indigent inmate brings a cause of action against an employee of the prison in which the inmate is incarcerated does not constitute exceptional circumstances such that it warrants appointed counsel.” *Id.* at 713. The court added that plaintiffs in medical malpractice cases can often find attorneys willing to represent on a contingent basis, and therefore the court stated that, “as long as his claims against Gibson were meritorious, Tolbert's indigency should not have prevented him from employing able counsel.” *Id.* See also, *Addicks v. Sickel*, 2009 WL 4757278, at *5 (Tex. App. 2009) (unpublished) (inmate’s suit against attorney for breach of contract and malpractice did not present “exceptional circumstances” so as to warrant appointment of counsel); *Henderson v. Univ. of Tex. Med. Branch*, 2003 WL 21553761, *2 (Tex. App. July 9, 2003) (unpublished) (in suit over denial of medical care to prisoner with serious medical problems, court holds that litigant had “failed to cite any compelling reason for the public to shoulder the expense of appointed counsel”).

State Court Decisions Addressing Constitutional Due Process or Equal Protection

In one case involving a prisoner claim for improper medical care, a Texas court of appeals relied on *Gibson v. Tolbert*, discussed *supra*, to analyze a due process claim, even though *Gibson* was about the discretionary appointment statute. See *Bankhead v. Spence*, 314 S.W.3d 464, 467 (Tex. App. 2010) (“Bankhead argues that the denial of appointed counsel deprived him of the opportunity to be heard at a meaningful time and in a meaningful manner. This is a due process claim;” court first cites to *Gibson* and states that “Bankhead's indigency should not have prevented him from retaining counsel on a contingent-fee basis if his claims against Spence were meritorious,” and then cites to *Lassiter* holding regarding appointment only being necessary when physical liberty at risk and states that “[t]he Texas constitution has not been interpreted differently in this regard.”)

D. Civil Forfeiture Proceedings

State Statutes and Court Decisions Interpreting Statutes

In *\$567.00 In U.S. Currency v. State of Texas*, 282 S.W.3d 244, 246–47 (Tex. App. 2009), the court held that “Chapter 59 [of the civil forfeiture code] does not provide for appointment of counsel to represent an indigent person in a forfeiture proceeding” and “although a district judge may appoint counsel for an indigent civil litigant” pursuant to Tex. Gov’t Code Ann. § 24.016, “[the appellant] did not establish that the public and private interests at stake in his case are so exceptional that the administration of justice would be best served by appointing a lawyer to represent him.”

State Court Decisions Addressing Constitutional Due Process or Equal Protection

A few Texas appellate courts have held there is no right to counsel in civil forfeiture cases, although they provided no analysis other than to state that such cases are civil in nature. *One Thousand Six Hundred Four Dollars & Nine Cents (\$1,604.09) in United States Currency v. State*, 2015 Tex. App. LEXIS 12845, at *482 n.6 (Tex. App.—Houston [14th Dist.] 2015); *Approximately \$ 42,850.00 v. State*, 44 S.W.3d 700 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

E. Marriage Dissolution/Divorce Proceedings

State Statutes and Court Decisions Interpreting Statutes

In *Taylor v. Taylor*, 2007 WL 2460359, at *11 (Tex. App.—Fort Worth 2007) (unpublished), the court found no exceptional circumstances warranting the appointment of counsel (pursuant to the general appointment statute at Tex. Gov't Code Ann. § 24.016) in a divorce case where the defendant “filed voluminous motions in the trial court prior to obtaining counsel. Several of those motions resulted in hearings and some in relief. Appellant was ultimately able to obtain counsel before a hearing on March 8, 2005, and counsel represented him through trial.”

State Court Decisions Addressing Court’s Inherent Authority

In *In the Matter of Marriage of King*, 2001 WL 438412, at *1 (Tex. App.—Texarkana 2001) (unpublished), a party to a divorce proceeding argued that the court should have appointed counsel for him. The court noted that “Richard does not contend that he was deprived of a due process right to counsel; thus, that question is not before us. He also does not contend that his case falls under a statute providing for appointment of counsel. Rather, he is challenging the trial court's discretionary refusal to appoint an attorney to represent him. Such a decision is reviewed under an abuse of discretion standard.” *Id.* at *2. Because the case apparently did not involve the discretionary appointment provision of Tex. Govt. Code Ann. § 24.016 (West 2011), only the court’s inherent power to appoint counsel appeared to be at stake, although the court did not use this term. *Id.* The court concluded that the trial court’s refusal to appoint counsel was not error, since the divorce did not involve children, there were few assets, and the parties were able to agree on most terms. *Id.* See also, *Thomas v. Anderson*, 861 S.W.2d 58, 61 (Tex. App.—El Paso 1993) (no authority for proposition that “courts have or should have an inherent power to appoint attorneys for mentally competent, non-indigent litigants”).

F. Forcible Detainer Cases

State Statutes and Court Decisions Interpreting Statutes

In *Mustapha v. HSBC Bank USA, Nat. Ass'n*, 2012 WL 273897 (Tex. App.—Houston [14th Dist.] 2012) (unpublished), the court held, without discussion, that there were no exceptional circumstances in the forcible detainer case at hand that warranted the appointment of counsel pursuant to the general appointment statute at Tex. Gov't Code Ann. § 24.016.

G. Probate Proceedings

State Statutes and Court Decisions Interpreting Statutes

A judge has the discretionary power to appoint counsel “to represent the interests of a person having a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir in any probate proceeding.” Tex. Estates Code Ann. § 53.104.

H. Truancy Proceedings

State Statutes and Court Decisions Interpreting Statutes

In 2015, Texas decriminalized its truancy law, such that truant children are only subjected at first to non-jail/fine remedies by the schools. Additionally, the 2015 law added Tex. Fam. Code 65.059, which states:

- (a) A child may be represented by an attorney in a case under this chapter. Representation by an attorney is not required.
- (b) A child is not entitled to have an attorney appointed to represent the child, but the court may appoint an attorney if the court determines it is in the best interest of the child.

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

State Statutes and Court Decisions Interpreting Statutes

By statute, Texas courts have both the general power to appoint counsel for indigent litigants in civil cases and the specific obligation to do so in a limited context. The general power statute states: “A district judge *may* appoint counsel to attend to the cause of a party who makes an affidavit that he is too poor to employ counsel to attend to the cause.” Tex. Gov’t Code Ann. § 24.016 (emphasis added). There is an equivalent provision for county court.⁹ This statute formerly created an absolute right to counsel, as it read: “The judges in any case, civil or criminal, in which a party may swear that he is too poor to employ counsel, *shall* appoint counsel for such party, who shall attend to the cause in behalf of such party without any fee or reward” (emphasis added). *Travelers Indem. Co. of Conn. v. Mayfield*, 923 S.W.2d 590, 593–94 (Tex. 1996). The *Travelers* court found that the legislature’s likely intent in modifying the statute to remove the “without any fee or reward” clause was not to allow the court to order an opposing party to pay fees, but rather to “remove any impediment to appointed counsel receiving attorney’s fees from some other source; e.g., from the indigent claimant’s recovery, from local or state government, or from the opposing party if independently authorized by agreement or some other fee-shifting statute.” *Id.* at 594.

The Texas Supreme Court has noted that while it had never addressed the limits of this discretionary statute, “[s]ome courts of appeals . . . have concluded that the discretionary boundary of section 24.016 is similar to a court’s inherent power to appoint counsel—counsel may be appointed in cases in which exceptional circumstances exist.” *Gibson v. Tolbert*, 102 S.W.3d 710, 712–13 (Tex. 2003). *See, e.g., Spigener v. Wallis*, 80 S.W.3d 174, 183 (Tex. App.—Waco 2002, no pet.) (utilizing “exceptional circumstances” test from *Travelers Indem. Co. of Conn.*, 923 S.W.2d 590, 593 (Tex.1996) to analyze authority under § 24.016, even though *Travelers* was discussing inherent authority).

The case law yields little evidence that courts have been willing to exercise this discretionary statutory power. *See, e.g., Henderson v. Univ. of Tex. Med. Branch*, 2003 WL 21553761, *2 (Tex. App.—Tyler July 9, 2003) (unpublished) (in suit over denial of medical care to prisoner with serious medical problems, court holds that litigant had “failed to cite any compelling reason for the public to shoulder the expense of appointed counsel”); *\$567.00 In U.S. Currency v. State of Texas*, 282 S.W.3d 244, 246–47 (Tex. App.—Beaumont 2009), (“Chapter 59 does not provide for appointment of counsel to represent an indigent person in a forfeiture proceeding” and “although a district judge may appoint counsel for an indigent civil

⁹ Tex. Gov’t. Code Ann. § 26.049 (“The county judge may appoint counsel to represent a party who makes an affidavit that he is too poor to employ counsel.”).

litigant . . . [the appellant] did not establish that the public and private interests at stake in his case are so exceptional that the administration of justice would be best served by appointing a lawyer to represent him.”); *Taylor v. Taylor*, 2007 WL 2460359, at *11 (Tex. App.—Fort Worth 2007) (unpublished) (no exceptional circumstances in divorce case where defendant “filed voluminous motions in the trial court prior to obtaining counsel. Several of those motions resulted in hearings and some in relief. Appellant was ultimately able to obtain counsel before a hearing on March 8, 2005, and counsel represented him through trial”); *Spigener*, 80 S.W.3d at 183 (summarily dismissing request for counsel because appellant’s “case does not satisfy . . . [the ‘exceptional cases’] test.”); *Mustapha v. HSBC Bank USA, Nat. Ass’n*, 2012 WL 273897 (Tex. App.—Houston [14th Dist.] 2012) (unpublished) (holding without discussion that there were no exceptional circumstances in forcible detainer case).

Federal Statutes and Court Decisions Interpreting Statutes

The federal Servicemembers Civil Relief Act (SCRA), which applies to each state¹⁰ and to all civil proceedings (including custody),¹¹ 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 U.S.C.S. § 3931(b)(2).

Additionally, 50 U.S.C.S. § 3932(d)(1), which also applies to all civil proceedings (including custody),¹² specifies that a service member previously granted a stay may apply for an additional stay based on a continuing inability to appear, while § 393(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.”

¹⁰ 50 App. U.S.C.A. § 512(a) states, “This Act [sections 501 to 515 and 516 to 597b of this Appendix] applies to-- ... (2) each of the States, including the political subdivisions thereof...”

¹¹ 50 App. U.S.C. § 521(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.”

¹² 50 App. U.S.C. § 522(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.”

State Court Decisions Addressing Constitutional Due Process or Equal Protection

One Texas court of appeals, considering the precise issue of a right to counsel, concluded that “no general federal or state constitutional right for counsel to be appointed for a civil litigant” exists. *Amegniso-Tosso v. Westminster Manor*, 2002 WL 1995832 (Tex. App.—Austin 2002) (unpublished) (employment discrimination case, and citing *Lassiter v. Dept. of Soc. Serv.*, 452 U.S. 18, 26-27 (1981); *Travelers Indem. Co. of Conn.*, 923 S.W.2d 590, 594 (Tex.1996); and *Pedraza v. Crossroad Sec. Sys.*, 960 S.W.2d 339, 341 (Tex. App.—Corpus Christi 1997)).

State Court Decisions Addressing Court’s Inherent Authority

As previously noted, The Texas Supreme Court has noted that while it had never addressed the limits of Tex. Gov’t Code Ann. § 24.016 (the discretionary appointment statute), “[s]ome courts of appeals . . . have concluded that the discretionary boundary of section 24.016 is similar to a court’s inherent power to appoint counsel—counsel may be appointed in cases in which exceptional circumstances exist.” *Gibson v. Tolbert*, 102 S.W.3d 710, 712–13 (Tex. 2003).