

# Parent Representation - Background

## Right to Counsel in Family-Related Court Proceedings

In New York, the right to assigned counsel for parents and other specified adults in family law cases is grounded in constitutional principles of due process and equal protection. In 1972, the New York State Court of Appeals ruled that “an indigent parent, faced with the loss of a child's society, as well as the possibility of criminal charges is entitled to the assistance of counsel.” *In Re Ella B.*, 30 N.Y.2d 352 (1972). Emphasizing that parents have a constitutional right to the care and custody of their children, the Court noted the “gross inherent imbalance of experience and expertise” between the State and unrepresented parents. The Court explained that “it is fundamentally unfair, and a denial of due process of law for the state to seek removal of the child from an indigent parent without according that parent the right to the assistance of court-appointed and compensated counsel.” Moreover, the Court declared, failure to provide the parent with a lawyer would constitute not only a violation of due process but, “in light of the express statutory provision for legal representation for those who can afford it, a denial of equal protection of the laws as well.”

In 1975 the New York State Legislature codified the right to assigned counsel in a range of family law proceedings involving “the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges.” [N.Y. Family Court Act §261](#). Currently, these include cases brought in Family, Surrogate's, and Supreme Court involving child custody and visitation, abuse/neglect, foster care placement and review, termination of parental rights, “destitute child”, adoption, paternity, and family offense (domestic violence) proceedings. Additionally, assigned counsel is available to a person charged with contempt of court for violation of a prior court order (including willful violation of a child support order), and persons in any other proceeding in which the judge concludes that the constitution of the State of New York or of the United States, requires the assignment of counsel. [N.Y. Family Court Act §262](#).

## **Enhancing the Quality of Mandated Family Law Representation**

Over the years, counties have struggled to provide constitutionally and statutorily mandated legal representation with limited to no state support, resulting in an uneven patchwork of quality across the state. As the [\*2006 Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services, Final Report, June 16, 2006\*](#) pointed out, the system for providing mandated family law representation suffers from the same systemic deficiencies as exist in the criminal defense system. These deficiencies include excessive caseloads, insufficient salaries for attorneys and support staff, inadequate office facilities, lack of sufficient funding for training, investigation, expert witnesses, social work, and support staff, as well as a marked disparity in resources between public legal services providers and local social services and law enforcement agencies.

Since its inception in 2010, ILS has infused state funds into the public legal services system in a way that supports the efforts of counties and court-appointed lawyers to deliver high quality, effective and cost-efficient assistance of counsel to financially disadvantaged clients. In accordance with our statutory mandate “to “monitor, study and make efforts to improve the quality” of public legal services ([Executive Law Article 30, § 832\(1\)](#)), ILS staff works closely with state and county officials, legal services providers and other interested organizations and individuals to address the obstacles to high quality mandated family court representation.

Through these collaborative efforts, a number of improvements have been made, including hiring of additional experienced family law practitioners and/or upgrading existing staff from part-time to full-time; establishing specialized panels of assigned counsel (“18-b lawyers”) with family law-specific qualification, training, supervision, and continuing legal education requirements; establishing dedicated family court units within existing public defender offices to handle all or some mandated family law matters (such as child protection and/or support violation cases); contracting with institutional providers to do family law cases; adding social workers, family law caseworkers, and investigators to assist lawyers and clients; and developing processes to ensure representation of parents/respondents at the first appearance in Article 10 abuse and neglect cases.

## **Parental Representation in State Intervention Matters**

In keeping with our statutory mandate to improve the quality of mandated representation, including representation under Family Court Act 262, on November 6, 2015 the ILS Board approved [Standards for Parental Representation in State Intervention Matters](#), with an effective date of December 1, 2015. The Parental Representation standards, developed by a diverse group of seasoned professionals with deep experience in the child welfare system will not only guide our efforts to assist counties and providers to improve the quality of representation in child protective, foster care, destitute child and termination of parental rights cases (collectively "state intervention" cases), but will also promote greater professionalism and uniform standards throughout New York State in this highly complex area of practice. [Click here](#) for the list of members of the Parent Representation Standards Workgroup.

## **ILS Family Court Mandated Representation Listserv**

The New York State Office of Indigent Legal Services (ILS) Family Court Mandated Representation Practice Area listserv is open to attorneys and their staff, including social workers, investigators, mitigation specialists, paralegals or other staff members who support the attorney's work of representing adults entitled under New York Family Court Act Section 262 to have a lawyer assigned pursuant to New York County Law 18-B.

The listserv is intended as a forum to discuss daily practice and broader policy and systemic issues, to post questions or announcements, and to seek feedback from colleagues. Ultimately, the goal of the listserv is to be a venue for family court mandated representation practitioners across New York State to support each other and work together toward improving the quality of representation for indigent clients in New York's Family Courts.

To join the list, click [here](#) to access the form. Then send your completed form as an attachment to [kira.schettino@ils.ny.gov](mailto:kira.schettino@ils.ny.gov). You will receive confirmation of your subscription status when the form is processed. If you have any other questions please feel free to contact Kira by email or by phone at (518)699-2642.

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