

Practice Advisory | 8/27/2021 | D'Adre Cunningham
Right to Counsel at Public Expense in WA State in Certain Child Custody Cases

Introduction. This practice advisory is for attorneys defending indigent parents, legal guardians, and legal custodians in civil and criminal proceedings, when the child(ren) they are physically or legally responsible for becomes subject to certain child custody proceedings under Chapter 13.34 RCW, Chapter 13.36 RCW, Chapter 26.33 RCW, Chapter 11.130 RCW, and certain other proceedings under Title 26.

Scope of the right to counsel. Indigent parents, legal guardians, and legal custodians have the right to counsel at public expense at any stage of the proceedings.¹ This right extends to all stages of a chapter 13.34 RCW proceeding (including shelter care hearings, review hearings, motion hearings, and trials on dependency and termination petitions).² This right also includes the trial hearings on a dependency guardianship petition filed under Chapter 13.36 RCW.³ Any nonconsenting parent to a private adoption has the right to be represented by counsel and counsel will be appointed for an indigent person who requests counsel, where their rights have not already been terminated in another proceeding.⁴ Indigent parents who are contesting the creation of a guardianship for one or more of their minor children shall be appointed counsel in that minor guardianship case.⁵ This right to counsel also exists in any case in a family law matter that is inextricably linked with an open dependency case involving the same parent(s) and child(ren).⁶ The right to an attorney at public expense includes the right to effective legal representation.⁷

The Washington State Office of Public Defense OPD contracts with attorneys to represent indigent parents, legal guardians or legal custodians in all WA counties involved in Chapter 13.34 RCW and Chapter 13.36 RCW.

Effective July 1, 2018, the program operates in all 39 Washington counties.⁸ To contact them regarding whether an attorney that has been assigned, or to request that an attorney be assigned to a case, the parent-client should write or call them at their main office.



Contact Us

If you cannot find an answer to your question on our website, please contact us directly for more information.

Mailing Address

Washington State Office of Public Defense
P.O. Box 40957
Olympia, WA 98504-0957

Phone

(360) 586-3164 or 1-800-414-6064

¹ Although the title only mentions parents, the right applies to legal guardians and legal custodians too.

² See *In re Myricks' Welfare*, 85 Wn.2d 252 (1975)(dependency cases); *In re Luscier's Welfare*, 84 Wn.2d 135 (1974) (termination cases); *In re Grove*, 127 Wn.2d 221 (1995) (appeals); see also RCW 13.34.090(2).

³ See RCW 13.36.040 (1).

⁴ See RCW 26.33.110 (3)(b).

⁵ RCW 11.130.200 (5)(effective January 1, 2021 new minor guardianship law replaced the old non-parental custody statute with regards to filing new petitions and amending old non-parental custody decrees).

⁶ See *In re Dependency of E.H.*, 158 Wn. App. 757 (2010)(family law cases inextricably linked to an open dependency).

⁷ The constitutional and statutory right to counsel in dependency and termination proceedings includes the right to effective representation. See *Citizen v. Clark Cty. Bd. of Comm'rs*, 127 Wn. App. 846, 851-52, 113 P.3d 501, 504 (2005); see also RCW 10.101.005 (“The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.”).

⁸ <https://www.opd.wa.gov/program/parents-representation>.