

MOTION TO REPLACE COURT APPOINTED ATTORNEY FOR INEFFECTIVE ASSISTANCE OF COUNSEL

FACTS and POINTS OF LAW

1. Respondent's court-appointed attorney refused respondent's wishes to represent respondent effectively or according to respondent's objectives. Respondent has had no say in the representation of this case. Counsel has unilaterally made all decisions without the freely-given, FULLY informed consent of the respondent.
2. Counsel has not discussed the case with the respondent outside of the courtroom, and has not returned respondent's phone calls.
3. If the Court allows the respondent's court-appointed counsel to withdraw and refuses to appoint another court-appointed attorney to properly represent the respondent in spite of the fact that the respondent is still willing to work with the attorney, the respondent's objects that this will be a denial of due process. The problem here is not that the respondent is intractable, but that the attorney is. Respondent's requests have been legal and ethical. This has resulted in a denial of the respondent's right to due process. If counsel is unwilling to do more than merely appear in court, then counsel should not accept the contract to represent respondent parents and the court should not allow his appointment in that capacity.
4. The respondent is indigent, and cannot afford to hire an attorney. The Court has prior knowledge of that indigence.
5. The respondent is ignorant of the laws, of the court rules, and of court procedure. If the Court expects the respondent to either represent himself or accept inadequate counsel, it would be a denial of due process. *POWELL v. STATE OF ALA.*, 287 U.S. 45 (1932), *GREENE V. MCELROY*, 360 U.S. 474.
6. This case, while not criminal in nature, is also not consistent with civil proceedings. The U.S. Supreme court has consistently ruled that due process protections of a criminal nature apply in child dependency cases. As such, the rights of the respondent must be protected at all levels of the proceedings, especially considering the nature of the case which involves an interest far more precious than any property right, that being the respondent's liberty interests - the rights to the care, custody and control of the respondent's children. To deny the respondent representation under these circumstances is a denial of due process. *LASSITER V. DEPARTMENT OF SOCIAL SERVICES* 452 U.S. 18, *POWELL v. STATE OF ALA.*, 287 U.S. 45 (1932).
7. The respondent, by the actions of the court-appointed attorney, has been denied the fundamental right to due process. Respondent's attorney has allowed established procedures which are inconsistent with statute, rule and policy to prevail in this case rather than presenting a vigorous defense, to the detriment of the respondent. "Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand." *STANLEY V. ILLINOIS* 405 U.S. 645.
8. "In its Fourteenth Amendment, our Constitution imposes on the States the standards

- necessary to ensure that judicial proceedings are fundamentally fair. A wise public policy, however, may require that higher standards be adopted than those minimally tolerable under the Constitution. Informed opinion has clearly come to hold that an indigent parent is [452 U.S. 18, 34] entitled to the assistance of appointed counsel not only in parental termination proceedings, but in dependency and neglect proceedings as well.” LASSITER V. DEPARTMENT OF SOCIAL SERVICES 452 U.S. 18. See also GREENE V. MCELROY, 360 U.S. 474. Ineffective counsel is the same as or even worse than having no counsel. Many errors have been perpetrated by the respondent having been appointed ineffective counsel and by that counsel refusing to present the respondent’s legal, ethical and reasonable objectives in this case which has resulted in harm and damage to the respondent and respondent’s family and gives rise to fundamental unfairness in all proceedings to date. Counsel has represented counsel’s wishes to the court, not the respondent’s wishes, to the detriment of the respondent.
9. The effect of the court-appointed counsel of failing to fully inform the respondent of all options available and the associated ramifications by only instructing the respondent to ‘sign the stipulation because they’re going to get [the adjudication] anyway,’ of ignoring the respondent’s pleas to take certain actions, of presenting no defense but demanding the respondent to stipulate under threat, duress, and coercion, of making no objections, of raising no appealable issues, of allowing falsified reports and statements to stand un rebutted, of failing to ask for contested hearings to present evidence and requiring EVIDENCE from the department to substantiate their allegations and of subjecting that evidence to cross-examination, of conducting NO investigation, of consulting NO experts in the field, of requesting no discovery, and of not acting to insure that the department keep within the guidelines established by the statutes and regulations have established errors so severe as to deprive the respondent of hearings whose results were fair and reliable. LOCKHART V. FRETWELL.
 10. A fair trial is one in which ***evidence subject to adversarial testing is presented*** to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled. ADAMS V. UNITED STATES EX REL. MCCANN, 317 U.S. 269, 275, 276 (1942). Refusal of counsel to subject the evidence to adversarial testing denies the respondent’s right to due process and equal access.
 11. Counsel has failed and/or refused to conduct any investigation whatsoever in behalf of respondent’s defense. Counsel must conduct a ‘reasonably substantial investigation. . .’ and must include ‘an independent examination of the facts, circumstance, pleadings and laws involved.’ The court has held that if there is more than one plausible line of defense, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial. STRICKLAND (quoting Rummel v. Estell, 590 F.2d 103, 104 CA5 1979). Respondent’s counsel never interviewed witnesses, or even the respondent beyond a cursory few instructions to the respondent, never asked for discovery, never investigated possible biases or previous professional infractions by other parties, never even tried to determine the respondent’s side of the story, and has not researched the issues surrounding this case.

12. Through the deliberate obstructionism of respondent's court-appointed counsel, the respondent has been denied the substantive and procedural rights to obtain discovery, rebut testimony, cross-examine witnesses against the respondent, examine evidence against the respondent, present witnesses and evidence in respondent's defense, and insure that the intervention procedures followed by DHS were performed within their statutory and procedural mandates. This cannot be considered "sound trial strategy." As a result, respondent's children were removed and kept in state custody (where they were at the very least, emotionally abused by the separation from their parents), effectively uncontested, while respondent is being forced to comply with an uncontested treatment plan that the respondent (and the respondent's chosen representatives). The court-appointed counsel's assistance was so defective that it falls below an objectionable standard of reasonableness and said deficient performance prejudiced the respondent's defense and deprived the respondent of fair hearings.
13. Counsel has on more than one occasion expressed a personal bias against the respondent, iterating the necessity for her to do what DSS was demanding based on the un rebutted falsified reports. Counsel either did not believe respondent's claims of innocence or deliberately chose to ignore those claims to the detriment of the respondent and children. This demonstrates discrimination based solely on the accusations against the respondent. By these actions, counsel has breached the duty of loyalty, the most basic of counsel's duties. STRICKLAND.
14. These arguments are being raised as of the time of the counsel's conduct. STRICKLAND 466 U.S. at 690.

REMEDIES REQUESTED

15. Respondent requests the court to grant a continuance and instruct court appointed counsel to provide a vigorous defense as required to protect respondent's rights, or;
16. If the court allows counsel to withdraw over the objection of the respondent to appoint new counsel and grant a continuance.
17. Respondent requests the court to find that counsel has been ineffective to date and to review the procedures and take steps to remedy that defect and find that to be in the best interests of the child.

Signed and dated