

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 88

ATTORNEYS - Counsel acting at direction of retaining parents to exclusion of client youth's wishes;  
ATTORNEYS - Parental refusal to hire counsel for indigent youth;  
JUVENILES - Counsel acting at direction of retaining parents to exclusion of client youth's wishes;  
JUVENILES - Parental refusal to hire counsel for indigent youth;  
YOUTH COURT ACT - Counsel acting at direction of retaining parents to exclusion of client youth's wishes;  
YOUTH COURT ACT - Parental refusal to hire counsel for indigent youth;  
MONTANA CODE ANNOTATED - Sections 40-6-211, 41-5-501, 41-5-511, 41-5-523.

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HELD: When a petition is filed initiating proceedings under the Youth Court Act, a youth is entitled to court-appointed counsel when the youth is indigent and the youth's parents have sufficient financial resources but refuse to employ counsel. A youth court may order reimbursement from nonindigent parents for expenses associated with such court-appointed counsel.

9 June 1988

Claude I. Burlingame  
Sanders County Attorney  
Sanders County Courthouse  
Thompson Falls MT 59873

Dear Mr. Burlingame:

You have requested my opinion on the following questions:

1. When a petition is filed initiating proceedings under the Youth Court Act, is the youth entitled to court-appointed counsel when the youth is indigent and the youth's parents have sufficient financial resources but refuse to employ counsel?
2. When an attorney retained to represent an indigent youth following the filing of a petition under the Youth Court Act follows the exclusive direction of the retaining parents to the exclusion of the youth's wishes, is the youth entitled to court-appointed counsel?

There are several Montana statutory provisions which address your questions. Section 41-5-511, MCA, concerns the right of a youth to counsel in youth court proceedings:

In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained

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or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication. [Emphasis added.]

This provision thus makes clear that a youth must be represented by counsel where commitment to the Department of Family Services for more than six months may occur and that, in all other instances, the right to counsel may be waived only with the consent of both the youth and his parents. Consequently, when a youth desires counsel but is unable to pay for legal representation, an attorney must be appointed irrespective of his parents' wishes. See generally In re Gault, 387 U.S. 1, 36, 41 (1967).

The issue of whether counsel must be appointed, however, is distinct from the question of whether the county or the youth's parents are obligated to pay for such counsel's services.

Section 40-6-211, MCA, obligates parents to provide necessary support to their children. Counsel fees incurred on behalf of a minor child have been held to be necessities for which the parents are liable. In Re H., 468 P.2d 204 (Cal. 1970) and cases cited therein. Section 41-5-523(1)(i), MCA, allows a youth court at the time of disposition of a delinquent youth or youth in need of supervision to order the parents to furnish such services as the court may designate. Under these statutory provisions, a youth court may order reimbursement for expenses associated with court-appointed counsel if the nonindigent parents refused to retain counsel following the filing of a petition under section 41-5-501, MCA.

I determine that your second question is inappropriate for issuance of an Attorney General's Opinion. Counsel representing youths are obligated under Rules 1.7(b), 1.8(f), and 5.4(c) of the Rules of Professional Conduct to maintain the integrity of their attorney-client relationships with such youths. They must, therefore, recognize at all times that the youths and not the parents are their clients, even if the latter are responsible for the fees associated with the representation. I must assume attorneys are aware of

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their ethical responsibilities and will faithfully discharge those responsibilities. Should an attorney become conflicted, however, the Youth Court possesses clear authority to take whatever remedial measures are necessary to ensure that a youth receives appropriate representation. The nature of such remedial measures, which could extend to appointment of new counsel at the parents' expense, must be determined on a case-by-case basis through exercise of the Youth Court's sound discretion.

THEREFORE, IT IS MY OPINION:

When a petition is filed initiating proceedings under the Youth Court Act, a youth is entitled to court-appointed counsel when the youth is indigent and the youth's parents have sufficient financial resources but refuse to employ counsel. A youth court may order reimbursement from nonindigent parents for expenses associated with such court-appointed counsel.

Very truly yours,

MIKE GREELY  
Attorney General