

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 1915

Short Title: Appointment of Counsel Funds. (Public)

Sponsors: Representatives Glazier, M. Alexander, Bordsen (Primary Sponsors); and Harrison.

Referred to: Judiciary II, if favorable, Appropriations.

May 20, 2010

A BILL TO BE ENTITLED
AN ACT TO APPROPRIATE FUNDS TO INCREASE ACCESS TO COUNSEL IN CIVIL
CASES, AS RECOMMENDED BY THE NORTH CAROLINA EQUAL ACCESS TO
JUSTICE COMMISSION.

Whereas, the North Carolina Constitution provision for open and fair civil courts and Tribunals of Justice is one of the fundamental guarantees of our constitutional democracy and an historic legacy of this State; and

Whereas, the greater availability of competent legal assistance is essential to making our courts and tribunals open and fair, especially when there are complex factual and legal issues, the nature of the interests affect shelter, sustenance, safety, health, or family integrity, and the potential consequences of the outcome on the unrepresented party may be severe; and

Whereas, civil legal representation is often necessary for individuals to protect such basic human needs as shelter, sustenance, safety, health, or family integrity; and

Whereas, many of our State's citizens cannot afford legal representation for cases involving vital decisions about their lives and families, and over one-third of North Carolinians, nearly 3.2 million persons, are now eligible for federally-subsidized legal assistance, which is not adequate to meet the great need; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-451 is amended by adding a new subsection to read:

"(g) In any civil case, the court may appoint an attorney to represent any person unable to afford counsel. In determining whether to exercise the discretion to appoint an attorney, the court shall consider the totality of circumstances relevant to the need for representation in the particular case, including such factors as:

(1) The complexity of the factual and legal issues in the case.

(2) The nature of the interests at stake, and particularly whether the case impacts basic human needs, including shelter, sustenance, safety, health, and family integrity.

(3) The severity of potential consequences that the outcome may have for the unrepresented party.

(4) The extent to which appointment of counsel in the case will assist in the administration of justice.

The court may revoke the appointment of counsel or take other appropriate action if the court determines that the allegation of poverty is untrue or the case is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.



1 The appointment of counsel as provided in this subsection and the procedure for
2 compensation shall comply with rules adopted by the Office of Indigent Defense Services.

3 The services provided for under this subsection are not intended to and shall not supplant
4 legal services resources supplied by any other source, and this subsection does not override the
5 local or national priorities of existing civil legal services programs."

6 **SECTION 2.(a)** The Office of Indigent Defense Services shall develop protocols
7 and make awards of twenty-five thousand dollars (\$25,000) each to three
8 geographically-dispersed judicial districts to establish a Provision of Counsel Committee in
9 each district to develop a plan to determine to what extent counsel is needed in civil cases
10 affecting basic human needs and the most efficient and effective method for doing so,
11 considering all existing and local resources.

12 **SECTION 2.(b)** The Provision of Counsel Committees chosen for each of the three
13 pilot projects shall evaluate the existing justice system in that judicial district to identify areas
14 of the law in which basic human needs are at stake, such as those involving shelter, sustenance,
15 safety, health, or family integrity, and shall determine where the provision of counsel is needed
16 to ensure that individuals in that district secure fair results. Such evaluation shall determine:

- 17 (1) The categories of cases requiring counsel.
- 18 (2) The subcategories of cases in which counsel is necessary as a result of being
19 contested, complex or urgent matters.
- 20 (3) The levels of financial need that should trigger the provision of counsel.
- 21 (4) The categories of individuals with limitations of literacy, disability, age, and
22 of other natures are in need of counsel.
- 23 (5) The costs of establishing a provision of counsel system in the particular
24 judicial district.

25 **SECTION 2.(c)** Each Provision of Counsel Committee shall consist of at least
26 seven members, including the senior resident superior court judge and the chief district court
27 judge. The senior resident superior court judge, in consultation with the chief district court
28 judge, shall appoint the remaining members, including at least the following:

- 29 (1) A clerk of court from the district.
- 30 (2) A representative from the judicial district bar association.
- 31 (3) A representative from the local established legal services provider as defined
32 in G.S. 7A-474.2(1a).
- 33 (4) A representative of State or local government.
- 34 (5) A representative of the North Carolina Equal Access to Justice Commission.

35 **SECTION 2.(d)** Each Provision of Counsel Committee shall prepare a written
36 report of its deliberations and findings and provide the report to the General Assembly no later
37 than April 1, 2011.

38 **SECTION 3.** There is appropriated from the General Fund to the Judicial
39 Department, Office of Indigent Defense Services, the sum of two hundred thousand dollars
40 (\$200,000) for the 2010-2011 fiscal year to provide counsel in cases pursuant to
41 G.S. 7A-451(g), as enacted in Section 1 of this act.

42 **SECTION 4.** There is appropriated from the General Fund to the Judicial
43 Department, Office of Indigent Defense Services, the sum of seventy-five thousand dollars
44 (\$75,000) for the 2010-2011 fiscal year to provide twenty-five thousand dollars (\$25,000)
45 grants to three judicial districts to establish a Provision of Counsel Committee to study and
46 develop a plan for provision of counsel in certain civil cases as provided in Section 2 of this
47 act.

48 **SECTION 5.** This act becomes effective July 1, 2010.