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WHERE OHIO IS THE INITIATING STATE IN A PROCEED-ING UNDER 3115., R. C., THE COURT MAY APPOINT COUN-SEL FOR PLAINTIFF AND FIX FEE FOR SAID SERVICE; HOWEVER, COURT NOT AUTHORIZED TO SO APPOINT IN PROCEEDINGS WHERE OHIO IS RESPONDING STATE— CHAPTER 3115., §3115.05, R.C.

SYLLABUS:

Where Ohio is the initiating state in a proceeding under Chapter 3115., Revised Code, the court may, pursuant to Section 3115.05, Revised Code, appoint the prosecuting attorney or other counsel to represent the plaintiff and fix the fee for such service, which fee is taxed as costs; however, said chapter does not authorize the court to so appoint in proceedings under the chapter where Ohio is the responding state.

Columbus, Ohio, September 14, 1961

Hon. Lynn B. Griffith, Jr., Prosecuting Attorney Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion is relative to fees for counsel with

reference to support of dependents under Sections 3115.05 and 3115.08, Revised Code, and asks:

"Can a prosecuting attorney or his representative be appointed to represent indigent plaintiffs and have fees taxed as costs:

- (a) At the initial hearing in the responding state, when Ohio is the responding state and/or—
- (b) At a hearing in which a defendant is cited for contempt in the responding state, when Ohio is the responding state."

Section 3115.05, Revised Code, provides in pertinent part :

"When it appears to the court by affidavit that the plaintiff has no means or property to provide for employment of counsel, the court may appoint the prosecuting attorney or other counsel to represent the plaintiff and fix the fee for such service, which fee shall be taxed as costs in said proceeding or the attorney of any agency or organization legally constituted for the welfare or protection of obligees may represent the plaintiff in any such proceeding.

It will be noted that under Section 3115.05, *supra*, authority is given to the court to appoint the prosecuting attorney or some other counsel for the plaintiff in an action for support pursuant to the provisions of Chapter 3115., Revised Code, provided an affidavit is presented to the court showing that the plaintiff does not have means to employ his own counsel. It is clear that this provision applies where Ohio is the *initiating* state.

Section 3115.08, Revised Code, sets out the steps required to be taken by the court when Ohio is the *responding* state, and reads:

"When the court of this state, acting as a responding state, receives from the court of an initiating state the copies as provided in section 3115.07 of the Revised Code, it shall:

(A) Docket the cause;

(B) Notify the prosecuting attorney or his representative who shall thereafter represent the initiating state;

(C) Set a time and place for a hearing and cause notice and/or summons conforming thereto, to be served on the defendant, setting forth time and pleading therein;

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(D) Take such action as is necessary to obtain jurisdiction." (Emphasis added)

Also to be considered is Section 3115.09, which provides :

"The court of this state when acting as the responding state may subject the defendant to such terms as the court deems proper to assure compliance with its orders which include:

(A) Requiring the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court deems proper to assure payment of any amount required to be paid by the defendant;

(B) Requiring the defendant to make payments at specified intervals to the clerk of the court, other persons designated by the court, or the obligee and to report personally to such clerk at such times as are necessary;

(C) Punishing a defendant who violates any order of the court as is provided by law for contempt of the court."

You will note that Section 3115.05, *supra*, is the only one in which provision is made for the appointment of counsel and the fixing of the fee, such fee to be taxed as costs. Sections 3115.08 and 3115.09, *supra*, which set out the proceedings and the authority of Ohio when acting as the responding state, are silent in this regard. I do not believe that the provision in Section 3115.08, *supra*, which requires the court to notify the prosecuting attorney or his representative, can be impliedly construed as giving the court the authority to appoint counsel and fix the fee which is to be taxed as costs. Such interpretation appears particularly unwarranted in view of the mandatory language used in such section with respect to the prosecuting attorney or his representative, to wit: "who shall thereafter represent the initiating state." In other words, the prosecuting attorney or his representative has no choice—he is required to appear at the proceedings when Ohio is the responding state, not directly for the plaintiff but as the representative of the initiating state.

As regards Section 3115.09, *supra*, wherein Ohio as the responding state is authorized, among other things, to punish the defendant for contempt if he should fail to obey any of the orders of the court, it must obviously be read together with Section 3115.08, *supra*. Since the duty of representation of the initiating state by the prosecuting attorney or his representative is already fixed in Section 3115.08, *supra*, by the use of the term "thereafter," it follows that the prosecuting attorney or his

representative must also represent the initiating state if and when a defendant is cited for contempt of court.

It accordingly appears that the task of representation in all such cases where Ohio is the responding state, must be regarded as one of the duties which the prosecuting attorney is obligated to perform in his official capacity.

In light of the foregoing, it is my opinion and you are advised that where Ohio is the initiating state in a proceeding under Chapter 3115., Revised Code, the court may, pursuant to Section 3115.05, Revised Code, appoint the prosecuting attorney or other counsel to represent the plaintiff and fix the fee for such service, which fee is taxed as costs; however, said chapter does not authorize the court to so appoint in proceedings under the chapter where Ohio is the responding state.

> Respectfully, MARK McElroy Attorney General