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Opinion No. 02-107

Consequence of Attorney Refusing Appointment by Juvenile Court to Represent Parent or Child

QUESTION

May an attorney practicing in the jurisdiction of a juvenile court refuse to accept an order of appointment to represent a parent or a child in a juvenile court proceeding on the ground that the attorney will no longer be practicing in juvenile court?

OPINION

An attorney who refuses a lawful juvenile court order of appointment commits, and may be punished for, contempt.

ANALYSIS

We could find no case law or other authority addressing the precise question you ask, but analogous Tennessee case law addressing attorneys' refusal of appointments to defend criminal defendants is instructive. As early as 1945, the Tennessee Supreme Court recognized a criminal court's authority to punish as contempt a lawyer's refusal to accept an appointment to defend a criminal defendant. *Schoolfield v. Darwin*, 185 S.W.2d 509, 510 (Tenn. 1945). In *State v. Jones*, 726 S.W.2d 515, 516-517 (Tenn. 1987), a county attorney refused appointment as attorney for a criminal defendant, relying on an ethics opinion that held that county attorneys could not represent criminal defendants prosecuted by county officers. The Court noted that trial judges were commanded by statute to appoint counsel for indigent criminal defendants and that disobedience of even an erroneous order was punishable as contempt, so long as the issuing court had jurisdiction. *Id.* at 517. It was irrelevant that the disobedient attorney was respectful and acted from a lofty motivation. *Id.* at 521. The Court added that an attorney aggrieved by an appointment is entitled to interlocutory review but must continue to represent the client during the pendency of interlocutory review. *Id.* at 520. Finally, in *State v. Smith*, 906 S.W.2d 6 (Tenn. 1995), the Supreme Court held that the principles announced in *Jones* apply to withdrawal as well as appointment of counsel and upheld the trial court's order denying defense counsel's motion to withdraw when the motion was based in part on defense counsel's assertion that their practices had become almost entirely civil. *Id*. at 906 S.W.2d at 8, 10, 11.

Read together, the cases indicate that, if a juvenile court has the authority to appoint counsel

and the authority to punish for contempt, an attorney commits contempt and faces sanctions if she refuses an appointment because she no longer intends to practice in juvenile court. In fact, as the following examples illustrate, a juvenile court is commanded or authorized by statute to appoint attorneys in certain circumstances. A juvenile court may appoint a guardian ad litem to represent a child in any proceeding. Tenn. Code Ann. § 37-1-149(a). A juvenile court must appoint a guardian ad litem to represent a child who is the subject of a physical or sexual abuse investigation or proceeding or whose parent is the subject of a termination of parental rights proceeding. Tenn. Code Ann. §§ 37-1-149(a) and 37-1-610(a); Rule 13, §1(d)(8) and (9), Rules of the Supreme Court. A juvenile court must appoint counsel for an indigent parent who requests counsel if allegations against the parent could result in the child being found dependent or neglected, or if a petition to terminate the parent's rights has been filed. Rule 13, §1(d)(7). In addition to its appointment powers, a juvenile court also possesses statutory authority to hold a person who disobeys its orders in contempt and punish that person by fine or imprisonment. Tenn. Code Ann. § 37-1-158. Because a juvenile court has the authority to appoint counsel and to punish disobedience of its orders as contempt, an attorney who refuses a juvenile court order of appointment commits, and may be punished for, contempt, regardless whether she intends to practice in that court in the future.

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