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WHERE OHIO IS THE INITIATING STATE IN A PROCEEDING UNDER 3115., R. C., THE COURT MAY APPOINT COUNSEL 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



(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