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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 174  
January 4, 1993

## MIRANDA/RIGHT TO COUNSEL

Reference: Raymond Carr  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1256  
P.2d  
October 16, 1992

### FACTS:

Carr and Sandra Y. lived together for many years and had two children, K.Y. and T.Y. Sandra also had a daughter, S.Y., from a previous relationship. Sometime in 1988, Carr and Sandra were imprisoned for unrelated crimes--Carr for assault and sale of simulated controlled substances; Sandra for forgery. The State placed the children in foster care and filed child-in-need-of-aid (CINA) proceedings to obtain formal custody of them. As the father of K.Y. and T.Y., Carr was a party to the CINA case. Carr's attorney in the assault and controlled-substance cases was eventually appointed to represent him also in the CINA case.

While the CINA case was pending, S.Y. reported to one of her foster parents that Carr had sexually abused her on numerous occasions when she was six years old. The matter was ultimately referred to Alaska State Troopers and Investigator Daniel Hickman was assigned to conduct the investigation.

Hickman contacted Sandra, who was still incarcerated, and persuaded her to cooperate. Hickman obtained a Glass (see Legal Bulletin No. 16) warrant and Sandra then telephoned Carr, who also was still incarcerated. Hickman monitored and recorded the call, during which time Carr admitted that he had sexually abused S.Y. Sandra did not inform Carr that the call was being monitored by Hickman. The following day, Hickman contacted Carr at the institution where he was being held, advised him of his Miranda rights and obtained a waiver. Carr made additional incriminating statements.

Prior to trial, Carr moved to suppress his statements to Sandra and Hickman. He argued that, because he was incarcerated and Sandra was acting on behalf of Hickman, Sandra's telephone conversation with him amounted to custodial interrogation and therefore should have been preceded by a Miranda warning. He also claimed that, since he was represented by counsel in the pending CINA case, Sandra's trooper-instigated telephone call to him amounted to a

violation of his right to counsel. He also claimed that Hickman's interview violated his right to counsel.

ISSUE NO. 1:

Did the interrogations of Carr occur under circumstances amounting to Miranda custody?

HELD: No.

ISSUE NO. 2:

Did the telephone interview by Sandra and the in-person interview conducted by Investigator Hickman violate Carr's right to counsel?

HELD: No.

REASONING:

1. It is undisputed that Sandra placed her telephone call to Carr at the behest of the troopers; therefore, Carr's incriminating statements to her resulted from police interrogation, as she was acting as their agent.

2. Miranda custody exists when there are inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.

3. Miranda warnings are required for police interrogation conducted under circumstances in which a reasonable person would feel he was not free to leave and break off the questioning.

4. Incarceration, in and of itself, will not automatically trigger the Miranda warning requirement.

5. The record contains nothing to indicate that Carr was under any degree of compulsion in electing to accept Sandra's call nor that he was in any way inhibited from terminating the call.

6. In light of the totality of the circumstances surrounding Carr's telephone conversation with Sandra, it seems virtually inconceivable that Carr's statements were the product of "coercion resulting from the interaction of custody and official interrogation." Carr was not in Miranda custody when he spoke with Sandra and he need not have been informed by her of his Miranda rights. (emphasis added)

7. The right to counsel is not triggered by purely investigative

police efforts; before a person may claim the right, the State must take some type of formal adversary action, changing the person's status from that of a suspect to that of an "accused" in a criminal prosecution.

8. The right to counsel is case-specific: the fact that it has attached in a particular case does not entitle the accused to demand representation in connection with factually and legally unrelated matters in which the State has made no accusation and taken no adversary action.

9. When Sandra and Hickman spoke with Carr, the State was still in the early stages of investigating the report of sexual abuse.

10. The CINA proceeding and the sexual abuse investigation were not sufficiently related to vest Carr with the right to counsel in the sexual abuse case.

NOTES:

Review of Section P of the Legal Briefs Manual is recommended--especially those cases having to do with custody versus non-custody issues and the right to counsel (there are a number of them: e.g., Thiel v. State, Legal Bulletin No. 125; Murray v. State, Legal Bulletin No. 148; Kochutin v. State, Legal Bulletin No. 161; and Moss v. State, Legal Bulletin No. 166).

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section L, "Participant Monitoring," and Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 174 numerically under Section R of the manual.