

Pennsylvania Rules of Juvenile Court Procedure

PART B(2) COUNSEL

150. Attorney -- Appearances and Withdrawals

151. Assignment of Counsel

152. Waiver of Counsel

RULE 150. ATTORNEYS – APPEARANCES AND WITHDRAWALS

A. Appearances.

1) Counsel for the juvenile shall file an entry of appearance with the clerk of courts promptly after being retained, and serve a copy on the attorney for the Commonwealth and the juvenile probation office.

a) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.

b) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

2) When counsel is appointed pursuant to Rule 151 (Assignment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

B. Duration. Once an appearance is entered or the court assigns counsel, counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw pursuant to paragraph (C).

C. Withdrawals.

1) Upon motion, counsel shall be permitted to withdraw only:

a) by order of the court for good cause shown; or

b) if new counsel has entered an appearance in accordance with paragraph (A).

2) A motion to withdraw shall be:

a) filed with the clerk of courts, and a copy concurrently served on the attorney for the Commonwealth and the juvenile; or

b) made orally on the record in open court in the presence of the juvenile.

COMMENT

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the juvenile reaches the age of twenty-one. See 42 Pa.C.S. §§ 6302, 6352.

Under paragraph (C)(1)(a), a court can terminate an attorney's representation if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation are met, as provided for in Pa.R.P.C. 1.16.

Under paragraph (C)(1)(b), because the attorney for the Commonwealth and the juvenile probation officer will be on notice of the identity of the new attorney, they should comply with the

discovery requirements of Rule 340.

Under paragraph (C)(2), counsel is to file a motion to withdraw in all cases. Counsel's obligation to represent the juvenile, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. *See, e.g., Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). The court is to make a determination of the status of the case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine if new counsel needs to be appointed, and that the change in attorneys will not delay the proceedings or prejudice the juvenile, particularly concerning time limits.

See also Rule 631 for termination of court supervision.

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed for juveniles when there is a conflict of interest. *See* Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 150 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective April 1, 2008.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 150 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 150 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008).

RULE 151. ASSIGNMENT OF COUNSEL

All juveniles are presumed indigent. If a juvenile appears at any hearing without counsel, the court shall appoint counsel for the juvenile prior to the commencement of the hearing.

COMMENT

Although this rule contemplates a presumption of indigency which may be rebutted, the guardian's income and resources are not to be utilized. There is an inherent risk that the legal protections afforded juveniles could be eroded by making legal representation dependent upon the limited financial resources of their guardians, particularly where guardians have an income just above the poverty guidelines. Additionally, the unwillingness of guardians to expend their resources should not determine the juvenile's opportunity to have counsel. There is also a risk that the attorneys hired by guardians might rely upon the guardians for decision making in a case rather than upon the juvenile as the law requires.

The juvenile is the client.

Generally pursuant to this rule, the court is to assign counsel in every case in which the juvenile has appeared without counsel. However, the court may give the juvenile a reasonable opportunity to retain a private attorney of the juvenile's choosing if the juvenile so desires.

Counsel may be present at an intake conference or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. *See* Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005. Amended May 16, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 151 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 151 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

RULE 152. WAIVER OF COUNSEL

A. Waiver requirements. A juvenile who has attained the age of fourteen may waive the right to counsel if:

- 1) the waiver is knowingly, intelligently, and voluntarily made; and
- 2) the court conducts a colloquy with the juvenile on the record; and
- 3) the proceeding for which waiver is sought is not one of the following:
 - a) detention hearing pursuant to Rule 242;
 - b) transfer hearing pursuant to Rule 394;
 - c) adjudicatory hearing pursuant to Rule 406, including the acceptance of an admission pursuant to Rule 407;
 - d) dispositional hearing pursuant to Rule 512; or
 - e) a hearing to modify or revoke probation pursuant to Rule 612.

B. Stand-by counsel. The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

C. Notice and revocation of waiver. If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

COMMENT

Because of the ramifications of a juvenile record, it is important that every safeguard is taken to ensure that all constitutional and procedural guarantees and rights are preserved. Juveniles should not feel pressured to waive counsel or be the subject of any proactive pursuit for obtaining a waiver.

In determining whether the waiver of counsel is knowingly, intelligently, and voluntarily made, the court, on the record, is to ask the juvenile questions to elicit: 1) the reasons why the juvenile wants to waive counsel; 2) information regarding the juvenile's: a) age; b) maturity; c) education; d) mental health issues, if any; and e) any current alcohol or drug issues that may impair the juvenile's decision-making skills; 3) the juvenile's understanding of the: a) right to an attorney, including the provisions of Rule 151; b) juvenile's role when proceeding *pro se*; c) allegations in the petition against the juvenile; d) possible consequences if the juvenile is found delinquent; 4) whether the juvenile consulted with the juvenile's guardian; and 5) whether the juvenile consulted with an attorney.

If it is determined that the juvenile has not knowingly, intelligently, and voluntarily waived counsel, the court immediately is to appoint counsel for the juvenile. If it is determined that the juvenile has made a knowing, intelligent and voluntary waiver, the court may appoint stand-by counsel for all proceedings.

This rule is not meant to preclude the guardian's presence at any hearing. Indeed, the presence and active participation of a guardian should be welcomed. During the colloquy which is the subject of this rule, the court should feel free to elicit information from the guardian. As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interest of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Additionally, Rule 150(B) provides that once an appearance is entered or the court assigns counsel, counsel is to represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw. See Pa.R.J.C.P. 150(B). Notwithstanding the provisions of paragraph (A)(3), a juvenile fourteen years of age or older may make or file a motion pursuant to Rule 344(E) for alternative relief, for example, when the juvenile subscribes to a protected formal belief system which prohibits attorney representation. Pursuant to paragraph (C), if waiver of counsel is revoked, the court is to appoint counsel before proceeding.

Official Note: Rule 152 adopted April 1, 2005, effective October 1, 2005. Amended January 11, 2012, effective March 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 152 published with the Court's Order at 42 Pa.B. 547 (January 28, 2012).#