

## **RULE 152. WAIVER OF COUNSEL**

A. **Waiver requirements.** A juvenile who has attained the age of fourteen may [not] waive the right to counsel [unless]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**

[It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

- 1) Whether the juvenile understands the right to be represented by counsel;
- 2) Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;
- 3) Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;
- 4) Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
- 5) Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;
- 6) Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;
- 7) Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and

- 8) **Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.]**

**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[s] 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 41 Pa.B. -(-).**