

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 151 be adopted and prescribed. These proposed modifications address the presumption of indigence for juveniles.

The following *Explanatory Report* highlights the intent of this Rule. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the Rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the *Explanatory Reports*.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, February 1, 2011.

11/29/2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

EXPLANATORY REPORT

Background

The intent of this Rule, as originally drafted, was that all juveniles receive appointed counsel. The Committee decided to use the language of the Juvenile Act which states that the court is to appoint counsel if “the juvenile is without financial resources or otherwise unable to employ counsel.” The Committee interpreted the “*otherwise unable to employ counsel*” to cover all situations when a juvenile did not have counsel.

The following is an excerpt from the original *Explanatory Report* when the court adopted the Rules of Juvenile Court Procedure - Delinquency Matter on April 1, 2005:

This rule provides that the court is to assign counsel. If the Public Defender decides in a county that it will not represent a juvenile, the court may still assign “private” counsel for the juvenile. This rule does not say that the juvenile is entitled to a Public Defender. As a practical matter, the county may choose to have all juveniles represented by the Public Defender’s Office because it is more cost effective than private counsel.

In some counties, the juvenile is not receiving counsel as anticipated. The practice in these counties is not to offer representation to a juvenile unless: 1) there was an application for services; and 2) the Poverty Guidelines were met based on the parent’s income.

To eliminate this misconception and clarify the Rule’s intent, modifications are being proposed.

Rule Discussion

The primary change to this Rule is that the juvenile is presumed indigent. It is also noted that every presumption may be rebutted. As stated in the Committee’s previous *Explanatory Report* discussed *infra*, the Rule does not say that every juvenile is entitled to a Public Defender but, rather to counsel.

The Public Defender is to look at the juvenile’s income, not the guardian’s income. The juvenile is the client and needs representation in these cases. Because it is believed that 99% of juveniles will qualify, the Rule provides for the presumption that juveniles are indigent.

As stated in the Interbranch Commission on Juvenile Justice (ICJJ) Report, there is an inherent risk that the legal protections afforded juveniles could be eroded by making that legal representation dependent on the limited financial

resources of their parents, particularly when parents have an income just above the poverty guidelines. Additionally, the unwillingness of parents to expend their resources should not determine the juvenile's opportunity to have counsel. (Report pg. 50).

The Committee believes that a conflict of interest results from using the parents' income to determine whether the juvenile will be eligible for an attorney.

There are also situations in which the juvenile may wish to obtain private counsel on their own. The court may give the juvenile a reasonable opportunity to obtain such counsel.

RULE 151. ASSIGNMENT OF COUNSEL

[A. General.] All juveniles are presumed indigent. If a juvenile appears, at any proceeding, without counsel [does not enter an appearance for the juvenile], the court shall inform the juvenile of the right to **appoint counsel for the juvenile prior to [any] the proceeding. [In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel.]**

[B. Time.

- 1) If the juvenile is detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the detention hearing.**
- 2) If the juvenile is not detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the adjudicatory hearing.]**

COMMENT

This Rule contemplates presumption of indigency which may be rebutted. 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 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 rely upon the juvenile as the law requires. Therefore, the guardians' income is not to be utilized for determining indigence.

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 obtain a private attorney of the juvenile's choosing if there has been an indication of this desire.

Even if a waiver of counsel colloquy is completed and the court is satisfied that the juvenile may waive counsel pursuant to Rule 152, the juvenile is to have counsel to complete the waiver colloquy and thereafter, as stand-by counsel.

Counsel may be present at an intake hearing 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.

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).