

PENNSYLVANIA RULES OF JUVENILE COURT PROCEDURE

DELINQUENCY MATTERS - 2013

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).

RULE 407. ADMISSIONS

A. Admissions. At any time after a petition is filed, the juvenile may tender an admission to some or all of the delinquent acts charged.

1) Requirements.

- a) Before the court can accept an admission, the court shall determine that the admission is knowingly, intelligently, and voluntarily made.
- b) As a part of this determination, the court shall ensure:
 - i) an attorney has reviewed and completed the admission colloquy with the juvenile pursuant to paragraph (C); and
 - ii) there is a factual basis for the admission.
- c) At the hearing, the court shall conduct an independent inquiry with the juvenile to determine:
 - i) whether the juvenile understands the nature of the allegations to which he or she is admitting and understands what it means to admit;
 - ii) whether the juvenile understands that he or she has the right to a hearing before the judge and understands what occurs at a hearing;
 - iii) whether the juvenile is aware of the dispositions that could be imposed and the consequences of an adjudication of delinquency that can result from an admission;
 - iv) whether the juvenile has any questions about the admission; and
 - v) whether there are any other concerns apparent to the court after such inquiry that should be answered.

2) Agreements. If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) Court action. If the court accepts the tender, the court shall enter an order incorporating any agreement. If the court does not accept the tender, the case shall proceed as if no tender had been made.

4) Limitations on withdrawals. An admission may be withdrawn prior to the court entering the dispositional order. After the court has entered the dispositional order, an admission can be withdrawn only upon a demonstration of manifest injustice.

B. Incriminating statements. An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

C. Written admission colloquy. If a juvenile is making an admission, the colloquy shall be:

- 1) in writing;
- 2) reviewed and completed with the juvenile by an attorney;
- 3) submitted to and reviewed by the court; and
- 4) substantially in the following form:

1 of 4 _____ Initials **ADMISSION FORM**

In re : _____ **JD** _____
(Juvenile) :

: **Delinquent Act(s):** _____
: _____
: _____
: _____

Answer all of the questions on this form. If you do not understand any question, leave it blank and ask your lawyer or the judge.

I admit that I did the following things (attorney shall list the delinquent acts, grading of acts, and counts): _____

General Information:

1) What is your full name? _____

2) Do you have any other name or nickname? _____

If yes, state: _____

3) How old are you today? _____

4) What grade are you in? _____

5) Can you read, write, and understand English? _____

a) If you cannot read, has someone read this form to you? _____
If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

b) If you do not read English, have you been given a translator or a lawyer who speaks your language? _____

c) Did your translator or lawyer read this form to you and explain it? _____
If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

2 of 4 _____ Initials

Knowing and Voluntary Admission:

6) Are you now a patient in a mental hospital or institution? _____

- a) If yes, where? _____
- b) Are you being treated for a mental illness (which is an illness that causes you to see a doctor for different behavior)? _____
- c) If yes, what are you being treated for? _____

7) Have you taken any drugs or alcohol yesterday or today that do not make you think clearly? _____

If yes, specify type of drugs and/or alcohol: _____

8) Has anyone threatened or forced you to sign this form? _____

If yes, explain: _____

9) Have you been promised anything for this admission? _____

If yes, explain: _____

Understanding the Admission:

10) Has your lawyer told you what you did was against the law (delinquent act)?

11) By admitting what you did, do you understand that you are giving up:

a) the right to be presumed innocent, which means the judge does not think you broke the law until the D.A. (District Attorney) proves beyond a reasonable doubt that you broke the law (a reasonable doubt is a belief that it is very possible you did not break the law); _____

b) the right to a hearing by a fair judge, which means the judge will listen to what everyone has to say and look at all the evidence before deciding; _____

c) the right to remain silent and your silence cannot be held against you, which means you will not be punished for not speaking; _____

d) the right to be heard, which means you may tell the judge your side of the story if you want; _____

e) the right to face and cross-examine witnesses, which means you can ask all witnesses questions; _____

f) the right to present witnesses or evidence to help tell your side of the story, but you do not have to do anything; _____

3 of 4 _____ Initials

- g) the right to challenge evidence against you, which means you tell the judge you disagree with something; _____
- h) the right to make objections and ask for rulings, which means the judge decides if he or she should hear certain evidence; and _____
- i) the right to have another court, which is an appellate court, review this judge's decision. _____

12) Do you understand if the judge accepts your admission and believes you need help ("treatment, rehabilitation, and supervision"), the judge may find you delinquent, which means that you broke the law and need help? _____

Possible Consequences of Adjudication of Delinquency:

13) Do you understand that if you are found delinquent, the judge may make you pay money and place you outside of your home or on probation until you turn 21 years old?

14) Are you aware that if you are admitting to _____ that your driving license will be suspended now or in the future (which means you will not be able to drive)?
(lawyer shall write acts on this line, cross off, or write n/a).

15) Do you understand that this case can be used against you in the future? For example, if you break the law again, you may get a longer sentence in jail. _____

16) Do you understand that if you are found delinquent, other people may find out about it? You may also have to tell people, including colleges, military recruiters, or employers?

17) Do you understand that if you are not a U.S. citizen, it may cause problems, which could include being forced to leave the U.S.? _____

Admission Agreements:

18) Are you aware that the judge does not have to accept any agreement between you and the D.A.? _____ (write n/a if no agreement)

Appeals:

19) If you are found delinquent after this admission, you can have a higher court review your case for three reasons:

- a) Your admission was not knowingly, intelligently, and voluntarily made, which means you did not understand this admission or were forced to admit; _____

4 of 4 _____ Initials

- b) The court did not have jurisdiction, which means it was not the proper court to take your admission; or _____
- c) The judge's disposition of the charge(s), which means what the judge is going to do with you (like a sentence in adult court), is more than the biggest punishment an adult would get for the same crime. _____

If you do not admit, do you understand you have other rights? _____

Lawyer's Representation and Opportunity to Speak with Guardian

20) Are you okay with what your lawyer did for you and how he or she explained everything? _____

21) Did you talk with your parent or guardian about admitting the charge(s)? _____

I promise that I have read this whole form or someone has read this form to me. I understand it. I am telling the truth. I am saying that I have done the things on page 1. I believe that this admission is best for me. The signature below and initials on each page of this form are mine.

JUVENILE

DATE

I, _____, lawyer for the juvenile, have reviewed this form with my client. My client has told me and I believe that he or she understands this form.

LAWYER FOR JUVENILE

DATE

COMMENT

Under paragraph (A)(1), the court is to determine if the admission is knowingly, intelligently, and voluntarily made by asking questions to ascertain the juvenile's ability to comprehend the written colloquy and to make an admission.

The written colloquy serves as an aid for the court in making its determination that the admission is knowingly, intelligently, and voluntarily made and it does not supplant the court's responsibility to conduct a sufficient inquiry to support its determination pursuant to paragraph (A)(1).

Nothing in this rule prohibits the judge from reviewing the entire written colloquy with the juvenile on the record or asking more questions than required under paragraph (A)(1)(c).

The admission colloquy is similar to a guilty plea colloquy in criminal court; however, the juvenile court judge has special responsibilities under the Juvenile Act in providing a balanced attention to the protection of the community, the imposition of accountability for delinquent acts committed, and the development of competencies to enable juveniles to become responsible and productive members of the community. See 42 Pa.C.S. § 6301.

If the court finds an admission is not knowingly, intelligently, and voluntarily made, the case is to proceed to a hearing pursuant to Rule 406. The decision whether an admission is knowingly, intelligently, and voluntarily made is not appealable to another common pleas judge; therefore, the admission may not be presented to another judge once this determination has been made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

If the court does not accept an agreement or finds an admission not to be knowingly, intelligently, and voluntarily made, a motion for recusal of the judge may be appropriate for the adjudicatory hearing.

Pursuant to paragraph (C), an attorney is to review the written admission colloquy with the juvenile prior to entering the courtroom. The practice in some judicial districts permitting the juvenile probation officer to review this colloquy with the juvenile is inconsistent with this rule.

The colloquy uses several age-appropriate terms for the juvenile to understand; however, certain legal terms are contained in the form. It is expected that attorneys will explain this form until their clients understand.

Pursuant to paragraph (C)(4), the admission colloquy is to be substantially in this form. The questions set forth are the minimal standard. A judicial district may choose to add requirements to its admission colloquy. Any addition to the required colloquy is considered a local rule and the procedures of Rule 121 are to be followed if a judicial district chooses to make additions. See Rule 121.

Nothing in this rule precludes the court from entering a consent decree after the acceptance of an admission.

The admission colloquy can be downloaded from the Supreme Court's webpage at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>. The admission form is also available in Spanish.

The Pennsylvania Juvenile Collateral Consequences checklist is also available on the Supreme Court's webpage.

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005. Amended January 18, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 407 published with the Courts' Order at 42 Pa.B. 664 (February 4, 2012).