

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 3 AND 5]

Order Amending Rules 151, 362, and 512 of the Rules of Juvenile Court Procedure; No. 531 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 16th day of May, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 7038 (December 11, 2010), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 7, No. 2, December 24, 2010), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 151, 362, and 512 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2011.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 151. Assignment of Counsel.

[*A. General. If*] All juveniles are presumed indigent. If a juvenile appears at any hearing 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 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*] the commencement of the hearing.

[*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

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 finan-

cial 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 [**hearing**] 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:

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Final Report explaining the amendments to Rule 151 published with the Court's Order at 41 Pa.B. 2685 (May 28, 2011).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

Rule 362. Requirements of the Summons.

The summons shall:

* * * * *

3) instruct the juvenile [**about**] of the juvenile's right to **retain private counsel or be appointed counsel** [, and if the juvenile is without financial resources or otherwise unable to employ counsel, the right to assigned counsel];

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Official Note: Rule 362 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 16, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 362 published with the Court's Order at 41 Pa.B. 2685 (May 28, 2011).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

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Comment

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Pursuant to paragraph (C), the court is to advise the juvenile of his or her appellate rights orally in the courtroom on the record. The court is to explain the right to **retain private counsel or be appointed counsel for an appeal if a juvenile is without counsel [, and without the financial resources or otherwise unable to employ counsel]**. See 42 Pa.C.S. § 6337; see also Rule 150(B) for duration of counsel and Rule 151 for assignment of counsel.

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Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. **Amended May 16, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2685 (May 28, 2011).

EXPLANATORY REPORT

May 2011

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 151, 362, and 512 with this Recommendation. The changes are effective July 1, 2011.

Background

The intent of this rule, as originally drafted, was that the court must appoint counsel for all juveniles who appeared without counsel.

The Committee originally decided to incorporate 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.” 42

Pa.C.S. § 6337. The Committee interpreted the “otherwise unable to employ counsel” to include situations when a juvenile did not have counsel.

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

To eliminate any confusion and clarify the rule’s intent, modifications to Rules 151, 362, and 512 have been made.

Rule 151

The primary change to Rule 151 is the juvenile’s presumed indigence. As noted in the Comment, this is a rebuttable presumption.

The Public Defender is to consider the juvenile’s income, not the guardian’s income and resources. The juvenile is the client and needs legal representation in these cases. Because it is believed that the majority of juveniles will qualify, the rule provides for the presumption of indigency.

In the Interbranch Commission on Juvenile Justice (ICJJ) Report, the ICJJ noted 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.¹

The Committee believes that a conflict of interest may result from using the parents’ income and resources to determine whether the juvenile will be eligible for a court-appointed attorney.

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

Rules 362 and 512

In light of the proposed changes to Rule 151, Rules 362 and 512 have been modified to delete “if the juvenile is without financial resources or otherwise unable to employ counsel.”

[Pa.B. Doc. No. 11-870. Filed for public inspection May 27, 2011, 9:00 a.m.]

¹ Interbranch Commission on Juvenile Justice, Report, May 2010, at page 50.