

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULE 44 AND ADDING RULE 44.1

OF THE FAMILY COURT RULES OF CRIMINAL PROCEDURE

This 16th day of February 2017, **IT IS ORDERED THAT:**

1. Rule 44 shall be amended as follows:

Rule 44. Appointment of counsel for adults.

(a) Appointment of counsel. -- If the person charged appears in Court without counsel, the Court shall advise of the right to counsel and, in every case in which the law requires and in any other case in which the Court deems it appropriate, the Court shall appoint counsel to represent the person charged at every stage of the proceeding unless the person charged elects to proceed without counsel or is able to obtain counsel. ~~A waiver of the right to counsel by a child shall be in writing unless made in Court on the record or made in the presence of the child's custodian.~~ The Court may appoint the Chief Defender to represent a person charged if it finds at or after arraignment that the person charged, ~~and if the person charged is a child the custodian as well,~~ is indigent; ~~if the person charged is an indigent child who wishes counsel but whose custodian is not indigent but has refused to obtain counsel for the child,~~ the Court may appoint counsel to represent the child at the expense of the child's custodian.

2. Rule 44.1 shall be added as follows:

Rule 44.1. Appointment of counsel for juveniles.

- (a) Right to counsel. -- A juvenile against whom delinquency proceedings have been initiated shall have the right to counsel at all stages.
- (b) Appointment of counsel where juvenile not represented. -- If a juvenile is not represented by counsel at his or her initial Family Court appearance, the Court shall order the Chief Defender to assign counsel to represent the juvenile.

(c) Cases in which the right to counsel may not be waived. -- The juvenile's right to be represented by counsel under subsection (a) of this Rule shall not be waived:

- (1) By a juvenile of any age where the delinquent act the juvenile is accused of is a felony.
- (2) By a juvenile of any age who is in the custody of the Division of Family Services.
- (3) By a juvenile who is younger than 16 years of age at the time of the attempted waiver.
- (4) By a juvenile whose family member, guardian, or custodian is the alleged victim of the delinquent act or whose interest is determined by the Court to be adverse to the juvenile's interest.

(d) Waiver of counsel. -- In cases not listed in subsection (c) of this Rule, the juvenile may waive the right to counsel only after following the procedures of this subsection of the Rule.

The following shall be the sole method of waiver by a juvenile of his or her right to counsel:

- (1) If the juvenile wishes to waive his or her right to counsel, the juvenile shall be fully and effectively informed, through an in-person meeting with counsel, of the disadvantages of self-representation.
- (2) If, after this meeting, the juvenile still wishes to waive the right to counsel, the Court shall conduct an in-court hearing to determine whether the waiver is knowing, intelligent, and voluntary. The juvenile shall bear the burden of proving the waiver is knowing, intelligent, and voluntary by clear and convincing evidence.
- (3) In determining whether a juvenile's waiver is knowing, intelligent, and voluntary, the Court shall consider the circumstances surrounding the waiver, including, but not limited to:
 - A. The juvenile's mental and emotional health and maturity;
 - B. Whether the juvenile understands the consequences of the waiver;
 - C. Whether the juvenile understands the seriousness of the offense;

- D. Whether the juvenile understands the potential, direct and collateral consequences of being adjudicated delinquent of the offense;
 - E. Whether the parent, guardian, or custodian understands the consequences to the juvenile of the waiver; and
 - F. Whether the waiver of the right to counsel is the result of any coercion, force, or inducement.
- (4) Before the Court may accept the waiver, the juvenile must provide to the Court a written statement, signed by both the juvenile and his or her parent, guardian, or custodian, affirming that the juvenile has followed the procedures of this Rule and understands the rights he or she is waiving and the potential consequences of the waiver.
- (5) 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.

3. This amendment shall be effective after 30 days notice to members of the Bar.