

RULE 36. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL**Rule 36.01. Right to Representation**

Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.

Rule 36.02. Appointment of Counsel

Subd. 1. Child. Appointment of counsel for a child who is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes, section 260C.163, subdivision 3. Appointment of counsel for an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(b). The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 2. Parent, Guardian, Legal Custodian, or Indian Custodian. Appointment of counsel for a parent, guardian, or legal custodian whose child is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes, section 260C.163, subdivision 3. Appointment of counsel for a parent or Indian custodian of an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(b). For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 3. Reimbursement. Whenever counsel is appointed for a child, parent, guardian, or custodian, the court shall make all inquiries required by Minnesota Statutes, section 260C.331, subdivision 5, into the ability to pay for counsel's services, and may make any orders as authorized by that statute.

Subd. 4. Child's Preference. In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings pursuant to Minnesota Statutes, section 260C.163, subdivision 3, paragraph (g), if the child is of suitable age to express a preference.

Rule 36.03. Notice of Right to Representation

Any child, parent, legal custodian, or Indian custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to this rule.

Rule 36.04. Certificate of Representation

An attorney representing a client in a juvenile protection matter, other than a public defender, a court-appointed attorney, or a county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 36.05. Withdrawal or Discharge of Counsel

An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:

(a) all district court proceedings in the matter have been completed, including filing and resolution in district court of all post-trial motions under Rules 21 and 22;

(b) the attorney has been discharged by the client in writing or on the record;

(c) the court grants the attorney's motion for withdrawal, which may be ex parte, upon good cause shown; or

(d) the court approves the attorney's written substitution of counsel, which may be ex parte.

(Amended effective January 1, 2024.)

2019 Advisory Committee Comment

Rule 36 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 25. The amendments are not intended to substantively change the rule's meaning.

Rule 36.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court-appointed counsel as described in Rule 36.02. Rule 36.02, subd. 4 reiterates the court's statutory responsibility to inquire into a child's preferences regarding the proceedings when the child is not represented by counsel.

Former Rule 25.03 governed reimbursement for the costs of court-appointed counsel, and has been moved to Rule 36.02, subd. 3 for clarity. Former Rule 25.02, subd. 3 governed appointment of counsel for guardians ad litem, and has been removed because counsel for guardians ad litem are now provided by the Minnesota State Guardian ad Litem Program.

*Pursuant to Rule 36.05(a), courts should not discharge counsel until there has been an opportunity to file and resolve post-trial motions. The Minnesota Court of Appeals has held that counsel should not be discharged before proceedings have concluded. See, *In re M.L.A.*, 730 N.W.2d 54, 62 (Minn. Ct. App. 2007).*