

Rule 25. Right to Representation; Appointment of Counsel**25.01 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.

(Amended effective January 1, 2004.)

1999 Advisory Committee Comment (amended 2003)

Rule 25.01 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 provided in Rule 25.02.

Rule 25.02 Appointment of Counsel

Subdivision 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, paragraphs (a) to (e). 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 (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 2. Parent, Legal Custodian, or Indian Custodian. Appointment of counsel for a parent or legal custodian whose child is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes, section 260C.163, subdivision 3, paragraphs (a) to (g). 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). The appointment of counsel for the parent, legal custodian, or Indian custodian 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 (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

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, if the child is of suitable age to express a preference.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

25.03 Reimbursement

When counsel is appointed for a child, the court may inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's

fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

25.04 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 Rule 25.

(Amended effective July 1, 2014.)

25.05 Certificate of Representation

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

25.06 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 of all post-trial motions under Rules 45 and 46;
- (b) the attorney has been discharged by the client in writing or on the record;
- (c) the court grants the attorney's ex parte motion for withdrawal upon good cause shown; or
- (d) the court approves the attorney's ex parte written substitution of counsel.

If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.

(Amended effective January 1, 2007.)