

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.

EXPLANATORY REPORT MAY 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."

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