

Criminal Rule 6.1

Release Conditions at IA

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Outline

- Current Rule provisions with no substantive change
- Previous Rule
- Current Rule



Outline

- Issues Precipitating Discussion
- Ethical Concerns
- Proposed Rule
- Legal Paraprofessionals
- Notice and Complaint



Rule 6.1 (Other Than 6.1(b) and (f))

(a) Right to Be Represented by Counsel. A defendant has the right to be represented by counsel in any criminal proceeding. The right to be represented by counsel includes the right to consult privately with counsel, or the counsel's agent, as soon as feasible after a defendant has been taken into custody, at reasonable times after being taken into custody, and sufficiently in advance of a proceeding to allow counsel to adequately prepare for the proceeding.

Rule 6.1 (Other Than 6.1(b) and (f))

(c) Waiver of Right to Counsel. A defendant may waive the right to counsel if the waiver is in writing and if the court finds that the defendant's waiver is knowing, intelligent, and voluntary. After a defendant waives the right to counsel, the court may appoint advisory counsel for the defendant at any stage of the proceedings. In all further matters, the court must give advisory counsel the same notice that is given to the defendant.

Rule 6.1 (Other Than 6.1(b) and (f))

(d) Unreasonable Delay in Retaining Counsel. If a defendant appears at a proceeding without counsel, the court may proceed if:

- (1) the defendant is indigent and has refused appointed counsel; or
- (2) the defendant is not indigent and has had a reasonable opportunity to obtain counsel.

Rule 6.1 (Other Than 6.1(b) and (f))

(e) Withdrawal of Waiver. A defendant may withdraw a waiver of the right to counsel at any time. But the fact that counsel is later appointed or retained does not alone establish a basis for repeating any proceeding previously held or waived.

(g) Definition of Indigency. For the purposes of this rule, “indigent” means a person who is not financially able to retain counsel.

Rule 6.2(a)

The presiding judge of each county must establish a procedure for the superior court and limited jurisdiction courts to appoint counsel for indigent defendants.

What Rule 6.1(b) Said Before

(b) Right to Appointment of an Attorney.

(1) *As of Right.* An indigent defendant is entitled to a court-appointed attorney:

(A) in any criminal proceeding that may result in punishment involving a loss of liberty; or

(B) for the limited purpose of determining release conditions at or following the initial appearance, if the defendant is detained after a misdemeanor charge is filed.

What Rule 6.1(b) Said Before

(b) Right to Appointment of an Attorney.

...

(2) *Discretionary.* In any other criminal proceeding, the court may appoint an attorney for an indigent defendant if required by the interests of justice.

What Rule 6.1(b) Says Now

(b) Right to Appointment of an Attorney.

(1) *As of Right.* An indigent defendant is entitled to a court-appointed attorney:

(A) in any criminal proceeding that may result in punishment involving a loss of liberty;

(B) for the limited purpose of determining release conditions at or following the initial appearance, if the defendant is detained after a misdemeanor charge is filed; **or**

What Rule 6.1(b) Says Now

(C) if the defendant is held on bond at the initial appearance.

(2) *Discretionary.* In any other criminal proceeding, the court may appoint an attorney for an indigent defendant if required by the interests of justice.

Issues

- Right to Counsel
- Why Appoint Counsel
- When to Appoint Counsel
- Scope of Representation
- Withdrawal of Counsel
- IA on Case from Another Jurisdiction

Ethical Issue?

➤ Discussion Between Court and Defendant

- *Is the conversation inherently coercive? (Rule 2.6(B))*
- *Ex parte implications? (Rule 2.9)*

➤ Waiver of Right to Counsel After Appointment

➤ Acceptance of Plea at IA

The Proposal

(b) Right to Appointment of an Attorney.

(1) *As of Right.* An indigent defendant is entitled to a court-appointed attorney in any criminal proceeding:

~~(A) in any criminal proceeding~~ that may result in punishment involving a loss of liberty; or

~~(B) for the limited purpose of determining release conditions at or following the initial appearance, if the defendant is detained after a misdemeanor charge is filed; or~~

~~(C) B) if the defendant is held on~~ while incarcerated because of a bond imposed at the initial appearance. The appointment will terminate upon the defendant's release from incarceration unless otherwise required by law or ordered by the court

Legal Paraprofessionals

Rule 6.1(f) Right to Be Represented by a Legal Paraprofessional.

A defendant may be represented by a legal paraprofessional in criminal cases and proceedings as provided in ACJA § 7-210. This does not affect the right to appointment of an attorney under (b)(1)(B). A legal paraprofessional must be permitted to consult privately with the defendant as soon as feasible after a defendant has been taken into custody, at reasonable times after being taken into custody, and sufficiently in advance of a proceeding to allow a legal paraprofessional to adequately prepare for the proceeding. A legal paraprofessional must comply with all duties in Rule 6.3(a), (c), and (d).

Legal Paraprofessionals

ACJA Part 7, Chapter 2, § 7-210:

Paragraph F(1) identifies “authorized services”

- Prepare and sign legal documents
- Provide specific advice, opinions, or recommendations about legal rights, remedies, defenses, options or strategies
- Draft and file documents
- Appear before a court or tribunal on behalf of a party, including mediation, arbitration and settlement conferences, and
- Negotiate legal rights or responsibilities for a person or entity

Legal Paraprofessionals

Supreme Court Rule 31.3(e)(4): May perform services in accordance with Code of Judicial Administration. The provisions are in **Part 7, Chapter 2, Section 7-210:**

Paragraph F(2) identifies the relevant scope and areas of practice as follows:

- Any civil limited jurisdiction matter in LJ court
- Any IA or limited purpose of release conditions
- Any misdemeanor action where jail is not an issue in LJ court

Legal Paraprofessionals

Code of Judicial Administration, **Part 7, Chapter 2, Section 7-210:**

Paragraph F(2) Criminal Law. Legal paraprofessionals may render authorized services:

Legal Paraprofessionals

Code of Judicial Administration, Part 7, Chapter 2, Section 7-210:

- (1) At any initial appearance, or, when the defendant is not represented by counsel in subsequent criminal proceedings, for the limited purpose of advocating for release of a defendant from pretrial detention.
- (2) For criminal misdemeanor matters before a municipal or justice court of this state where, upon conviction, a penalty of incarceration is not at issue, whether by law or by agreement of the prosecuting authority and trial court.

Rule 6.7: Appointment of Experts?

(a) Appointment. On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, and/or, in a felony matter, a mitigation specialist for an indigent defendant at county or city expense.

13-3903 – Notice to Appear and Complaint

Can an Arizona Traffic Ticket and Complaint issued for violation of a misdemeanor pursuant to 13-3903 be used as a long form complaint?

- Rule 2.1 R. Cr. Pr.
- Rule 2.3, R. Cr. Pr.

Questions?

Thoughts?

Feelings?

