



MINNESOTA JUDICIAL TRAINING UPDATE



DEFENDANT'S DEMAND FOR SUBSTITUTE PUBLIC DEFENDER

QUESTION: What is the appropriate judicial response if Defendant complains about his assigned Public Defender and demands a substitute attorney? What basic rules and procedures apply?

WRONG RESPONSE: The following are 3 real-life examples of what a presiding judge should **NEVER** tell a complaining Defendant:

1. Once the Court appoints the Public Defender, only the Chief Public Defender can replace the assigned Public Defender. State v. Lamar, 474 N.W.2d 1,3 (Minn. App. 1991); or
2. You can discharge your Public Defender and hire private counsel or represent yourself but the Court cannot, under any circumstance, give you a replacement attorney; State v. Lenoir, No. A10-1357 (Minn. App. Unpublished, May 31, 2011); or
3. The Court only has authority to appoint the Public Defender; if you're unhappy with your assigned attorney, you must direct your complaints to the Chief Public Defender, the rules do not allow for substitution of counsel. Cf State v. Vance, 254 N.W.2d 353, 359 (Minn. 1977).

WARNING: The Court cannot avoid this problem by cavalierly referring Defendant's complaints back to the Chief Public Defender pursuant to local practice or by asserting a perceived lack of authority to address the issue.

GENERAL RULE:

- 1) An indigent Defendant has a Constitutional right to effective assistance of Counsel;
- 2) The Court is obligated to furnish an indigent Defendant with a capable attorney, but the Defendant must accept the assigned attorney;
- 3) A request for substitution will be granted only if “exceptional circumstances” exist and the demand seems reasonable.

NOTE: If substitution is ordered, the case should be referred back to the Chief Public Defender for re-assignment.

THREE STEP PROCEDURE: When ruling on Defendant’s demand, the Court should follow a three-step analysis:

1. **SEARCHING INQUIRY:** When Defendant raises “serious allegations of inadequate representation,” the Court should conduct a “searching inquiry” before ruling on the Defendant’s request for substitution;
2. **ABILITY OR COMPETENCE STANDARD:** This is the legal standard to apply when evaluating a Defendant’s request for substitution. State v. Gillam, 629 N.W.2d 440 (Minn. 2001). The Supreme Court refers to this as the “Ability or Competence” standard;
3. **EXCEPTIONAL CIRCUMSTANCES:** Exceptional circumstances are those that affect a court-appointed attorney’s “ability or competence” to represent the client. A request for substitution will be granted only if “exceptional circumstances” exist and the demand seems reasonable.

NOTE: All 3 of the above legal requirements are further explained below.

1) SEARCHING INQUIRY:

The nature and scope of the “searching inquiry” is subject to Court discretion and is dependent on how serious the allegations are being raised by the Defendant. There are no hard and fast rules that apply, only general guidelines. For example:

- a. A record should be made whenever a Defendant and counsel disagree on significant matters of tactics or strategy in a manner that would protect the attorney-client relationship and the procedural safeguards of the criminal justice system. State v. Clark, 722 N.W.2d 460, 464 n.2 (Minn. 2006);
- b. The most serious allegations may require the need for testimony, although no appellate decision has ever required that;
- c. In most cases a thorough on-the-record discussion and colloquy between the Court, Defendant and the assigned attorney addressing whether the appointed Public Defender conducted a proper investigation, was prepared for trial, maintained contact with the Defendant, etc., is usually sufficient.

2) ABILITY OR COMPETENCE STANDARD:

This is a stringent standard that may be difficult for Defendants to establish. On the other hand, a strict standard is necessary to prevent Defendants from delaying proceedings by substituting counsel for trivial reasons.

NOTE: Minnesota has rejected the Federal standard which defines “exceptional circumstances” as “a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant,” stating the Federal standard is too stringent.

3) THE FOLLOWING ARE NOT EXCEPTIONAL CIRCUMSTANCES:

NOTE: There are no appellate decisions defining what actually constitutes exceptional circumstances: only examples of what it does not constitute.

- a) General dissatisfaction with court-appointed counsel's representation and assessment of the case, which included disagreements about trial strategy. State v. Gillam, 629 N.W.2d 440, 449 (Minn. 2001);
- b) Defendant complaining that attorney had not contacted him for more than 3 weeks and he disagreed with counsel's decisions regarding which witnesses to call and what evidence to gather. State v. Hazelton, A11-262, Unpublished (Minn. App. Feb. 13, 2012);
- c) A personality conflict or "personal tension" between Defendant and his court-appointed counsel (claim of attorney belittling and yelling at Defendant). State v. Voorhees, 596 N.W.2d 241 (Minn. 1999);
- d) Defendant complaining that his Public Defender did not put forth effort to help him, did not contact potential witnesses, did not prepare a defense, lacked interest in his case, waived his speedy trial right without his permission, and smiled and smirked at him. State v. Lenoir, No. A10-1357 (Minn. App. Unpublished, May 31, 2011).

NOTE: In State v. Gillam, supra, the Court stated "Although in certain circumstances an indigent Defendant's disagreements or dissatisfaction with his court-appointed attorney could affect the court-appointed attorney's ability or competence in representing the Defendant, we see no evidence suggesting that this happened here." Supra at 450.

RESOURCES: Matthew Frank, Managing Attorney, Trial & Appellate Division, Minnesota Attorney General's Office; State v. Gillam, 629 N.W.2d 440 (Minn. 2001); State v. Clark, 722 N.W.2d 460, 464 (Minn. 2006); State v. Lenoir, No. A10-1357 (Minn. App. Unpublished, May 31, 2011); State v. Hazelton, A11-262, File No. 27-CR-09-9371 (Minn. App. Unpublished, February 13, 2012).