

Rule 23. Right to Representation; Appointment of Counsel**23.01 Right to Representation**

Every party has the right to be represented by counsel in an adoption matter, including through appeal if any. This right attaches no later than when the party first appears in court.

23.02 Appointment of Counsel

Subdivision 1. Adoptee. Pursuant to Minnesota Statutes, section 259.65, in any adoption matter the court may appoint an attorney for the person being adopted. The court may inquire into the ability of the adopting parent to pay for the attorney's services and, after giving the adopting parent a reasonable opportunity to be heard, may order the adopting parent to pay the attorney's fees.

Subd. 2. Putative Father. Pursuant to Minnesota Statutes, section 259.52, subdivision 12, upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, shall be appointed counsel at public expense.

2004 Advisory Committee Comment

Rule 23.01 sets forth the basic principle that each party appearing in court has the right to be represented by counsel. Each party, however, does not necessarily have the right to court appointed counsel as provided in Rule 23.02. The phrase "at public expense" is not defined in the statute.

Rule 23.01, subdivision 1, is consistent with Minnesota Statutes, section 259.65, which provides: "In any adoption proceeding, the court may appoint an attorney or guardian ad litem, or both, for the person being adopted. The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed,....provided that such parents be given a reasonable opportunity to be heard."

Rule 23.02, subdivision 2, is consistent with Minnesota Statutes, section 259.52, subdivision 12, which provides: "Upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator must have counsel appointed at public expense."

23.03 Representation of Responsible Social Services Agency

In any adoption matter in which the Commissioner of Human Services is the legal guardian for the child, the responsible social services agency shall be represented by its county attorney.

23.04 Biological Parent Counsel in Direct Placement Adoption

Subdivision 1. Right to Counsel. Pursuant to Minnesota Statutes, section 259.47, subdivision 5, in a direct placement adoption, upon the request of a biological parent, separate legal counsel shall be made available to the biological parent at the expense of the prospective adoptive parents for legal services provided in a direct placement adoption. The prospective adoptive parent shall be required to provide legal counsel for only one parent unless the biological parents elect joint legal representation.

Subd. 2. Waiver of Right to Counsel. A biological parent may waive the right to counsel only by written waiver signed and filed with the court at the time the biological parent's consent to the adoption is executed pursuant to Minnesota Statutes, section 259.47, subdivision 7.

Subd. 3. Expiration of Right to Counsel. The right to legal counsel shall continue until consents become irrevocable, but not longer than seventy (70) days after placement. If the parent's consent

to adoption has not been executed within sixty (60) days of placement, the right to counsel under Rule 23 and Minnesota Statutes, section 259.47, subdivision 5, shall end at that time.

Subd. 4. Dual Representation Prohibited. Representation of a biological parent and a prospective adoptive parent by the same attorney is prohibited.

(Amended effective January 1, 2007.)

23.05 Certificate of Representation

An attorney representing a client in an adoption 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.

23.06 Withdrawal of Counsel

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

- (a) all proceedings in the matter have been completed;
- (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; 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.

23.07 Appointment of Counsel in Adoption Involving an Indian Child

Subdivision 1. Parent or Indian Custodian. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding.

Subd. 2. Indian Child. The court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

(Added effective January 1, 2007.)