

Rule 9. Appointment and Role of Counsel

(a) Appointment by the Committing Court. Immediately upon the filing of a petition for commitment or early intervention the court shall appoint a qualified attorney to represent the respondent at public expense at any subsequent proceeding under Minnesota Statutes, chapter 253B or 253D. An attorney shall represent the respondent until the court dismisses the petition or the respondent is discharged from commitment, and the conclusion of any related appeal.

(b) Private Counsel. The respondent may employ private counsel at the respondent's expense. If private counsel is employed, the court shall discharge the appointed attorney.

(c) Withdrawal. In order to withdraw, counsel must file a motion and obtain the appointing court's approval. Upon approval of withdrawal, the court shall appoint substitute counsel for respondent.

(d) Duty of Counsel. Counsel for the respondent is not required to file an appeal, commence any proceeding, or advance a position asserted in a filing made by the respondent under Minnesota Statutes, chapter 253B or 253D, if, in the opinion of counsel, there is an insufficient basis for proceeding.

(Amended effective September 18, 2013; amended effective October 1, 2016.)

Advisory Committee Comment - 2016 Amendments

The amendments regarding appointment of counsel ensure that committed individuals are continuously represented by counsel during commitment proceedings and during all times the individual is under commitment. No individual should be without counsel while under commitment.

The amendments regarding the duty of counsel recognize the challenges at times faced by counsel in representing individuals proposed for or subject to commitment by balancing counsel's ethical responsibility to ensure that arguments, positions, and pleadings are meritorious with the responsibility to be a vigorous advocate for the individual. When an individual is indeterminately committed, an important responsibility of counsel is to assist the individual in periodically petitioning for a reduction in custody to ensure neutral review of the individual's commitment status.