

Announcement
Amendments to Rules 44 and 44.1 of the
Family Court Rules of Criminal Procedure

By an Order dated February 16, 2017 and effective April 10, 2017, the Delaware Family Court has amended Rules 44 and 44.1 of the Family Court Rules of Criminal Procedure.

The amendments recognize the important role that an attorney serves for juveniles involved in delinquency proceedings and provide safeguards to ensure that constitutional and procedural rights of the juvenile are protected. The amendments remove juveniles from the general rule regarding appointment of attorneys (Rule 44) and create a standalone rule concerning appointment of attorneys for juveniles (Rule 44.1).

Rule 44.1 requires that an attorney be appointed for any juvenile who appears without an attorney at his or her initial Family Court appearance. The rule also establishes that in some circumstances a juvenile will not be permitted to waive his or her right to an attorney. These circumstances include: (1) when the alleged act is a felony, (2) when the juvenile is in the custody of the Division of Family Services, (3) when the juvenile is under the age of 16, and (4) when the juvenile's family member, guardian, or custodian is the alleged victim or otherwise has an interest that may be in conflict with the juvenile's interest. When waiver is allowed, the rule further provides the procedure by which a juvenile may waive his or her right to an attorney. The procedure requires that the juvenile discuss the decision with an attorney and that the waiver be knowing, intelligent, and voluntary. Finally, the rule provides that a juvenile may revoke his or her waiver at any time.