

RIGHT TO COUNSEL IN MISDEMEANOR & ORDINANCE CASES



State Bar
of Georgia

It is critical for courts to establish procedures that allow defendants to obtain legal counsel in a timely and reasonable manner. Procedures should facilitate prompt invocation of the right to counsel, processing of applications for appointed counsel, assignment of counsel and initial meeting between defense counsel and client. Defense counsel should have the time necessary to investigate the case and provide the client advice prior to critical stages of the criminal process, including prior to arraignment and prior to trial.

NOTIFICATION OF THE RIGHT TO COUNSEL AT THE EARLIEST POSSIBLE TIME

Defendants should be clearly notified they have the right to hire an attorney, or to have counsel appointed to represent them if they are unable to afford an attorney. This notification should be given as early as possible—at the time of citation or arrest. It should also be done in writing at the time the defendant is released on bail.

NOTIFICATION OF APPLICATION OR LEGAL REPRESENTATION FEE WAIVER

If the jurisdiction charges fees for applying for or receiving the services of defense counsel, it must be made clear the court will waive ANY such fee for persons who are unable to pay or for whom paying the fee would create a hardship. This should be explained at the same time any notifications are given regarding such fees.

CONTENT OF THE NOTIFICATION OF THE RIGHT TO COUNSEL

Notification of the right to counsel should include:

- Instructions explaining how and where to apply for/obtain appointed counsel.
- The name of the person or office in charge of appointments.
- Instructions for how to contact them, how to obtain application forms, when to expect a request for counsel to be answered and how to contact counsel once an application is approved.
- Advice counsel should be obtained well before any court date.

COUNSEL SHOULD BE MADE AVAILABLE SUFFICIENTLY IN ADVANCE OF COURT SO COUNSEL IS ABLE TO EFFECTIVELY REPRESENT THE DEFENDANT IN COURT

Defendants should be able to contact counsel and to meet with counsel sufficiently in advance of court to allow counsel time to prepare for court. Every effort should be made to avoid appointing counsel on the day of court and resolving cases that same day.

KNOWLEDGE OF THE RIGHT TO COUNSEL

For the purpose of waiver, Defendants should understand and be made aware of the following:

1. The right to a lawyer includes the right to a lawyer's assistance with plea negotiations, entering a guilty plea, trial, sentencing and appeal.
2. The nature of the charges.
3. Any statutory lesser included offenses.
4. The range of possible punishments including the possibility of alternative sentencing options, pre-trial diversion and first offender sentences.
5. Possible collateral consequences of conviction including suspension of driving privileges, immigration consequences, and the possibility of other consequences depending on the person's individual circumstances.
6. Possible defenses to the charges.
7. Possible mitigating circumstances.
8. Any other facts necessary for a broad understanding of the matter.

WAIVERS OF THE RIGHT TO COUNSEL

Waivers of the right to counsel may be accepted in lieu of actual legal representation. However, waivers may not be accepted unless the court first makes a finding the waiver is knowing and voluntary. For a waiver to be "knowing," the person must be aware of the right itself and the "dangers of proceeding without counsel."

ACCEPTING WAIVERS OF THE RIGHT TO COUNSEL

Waivers of counsel are not enforceable on a silent record. If, after being sufficiently knowledgeable of the benefit of counsel, the defendant desires to waive the right to counsel, the court must engage in an individual colloquy and make a determination, supported by findings of fact, the waiver is knowing, intelligent and voluntary. A written record evidencing the court's colloquy with the defendant and the court's findings must be signed by the court and made part of the official record of the case. Written waiver of the right to counsel on a plea agreement or other written waiver document is likely not a sufficient record without specific findings by the court.

Prepared by: State Bar Indigent Defense Committee (specifically, Nicki Vaughan, Chair, and Russell Gabriel, Chair, Indigent Defense in Misdemeanor Courts Project)



SERVING SELF-REPRESENTED LITIGANTS

Judicial Council of Georgia/
Administrative Office of
the Courts

Access to Justice
Committee

Every year, more than a million people represent themselves in Georgia courts. Because they are unfamiliar with the legal system, they often ask questions of you, our court staff. It is important that you give them accurate legal information without giving them legal advice.

HOW DO YOU DO THAT?

YOU CAN provide legal information

- You may explain and answer questions about how the court works.
- You may provide them with the phone number for the local lawyer referral service, law library, self-help center or other appropriate referral.
- You may give them general information about court rules, procedures and practices.
- You may provide court schedules and information on how to get a case scheduled.
- You may provide them information from their own case files.
- You may provide them with court-approved forms and court-approved instructions.
- You may answer general questions about court deadlines and how to compute them.

YOU CANNOT provide legal advice

- Do not tell them whether their case should be filed in your court.
- Do not tell them what words to use in their court papers (but you can follow a judge's direction to check the papers for completeness).
- Do not tell them what to say in court.
- Do not give an opinion about what will happen if they bring their case to court.
- Do not talk to the judge for them or otherwise intercede with a judge on their behalf.
- Do not tell them how to complete the forms you provide.
- Do not tell them their specific deadline or relevant statute of limitations.

WHEN TAKING ACTION

CONSIDER:

- Legal information explains the law and the legal system in general terms. It is not case-specific.
- Legal advice applies the law to a particular situation. It recommends the best course of action for that situation to achieve that person's goals.
- Note: Courts should consider issuing a standing order authorizing court personnel in the jurisdiction to rely on, distribute or otherwise display the attached "Serving Self-Represented Litigants Counter Card."