

“Phone Psychics” and “Theatrical Understud[ies]:”  
Standby and Advisory Counsel.  
Criminal Justice Institute  
August 23, 2017

Matthew Frank  
Assistant Attorney General  
[Matthew.frank@ag.state.mn.us](mailto:Matthew.frank@ag.state.mn.us)  
(651) 757-1448

## Substitute Counsel

Hearing?

“substantial complaints”

“serious allegations of inadequate representation”

## Substitute Counsel

“exceptional circumstances . . .  
timely and reasonably made”

“ability or competence”

## Advisory/Standby Counsel

Rule 5.04, subd. 2

court may appoint if waives right  
2 purposes

## Advisory/Standby Counsel

Rule 5.02, subd. 2(1)

“concerns about fairness”

state on record

Rule 5.02, subd. 2(1)

“concerns about fairness”

advise both:

- > defendant right to decide how and when
- > decisions may affect later request to assume representation

Rule 5.02, subd. 2(2)

“concerns about delays . . . potential disruption . . . complexity or length of trial . . .”

state on record

Rule 5.02, subd. 2(2)

must advise both counsel will assume representation if:

- a) defendant become so disruptive as to be waiver
- b) defendant requests it

*State v. Chavez-Nelson* (Minn. 2016)

Facts

*State v. Chavez-Nelson* (Minn. 2016)

- 1) when appoint under rule, can't ignore rule

*State v. Chavez-Nelson* (Minn. 2016)

- 1) Rule-based right to have advisory counsel assume representation  
– denial was error

*State v. Chavez-Nelson* (Minn. 2016)

- 2) No 6<sup>th</sup> Amendment violation, so no structural error

*State v. Chavez-Nelson* (Minn. 2016)

3) Harmless error

Minn. Stat. § 611.26, subd. 6

“The district public defender must not serve as advisory counsel or standby counsel.”

## Role of Advisory/Standby Counsel

Matthew Frank  
Assistant Attorney General  
[Matthew.frank@ag.state.mn.us](mailto:Matthew.frank@ag.state.mn.us)  
(651) 757-1448