

“Phone Psychics” and “Theatrical Understud[ies]:”
Standby and Advisory Counsel.
Criminal Justice Institute
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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 6th 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

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