

Right to Counsel in District Court

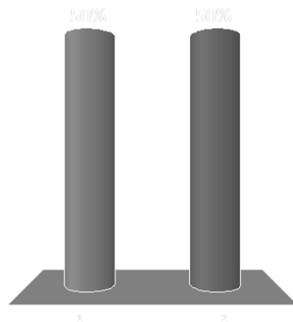
John Rubin
UNC School of Government
June 2013

If you want to impose a sentence of imprisonment in a misdemeanor case

You must afford a person the opportunity to be represented by counsel

The “imprisonment” rule applies to civil contempt proceedings

1. True
2. False



Exceptions

- You must afford a person the right to counsel in all felony cases, regardless of the possibility of imprisonment
- You do not have to afford a person the right to counsel in cases involving summary proceedings for direct criminal contempt
- We'll talk about waiver later

If you don't afford the opportunity for counsel when required

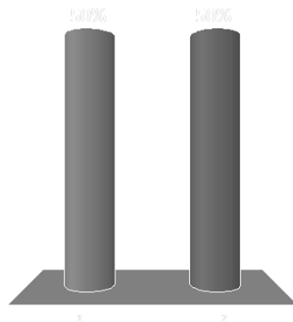
You may not impose imprisonment

Example

- On June 1, the defendant appears in district court on a misdemeanor. The defendant is indigent and requests counsel, but the judge finds it unlikely that the defendant will receive a sentence of imprisonment and denies counsel. The case is continued and comes before you on June 22. You do not revisit the earlier counsel decision and, after hearing the evidence, conclude that a suspended sentence of imprisonment and probation is appropriate.

Is a suspended sentence of imprisonment permissible?

1. Yes
2. No

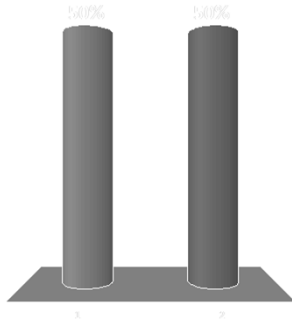


Example

- Disregarding Professor Rubin's advice (it's ok, I'm used to it), you impose a suspended sentence of imprisonment. Thereafter, the defendant violates probation. The defendant requests and receives counsel for the probation violation hearing. In light of the violations, you have the full range of imprisonment options under the JRA: revocation, confinement in response to violation, quick dip, split sentence, and contempt.

Is imprisonment permissible?

1. Yes
2. No

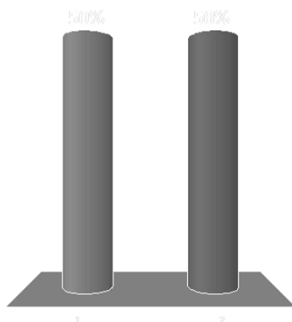


Example

- 10% of the judges follow Professor Rubin's advice and, when the misdemeanor was initially heard and the defendant convicted, they impose a fine only because the defendant was not afforded the opportunity for counsel. The defendant fails to pay the fine and is brought back before the court.

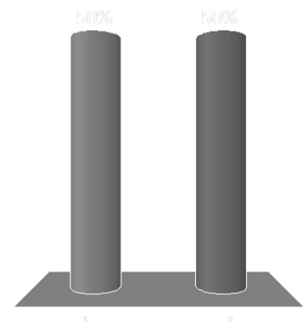
Is imprisonment permissible?

1. Yes
2. No



Does a defendant have a right to counsel at the "unpaid fine" hearing?

1. Yes
2. No

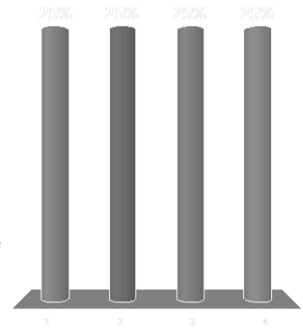


The right to counsel attaches at initial appearance before a magistrate

After the right to counsel attaches, the defendant must be afforded the opportunity for appointed counsel within a reasonable time

How do you do appointments for jailed defendants on misdemeanors?

1. First appearances are held for misdemeanors and felonies
2. The court is notified within 48 hours if the defendant has no counsel
3. Appointment is not made until the defendant's regular court appearance
4. Something else

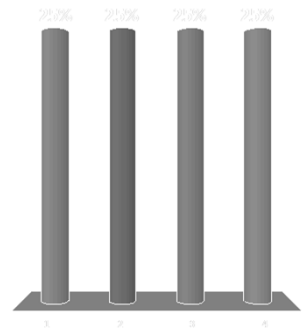


A defendant may represent himself or herself in a criminal case

If he or she validly waives counsel

In which cases must a respondent proceed through counsel?

1. Delinquency
2. Commitment
3. Both
4. Neither

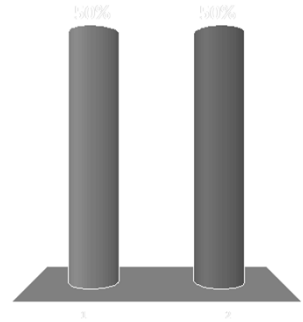


Example

- On June 1, the defendant appears before you for the first time in an impaired driving case and says he is going to hire his own lawyer. He signs the AOC waiver form, checking the box that he is waiving his right to appointed counsel. You continue the case to June 22, when the defendant appears without counsel. The defendant says nothing about counsel and appears ready to proceed.

May you proceed without a waiver of retained counsel?

- Yes
- No

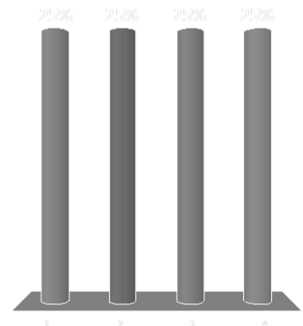


Example

- Same example (on June 1, defendant waives appointed counsel and says he's going to hire a lawyer), except on June 22 the defendant says he couldn't get a lawyer and wants appointed counsel.

What do you do?

- Appoint and continue case
- Require showing of good cause
- Refuse to appoint and proceed with case
- Something else

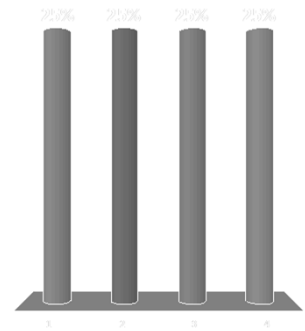


A valid waiver must meet statutory and constitutional standards

The defendant must (1) be clearly advised of the right to counsel, (2) clearly and unequivocally express the desire to proceed without counsel, and (3) knowingly, intelligently, and voluntarily waive the right to counsel

Which is a valid advisement of the right to counsel?

1. A general announcement at the start of court
2. Individual inquiry by the prosecutor
3. Individual inquiry by the judge
4. Something else

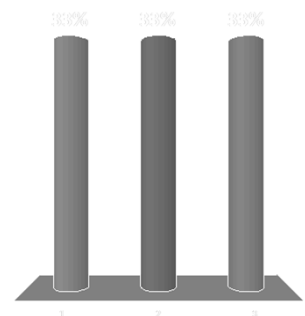


Example

- A defendant files a motion for appropriate relief to vacate a district court conviction from 1999 based on a right to counsel violation. He alleges that he did not have counsel and didn't waive counsel. The records have long since been destroyed so there is no evidence, other than the defendant's assertion, about whether his right to counsel was honored.

How would you rule?

1. Vacate the conviction because, with no written record, the State has the burden of showing a valid waiver
2. Deny the motion based on the "presumption of regularity" unless the defendant produces more evidence
3. Something else



Attorneys fees must be ordered against an indigent defendant

Only if the defendant is convicted

Example

- An indigent defendant is charged with a misdemeanor and, by virtue of his appointed attorney's remarkable legal skills and work, gets a sweet (and lawful) deal to an infraction only.

Is it permissible to order the defendant to repay attorneys' fees?

1. Yes
2. No

