

## MINNESOTA JUDICIAL TRAINING UPDATE



**QUESTION: When a Defendant demands a new public defender in the middle of a criminal case, what is the trial judge legally required to do — and what common mistakes can create reversible error?**

Every Judge and public defender will eventually be faced with an angry Defendant who, for whatever reason, is upset with their assigned PD and demands a new attorney. Before I explain the basic rules and procedures that apply, I first need to stress what the Court SHOULD NOT do!

**WARNING:** The Court cannot avoid this problem by cavalierly referring Defendant's complaints back to the Chief Public Defender pursuant to local practice or by asserting a perceived lack of authority to address the issue.

### Three examples of what a judge should NOT tell a complaining Defendant:

1. "Once the Court appoints the Public Defender, only the Chief Public Defender can replace the assigned Public Defender" (error); *State v. Lamar*, 474 N.W.2d 1,3 (Minn. App. 1991); see also *State v. Shepersky*, 718 N.W.2d 559, 564–65 (Minn. App. 2006);
2. "You can discharge your Public Defender and hire private counsel or represent yourself, but the Court cannot, under any circumstance, give you a replacement attorney" (error); *State v. Hohlen*, No. A11-1880 (Minn. App. 2012) (nonprecedential; cited for persuasive discussion); see also *State v. Shepersky*, 718 N.W.2d at 564–65);
3. "The Court only has authority to appoint the Public Defender; if you're unhappy with your assigned attorney, you must direct your complaints to the Chief Public Defender" (error); Cf. *State v. Vance*, 254 N.W.2d 353, 358–59 (Minn. 1977); see also *State v. Shepersky*, 718 N.W.2d at 564–65.

### THREE GENERAL RULES THAT ALWAYS APPLY

**GENERAL RULE #1:** The right to counsel does NOT give an indigent Defendant the right to choose a particular appointed attorney. *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013)

**GENERAL RULE #2:** Substitute counsel is required ONLY when exceptional circumstances exist, and the request is timely and reasonably made. *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998); *State v. Munt*, at 586–87.

**GENERAL RULE #3:** "Exceptional circumstances" are those affecting counsel's ability or competence; general dissatisfaction, strategy disagreements, or personality conflict are not enough. *State v. Gillam*, 629 N.W.2d 440, 449–50 (Minn. 2001).

## WHEN RULING ON DEFENDANT'S DEMAND, THE COURT SHOULD FOLLOW A THREE-STEP APPROACH

### STEP ONE: SEARCHING INQUIRY

- 1) **When Defendant raises “serious allegations of inadequate representation,”** the Court should conduct a “searching inquiry” before ruling on the Defendant’s request for substitution. *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013).
- 2) **However, if the Defendant merely expresses general dissatisfaction** or disagreement with counsel and does not raise serious allegations affecting counsel’s “ability or competence”, the Court is not required to conduct a searching inquiry. *State v. Woods*, 961 N.W.2d 238, 247 n.7 (Minn. 2021).
- 3) **The nature and scope of the “searching inquiry” is subject to Court discretion** and depends on the seriousness of the allegations raised by the Defendant. There are no hard and fast rules that apply, only general guidelines. The focus is whether the record is sufficient to allow appellate review of whether “exceptional circumstances” exist. *Munt*, supra. For example:

a) **A record should be made:**

- i) whenever a Defendant and counsel disagree on significant matters of tactics or strategy in a manner that would protect the attorney-client relationship. *State v. Clark*, 722 N.W.2d 460, 464 n.2 (Minn. 2006).
- ii) The Court should require the Defendant to articulate specific complaints rather than general dissatisfaction, so the record clearly reflects the nature of the allegations.



- b) **In rare cases involving specific factual allegations** that cannot be resolved through colloquy, the Court may consider sworn testimony; however, Minnesota appellate decisions generally do not require testimony so long as the record demonstrates that the Court adequately addressed the allegations. See *Munt*, supra.
  - c) **In most cases a thorough on-the-record discussion** and colloquy between the Court, Defendant and the assigned attorney addressing whether the appointed Public Defender conducted a proper investigation, was prepared for trial, maintained contact with the Defendant, etc., is usually sufficient.
  - d) **Counsel should be permitted to respond** in a manner that avoids disclosure of privileged attorney-client communications; when necessary, the Court may use limited in-camera inquiry to protect privilege while ensuring an adequate record.
- 4) **After completing the inquiry, the Court should make an express finding** on the record whether the Defendant has raised “serious allegations of inadequate representation,” as this determination controls whether further inquiry or substitution analysis is required under *Munt* and *Woods*. (See Step Three below for Required Findings.)

## STEP TWO: “ABILITY OR COMPETENCE” STANDARD AND “EXCEPTIONAL CIRCUMSTANCES”

1. **“Ability or Competence”** is the legal standard to apply when evaluating a Defendant’s request for substitution. *State v. Gillam*, at 449–50 (Minn. 2001). The district Court must grant a request for substitute appointed counsel “only if **exceptional circumstances** exist and the demand is **timely** and **reasonably made**.” *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). The defendant bears the burden of establishing exceptional circumstances.
2. **“Exceptional circumstances”** are those that affect appointed counsel’s “ability or competence” to represent the client. *Gillam*, 629 N.W.2d at 449–50; *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013).



This is a stringent standard that may be difficult for Defendants to establish. On the other hand, a strict standard is necessary to prevent Defendants from delaying proceedings by substituting counsel for trivial reasons. *See Worthy*, 583 N.W.2d at 278–79.

**NOTE (Federal / Eighth Circuit test):** Minnesota has declined to adopt the Eighth Circuit’s more stringent test for “justifiable dissatisfaction” (often phrased as “a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication”). Minnesota instead applies the Gillam “ability or competence” standard. *State v. Ali*, No. A05-2016 (Minn. App. Dec. 26, 2006) (nonprecedential; cited for persuasive discussion) (declining to adopt Eighth Circuit test as “more stringent” than Minnesota’s standard); *see also Gillam*, 629 N.W.2d at 449–50.

#### **THE FOLLOWING ARE NOT EXCEPTIONAL CIRCUMSTANCES**

There are no appellate decisions defining what constitutes exceptional circumstances: only examples of what it does not constitute. Most appellate decisions apply the “Ability or Competence” standard through concrete examples of what does *not* qualify as exceptional circumstances. *Gillam*, 629 N.W.2d at 449–50; *Worthy*, 583 N.W.2d at 278–79.

For Example:

- a) General dissatisfaction with Court-appointed counsel’s representation and assessment of the case, including disagreements about trial strategy (insufficient). *State v. Gillam*, at 449–50 (Minn. 2001); *State v. Worthy*, at 279 (Minn. 1998).
- b) Defendant complaining about lack of effort, and “not fighting” for me, or dissatisfaction with counsel’s handling of the case, and general complaints that do not show impairment of counsel’s ability or competence. (insufficient). *State v. Benniefield*, 668 N.W.2d 430, 434–35 (Minn. App. 2003).
- c) Personality conflict or “personal tension” between Defendant and his Court-appointed counsel, including claims that the attorney belittled or yelled at the Defendant. (insufficient). *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999).

## STEP THREE – DECISION AND REQUIRED FINDINGS

After completing Step One (Searching Inquiry) and applying Step Two (Ability or Competence - Exceptional Circumstances standard), the Court must make specific findings on the record and then rule on the request.

**Note:** Denial of Substitute counsel is reviewed for abuse of discretion.

### A) SIX FINDINGS THE COURT SHOULD MAKE (Sample Judicial Script)

**Finding #1 (What is being requested):** “The Defendant requests appointment of substitute Court-appointed counsel (a substitute public defender).”

**Finding #2 (When / posture):** “The request is made on [date] at [hearing stage—pretrial/omnibus/day of trial/during trial] and granting it would [require continuance / change scheduling / not affect trial date].”

**Finding #3 (Serious allegations determination):**

- “The Defendant (does / does not) voice serious allegations of inadequate representation.”
- If “does not”: “Because the complaints amount to general dissatisfaction / strategy disagreement / personal tension, the Court is not required to conduct a further searching inquiry.”
- If “does”: “The Court conducted a searching inquiry on the record, including Defendant’s specific complaints and counsel’s non-privileged response.”

**Finding #4 (Enumerate allegations and Counsel’s response summary):**

- “The Defendant alleges the following: (1) \_\_\_\_\_; (2) \_\_\_\_\_; (3) \_\_\_\_\_.”
- “Appointed counsel responds, in substance: (1) \_\_\_\_\_; (2) \_\_\_\_\_; (3) \_\_\_\_\_, without disclosing privileged communications.”

**Finding #5 (Ability/competence application):** “Based on the inquiry, the Court finds the complaints (do / do not) show an impairment of counsel’s “ability or competence” to represent the Defendant.”

Sample language the judge can use (choose what fits):

- “The issues raised reflect a disagreement with strategy and counsel’s assessment of the case, not incompetence.”
- “The record reflects counsel has investigated, prepared, and maintained adequate communication.”
- “The allegations are conclusory and not supported by specific facts demonstrating inability or incompetence.”

**Finding #6 (Timeliness, Reasonableness and “Exceptional Circumstances):**

- “The demand is (timely / untimely) because \_\_\_\_\_ (e.g., demand made on day of trial / after adverse rulings / after continuances / at earliest opportunity).”
- “The demand is (reasonable / not reasonable) because the stated reasons (do / do not) amount to “exceptional circumstances” under Gillam and Worthy.”

## **B) THE RULING (THE ACTUAL ORDER)**

**8) If the request is DENIED** - Ruling language:

“The request for substitute appointed counsel is denied because the Defendant has not established “exceptional circumstances” affecting counsel’s ability or competence, and/or the demand is not timely and reasonably made.”

**9) If the request is GRANTED** - Ruling language:

“The request is granted because the Court finds “exceptional circumstances” affecting counsel’s ability or competence to represent the Defendant, and the demand is timely and reasonable.”

**Note to Judges: Avoid the Psychological Shortcut**

Substitute-counsel requests often arise at emotionally charged moments when the court is balancing docket control against constitutional safeguards. The danger for trial judges is not granting or denying the request but ruling too quickly without creating a clear record demonstrating that discretion was actually exercised. A brief, structured inquiry often diffuses tension, protects the attorney-client relationship, and produces the record appellate courts require — even when the request is ultimately denied

**NOTE:** If substitution is ordered, the case should be referred back to the Chief Public Defender for re-assignment



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