

Rule 401. Waiver of Counsel

(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

(b) Transcript. The proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed and made a part of the common law record.

Amended June 26, 1970, effective September 1, 1970; amended effective September 1, 1974; amended September 29, 1978, effective November 1, 1978; amended April 27, 1984, effective July 1, 1984.

Committee Comments⁽¹⁾

(Revised April 27, 1984)

Rule 401, as adopted in 1967 (36 Ill. 2d R. 401), covered (1) waiver of indictment, (2) waiver of counsel, (3) pleas of guilty, and (4) the requirement of representation by counsel in open court on a guilty plea or waiver of counsel or waiver of indictment by persons under 18 years of age. In 1970, items (3) and (4) were transferred to Rules 402 and 403 respectively (43 Ill. 2d Rules 402, 403), and waiver of counsel and waiver of indictment were separated into separate lettered paragraphs (a) and (b), respectively (43 Ill. 2d R. 401(a), (b)), in order to give a clearer and more specific statement of the requirements for each type of waiver, since in a given case both waivers might not occur, or might occur at different times. In 1975, the Code of Criminal Procedure of 1963 was amended to abolish the requirement of indictment, and in 1978, to reflect this change, paragraph (b) of Rule 401 (58 Ill. 2d R. 401) was rescinded and former paragraph (c) became the present paragraph (b).

With regard to waiver of counsel, the 1970 amendments made no major change in substance, although they made explicit some requirements that were only implicit in the rule as originally adopted. For example, Rule 401 as originally adopted merely stated that the defendant must understand “the consequences [of the charges against him] if found guilty” (36 Ill. 2d R. 401(b)), while paragraph (a)(2) defines these consequences. The definition is the same as in Rule 402, paragraph (a)(2), concerning admonition of the consequences when a plea of guilty is accepted. See the committee comments to Rule 402.

Original Rule 401 (36 Ill. 2d R. 401), and Rule 401(a), as amended in 1970 (43 Ill. 2d R. 401(a)), required waiver of counsel only in cases in which the defendant was accused of a crime punishable by imprisonment in the penitentiary. In 1974, this paragraph of the rule was amended

(58 Ill. 2d R. 401(a)) to conform to the decision of the Supreme Court of the United States in *Argersinger v. Hamlin* (1972), 407 U.S. 25, in which it was held that no imprisonment may be imposed, absent a knowing and intelligent waiver, unless the defendant was represented by counsel at his trial.

The present paragraph (b) is derived from the last two sentences of paragraph (b) of former Rule 401 (36 Ill. 2d R. 401).

In 1984 paragraph (b) was amended to require transcription of the verbatim report of waiver proceedings only when ordered by the trial court. This brings Rule 401(b) into line with Rule 402(e), which requires transcription of guilty-plea proceedings in felony cases to be transcribed only when ordered by the trial court.

¹*The committee comments to Rules 401, 402, and 403 are those of the special committee appointed by the court to recommend rule revisions in the areas covered by those rules.