

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1103

Amending Administrative Rule 12
concerning technical changes.

IT IS ORDERED:

1. Administrative Rule 12 is amended to provide:

. . . .

(d) **Withdrawal from Unauthorized Appointment.** The public defender agency and the office of public advocacy shall accept appointments only in those cases for which the basis for the appointment is clearly authorized. If the agency or office determines that the basis for an appointment is not clearly authorized, the agency or office shall file with the court a motion to withdraw from the appointment.

(e) **Other Appointments at Public Expenses.**

(1) **Constitutionally Required Appointments.** If the court determines that counsel, or a guardian ad litem, or other representative should be appointed for an indigent person, and further determines that the appointment is not authorized by AS 18.85.100(a) or AS 44.21.410, but in the opinion of the court is required by law or rule, the court shall appoint an attorney who is a member of the Alaska Bar Association to provide the required services. Other persons may be appointed

to provide required services to the extent permissible by law.

(A) Appointments may be made in the following types of cases without prior approval of the administrative director, but only in cases in which the required services would not otherwise be provided by a public agency:

(i) Attorneys for biological parents in adoption cases to the extent required by the Indian Child Welfare Act (25 USC 1901 et seq.),

(ii) Attorneys for minor children and indigent parents or custodians of minor children in minor guardianship cases brought pursuant to AS 13.26.060(d),

(iii) Attorneys for respondents in protective proceedings brought pursuant to AS 13.26 in which appointment of the office of public advocacy is not mandated by statute,

(iv) Attorneys for minor children or incompetents who are heirs or devisees of estates in cases in which the attorneys' fees cannot be paid as a cost of administration from the proceeds of the estate,

(v) Attorneys for indigent putative fathers in actions to establish paternity in which the state of Alaska provides representation for mothers,

(vi) Attorneys to represent indigent respondents in involuntary alcohol commitments brought pursuant to AS 47.37,

(vii) Attorneys for indigent parents who are defending against a claim that their consent to adoption is not required under AS 25.23.050(a).

(B) In all other cases, the court shall inform the administrative director of the specific reasons why an appointment is required prior to making the appointment.

(2) *Soldiers & Sailors Civil Relief Act.* When the opposing party is financially unable to pay for such representation, the court shall appoint a member of the Alaska Bar Association to represent an absent service person pursuant to the Soldiers and Sailors Civil Relief Act (50 USC 520). Prior approval of the administrative director is not required.

(3) *List of Private Attorneys.* (A) The presiding judge shall designate the area court administrator and a clerk of court for each court location in the district to keep and make available to the

court in each location lists of attorneys or other persons eligible to receive court appointments under paragraph (e) of this rule.

(B) The attorney lists will first be compiled from names of persons who have volunteered to accept these appointments. If there are insufficient volunteers, the court will make appointments on a rotation basis from lists of eligible attorneys obtained from the Alaska Bar Association. The court may, in departing from a strict rotation basis, take in to account the complexity of the case and the level of experience required by counsel.

(C) Lists of other persons available to provide required services will be compiled from names of qualified persons who have indicated their willingness to provide the required services.

(4) *Appointment Orders.* When the court appoints an attorney or other person under paragraph (e) of this rule, the clerk of the court from which the appointment was made shall immediately send a copy of the appointment order to the administrative director.

(5) *Compensation.* (A) All claims for compensation must be submitted within 30 days following the disposition of a

case on forms provided by the court. Claims will be submitted to the assigned trial judge, who shall make a recommendation to the administrative director. The administrative director shall approve or disapprove the claim.

(B) Attorneys will be compensated at the rate of \$40.00 per hour; provided, that total compensation for any case will not exceed \$500.00 without prior approval of the administrative director.

(C) A person other than an attorney appointed to provide services will receive compensation if the court deems it appropriate not to exceed \$25.00 per hour; provided, that total compensation for any case will not exceed \$300.00 without prior approval of the administrative director.

(D) Extraordinary expenses will be reimbursed only if prior authority has been obtained from the administrative director, upon recommendation by the assigned trial judge or the presiding judge. The assigned trial judge may recommend extraordinary expenses up to a total amount not to exceed \$1,000.00 and the presiding judge may recommend an amount not to exceed an additional \$1,500.00. Extraordinary expenses exceeding \$2,500.00 may be authorized only in extremely complex cases by the administrative director upon the

recommendation of the presiding judge. In this paragraph, "extraordinary expenses" are limited to expenses for:

(i) Investigation;

(ii) Expert witnesses; and

(iii) Necessary travel and per diem expenses. Travel and per diem may not exceed the rate authorized for state employees.

(E) If necessary to prevent manifest injustice, the administrative director may authorize payment of compensation or expenses in excess of the amounts allowed under this rule.

(6) *Recovery of Costs.* When counsel is appointed for a person in a case described in subparagraph 12(e)(1), the court shall order the person, or if the person is a child, the person's parents, guardian or custodian, to pay the costs incurred by the court in providing representation. Before appointing counsel, the court shall advise the person that the person will be ordered to repay the state for the cost of appointed counsel and shall advise the person of the maximum amount that the person will be required to repay. The court shall require the person to execute assignments of the person's

permanent fund dividends to the State of Alaska for a sufficient number of years to cover the maximum amount of the judgment and shall order the person to apply for permanent fund dividends every year in which the person qualifies for a dividend until the judgment is paid in full. If the person refuses to execute the assignments, the court shall direct the clerk to execute the assignments pursuant to Civil Rule 70. The clerk shall determine the cost of representation, and shall mail to the person's address of record a notice informing the person that judgment will be entered against the person for the actual cost of representation or for \$500, whichever is less. The person may oppose entry of the judgment by filing a written opposition within 10 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The clerk shall enter judgment against the person for the amount shown in the notice if the person does not oppose entry of the judgment within the 10 days. If the person files a timely opposition, the court may set the matter for a hearing and shall have authority to enter the judgment. Criminal Rule 39(c)(1)(D) and (c)(2) shall apply to judgments entered under this section.

(f) Responsibilities of Appointed Counsel.

(1) An attorney appointed to represent an indigent person must advise the court if the attorney learns of a change in the person's financial status that would make the person financially ineligible for appointed counsel.

(2) An attorney appointed to represent an indigent person must move to withdraw if the attorney reasonably believes that the person has made a material misrepresentation of the person's financial status to the court. A material misrepresentation is a misrepresentation of facts that would make the person financially ineligible for appointed counsel. The attorney is not required to disclose to the court the existence or nature of the misrepresentation unless disclosure is necessary to prevent the person from fraudulently securing the services of appointed counsel.

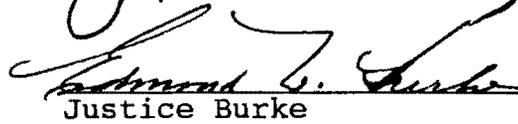
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Chief Justice Rabinowitz



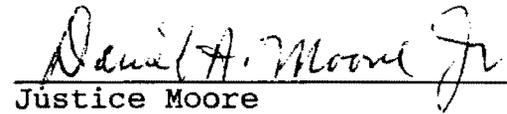
Justice Burke



Justice Matthews



Justice Compton



Justice Moore