

IN THE TRIAL COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

IN THE MATTER OF:

Withdrawal and Substitution
of Court-Appointed Counsel in
Criminal Matters

Presiding Judge's Administrative Order
21-14

**ORDER SETTING DISTRICT-WIDE PROCEDURE FOR WITHDRAWAL AND
SUBSTITUTION OF APPOINTED COUNSEL IN CRIMINAL CASES**

Courts in this district appoint counsel by rule,¹ statute,² and constitutional mandate³ for all indigent⁴ criminal defendants who request a lawyer. Generally speaking, the Public Defender Agency ("PDA") is the entity initially appointed to represent indigent defendants.⁵ If PDA cannot represent a specific defendant due to a conflict of interest,⁶ the Office of Public Advocacy ("OPA") is the designated agency to substitute as counsel and take over representation.⁷ If OPA cannot represent a defendant due to a conflict of interest, then OPA must contract with outside counsel to handle representation for that defendant.⁸

Each time an appointed lawyer withdraws from representation and a different lawyer is substituted as appointed counsel, some set of procedures for withdrawal and substitution must be followed. At present, different courts and lawyers across the district use different procedures to achieve the same desired result. Moreover, the procedures across the district routinely change over time. The result is a confusing array of inconsistent procedures ranging from a simple substitution of counsel to formal motions practice in the form of a motion to withdraw. The end result is unnecessary delay and needless litigation.

The purpose of this order is to create a uniform simplified procedure for withdrawal and substitution of counsel across the Fourth Judicial District. The procedures outlined in this order are intended to supplement Criminal Rule 50 and Civil Rule 81(e), neither of which specifically reference the procedure for withdrawal and substitution of appointed counsel for indigent defendants.⁹ Nothing in this order is intended to restrict or expand the right to court appointed counsel.

¹ Alaska Criminal Rule 39.

² AS §§ 18.85.010 to 18.85.180 (PDA) and AS §§ 44.21.400 to 44.21.470 (OPA).

³ U.S. Constitution Amendment V and Alaska Constitution Article I § 11.

⁴ See Alaska Criminal Rule 39.1 "Determining Eligibility for Court-Appointed Counsel."

⁵ AS § 18.85.100(a); Alaska Criminal Rule 39(b)(3); and Administrative Rule 12(b)(1)(A).

⁶ See Rules of Professional Conduct 1.6 through 1.11 for the specific rules controlling conflicts of interest.

⁷ AS § 44.21.410(5)("[indigent defendants] who cannot be represented by the public defender agency because of a conflict of interest"); Administrative Rule (12)(b)(1)(a).

⁸ Administrative Rule 12(b)(1)(B).

⁹ Civil Rule 81 mostly regulates the conduct of retained private counsel seeking to withdraw either with or without the consent of their clients. Agency lawyers engaged in court appointed representation are almost always seeking to withdraw because they have a conflict and cannot represent the client absent a conflict waiver. Civil Rule

The procedure for withdrawal and substitution of court-appointed counsel in the Fourth Judicial District shall be as follows:

1. In all cases there shall be a single pleading captioned **“STIPULATION FOR SUBSTITUTION OF COUNSEL”** (referred to in this order as “stipulation”) which shall be the only pleading necessary to permit court-appointed counsel to withdraw and to substitute newly appointed counsel based on a conflict of interest.¹⁰
2. The stipulation shall contain:
 - a. The case caption;
 - b. A stipulation that the current attorney is required to withdraw from representation in the matter(s) due to a conflict of interest.
 - c. A stipulation that the Office of Public Advocacy is substituted as appointed counsel;
 - d. The date and time of the next hearing; and
 - e. Signatures for each lawyer stipulating.
3. Filing this stipulation shall constitute a “formal written appearance” as required by Criminal Rule 50(a) on behalf of the agency and/or lawyer substituting as court-appointed counsel.
4. The lawyer signing the stipulation on behalf of the newly appointed agency will be considered the lawyer of record per Criminal Rule 50(a) and is expected to appear on behalf of the client until a different lawyer enters their appearance.
5. A stipulation filed in compliance with this order satisfies all requirements for withdrawal of court-appointed counsel under Criminal Rule 50 and Civil Rule 81 and there shall be no other motions, stipulations, notices, or pleadings required to allow current court-appointed counsel to withdraw or to substitute court-appointed counsel based on a conflict of interest.¹¹
6. Indigent criminal defendants shall be provided uninterrupted representation by court-appointed counsel.¹²

81(e)(1)(A) is the most appropriate provision for this purpose because the defendant “has other counsel ready to be substituted for the attorney who wishes to withdraw” in the form of OPA or OPA contract counsel.

¹⁰ By virtue of this order, the stipulation itself will be permitted to act as a de facto order extending the original appointment order in each case to the newly substituted lawyer.

¹¹ Administrative Rule 12(b) does reference the filing of a “motion to withdraw” as well as a “stipulation.” Read in context it is clear that the administrative rule is intended to ensure notice of a conflict and efficient substitution of counsel, which this order is intended to implement.

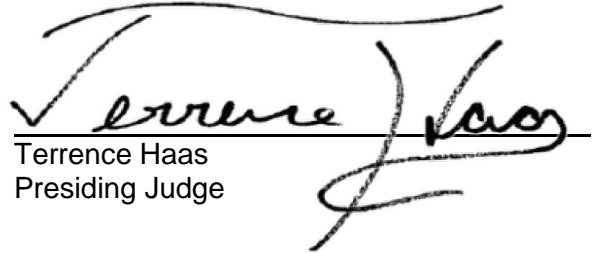
¹² Conflicted counsel will be required to appear at any hearing occurring before the filing of a stipulation to withdraw and substitute court appointed counsel. The individual attorney signing the stipulation for the newly appointed agency will be counsel of record until a different lawyer enters their appearance. This is consistent with Rules of Professional Conduct 1.16(c) and (d).

7. Any motion to withdraw filed after the date of this order, regardless of opposition, shall be treated as a motion under Criminal Rule 42 and shall be processed accordingly.

This order shall apply in all courts and to all criminal matters in the Fourth Judicial district.

IT IS SO ORDERED.

Dated this 26th day of August, 2021 at Bethel, Alaska.



Terrence Haas
Presiding Judge

Distributed via email:

Chief Justice
Administrative Director's Office
4th District ACA and RCAs
4th District Everyone
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