

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1145

Amending Criminal Rule 39, Appellate Rule 209 and Administrative Rule 12 concerning appointment of counsel.

IT IS ORDERED:

1. Paragraphs (b) and (c) of Criminal Rule 39 are amended to provide:

(b) **Appointment of Counsel for Persons Financially Unable to Employ Counsel.**

. . . .

(2) Before the court appoints counsel for an indigent defendant at public expense, the court shall advise defendant that defendant will be ordered to repay the prosecuting authority for the cost of appointed counsel, in accordance with paragraph (d) of this rule, if the defendant is convicted of an offense. [THE COURT SHALL ORDER DEFENDANT TO EXECUTE ASSIGNMENTS OF DEFENDANT'S PERMANENT FUND DIVIDENDS TO THE PROSECUTING AUTHORITY FOR A SUFFICIENT NUMBER OF YEARS TO ENSURE THAT THE MAXIMUM JUDGMENT THAT MAY BE ENTERED AGAINST THE DEFENDANT UNDER THE SCHEDULES IN PARAGRAPH (D) IS PAID IN FULL. IF DEFENDANT REFUSES TO EXECUTE THE ASSIGNMENTS, THE COURT SHALL DIRECT THE CLERK TO EXECUTE THE ASSIGNMENTS PURSUANT CIVIL RULE 70.] The court may enter such orders as appear reasonably necessary to prevent defendant from dissipating assets to avoid payment of this cost [THE JUDGMENT].

. . . .

(c) **Costs of Appointed Counsel.**

(1) *Entry of Judgment.*

(A) Upon conviction of an offense, revocation of probation, denial of a motion to withdraw plea, and denial of a motion brought under Criminal Rule 35.1, the court shall prepare a notice of intent to enter judgment for the cost of appointed counsel in accordance with paragraph (d) of this rule, provide a copy of the notice to defendant, and order defendant to

[(i) EXECUTE ASSIGNMENTS OF DEFENDANT'S PERMANENT FUND DIVIDENDS TO THE PROSECUTING ATTORNEY FOR A SUFFICIENT NUMBER OF YEARS TO ENSURE THAT THE JUDGMENT IS PAID IN FULL; AND

(ii)] apply for permanent fund dividends every year in which the defendant qualifies for a dividend [DIVIDED] until the judgment is paid in full.

[IF DEFENDANT REFUSES TO EXECUTE ASSIGNMENTS OF DEFENDANT'S PERMANENT FUND DIVIDENDS, THE COURT SHALL DIRECT THE CLERK TO EXECUTE ASSIGNMENTS PURSUANT TO CIVIL RULE 70.]

. . .

2. Paragraph (b) of Appellate Rule 209 is amended to provide:

(b) **Criminal Matters.**

. . . .

(2) After a trial court has authorized an appeal at public expense, the appellate clerk shall send defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

(A) advises defendant that, if defendant's conviction is not reversed, defendant will be ordered to repay the prosecuting authority for the cost of appointed appellate counsel, in accordance with the schedule of costs set out in subparagraph 209(b)(7)(8); and

[(B) ORDERS DEFENDANT TO EXECUTE ASSIGNMENTS OF DEFENDANT'S PERMANENT FUND DIVIDENDS TO THE PROSECUTING AUTHORITY FOR A SUFFICIENT NUMBER OF YEARS TO ENSURE THAT THE MAXIMUM AMOUNT OF JUDGMENT THAT COULD BE ENTERED UNDER SUBPARAGRAPH 209(B)(8) IS PAID IN FULL, AND TO FILE THE ASSIGNMENTS WITH THE APPELLATE CLERK;]

(B) [(C)] orders defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until this cost [THE JUDGMENT] is paid in full. [; AND]

[(D) ADVISES DEFENDANT THAT IF, AT THE CONCLUSION OF THE CASE, DEFENDANT'S CONVICTION IS REVERSED, THE PERMANENT FUND DIVIDEND ASSIGNMENTS ARE VOID.

(3) IF DEFENDANT REFUSES TO EXECUTE ASSIGNMENTS OF DEFENDANT'S PERMANENT FUND DIVIDENDS, THE CLERK SHALL EXECUTE THE ASSIGNMENTS PURSUANT TO CIVIL RULE 70.]

(3) [(4)] A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to proceed at public expense on appeal.

(4) [(5)] The action of the trial court in authorizing or declining to authorize an appeal at public expense is reviewable by a motion in the appellate court, ancillary to the appeal.

(5) [(6)] Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. In addition, an attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the public defender agency or the office of public advocacy is able to represent defendant on appeal. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204(b) have been accepted for filing by the clerk of the trial courts.

(6) [(7)] At the conclusion of the appellate proceeding, the appellate clerk shall enter judgment against defendant for the cost of representation on appeal unless defendant's conviction was reversed by the appellate court. The amount of the judgment shall be determined by reference to the schedule in subparagraph 209(b)(7)[(8)]. Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. Defendant may oppose entry of the judgment by filing a written opposition within 45 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 prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(D) and (c)(2) shall apply to judgments entered under this subparagraph.

(7) [(8)] The following schedule governs the cost of representation on appeal:

...

3. Subparagraph (e)(6) of Administrative Rule 12 is amended to provide:

(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 cost [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

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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.

DATED: September 9, 1993

EFFECTIVE DATE: October 1, 1993

Chief Justice Moore

Justice Rabinowitz

Justice Burke

Justice Matthews

Justice Compton