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IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 652

Office of Administrative Director
Alaska Court System

Relating to procedures for
counsel and guardian ad
litem appointments at
public expense

IT IS ORDERED:

Administrative Rule 12 is repealed and reenacted to read as follows:

ADMINISTRATIVE RULE 12: PROCEDURE FOR COUNSEL AND GUARDIAN AD LITEM APPOINTMENTS AT PUBLIC EXPENSE

(a) Intent

The court shall appoint counsel or a guardian ad litem only when the court specifically determines that the appointment is clearly authorized by law or rule, and that the person for whom the appointment is made is financially eligible for an appointment at public expense.

(b) Appointments under AS 18.85.100(a) (Public Defender Agency)

(1) Appointment procedure

(A) When a person is entitled to counsel under AS 18.85.100(a), appointments shall be made first to the public defender agency. If the agency files a motion to withdraw on the grounds that it cannot represent the person because of a conflict of interest, if the parties stipulate on the record that the agency has a conflict of interest, or if the court on its own motion finds an obvious conflict of interest, the court accepting such motion or stipulation or making such finding shall appoint the office of public advocacy to provide counsel.

(B) Upon a showing by the office of public advocacy that the office has made every effort to provide counsel either by staff or by contract to represent the defendant, but has been unable to do so, the court shall appoint an attorney to provide representation. Lists of attorneys eligible to handle misdemeanors, felonies, unclassified felonies and appeals in each court location shall be compiled annually by the director of the

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office of public advocacy in cooperation with the Alaska Bar Association. The list for each court location shall be provided to the clerk of that court and to the presiding judge of the judicial district. Appointments shall be made from the list on a rotating basis as far as is practical.

(C) All claims for payment for services performed after July 1, 1984 by attorneys appointed by the court shall be submitted to the director of the office of public advocacy, under such procedures as the director may prescribe. The director shall approve, modify or disapprove the claim.

(2) Determination of indigency Determination of indigency or financial inability for appointments under paragraph (B) of this rule must be made in accordance with the provisions of Criminal Rule 39.

(3) Assessment of costs To the extent that a person for whom counsel is appointed under paragraph (B) of this rule is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court shall order the person to pay for these items. When counsel is appointed for a child when the child's parents or custodian are financially able but refuse to employ counsel to assist the child, the court may, when appropriate, assess as costs against the parents, guardian or custodian the cost to the state for providing such counsel.

(c) Appointments Under AS 44.21.410 (Office of Public Advocacy)

(1) Appointment Procedure When a person qualifies for counsel or guardian ad litem services under AS 44.21.410, the court shall appoint the office of public advocacy. The court in its order appointing the office of public advocacy must state the authority for the appointment. In the case of a discretionary appointment, the court must give specific reasons for the appointment. In the case of a guardian ad litem appointment, the court shall limit the appointment to the pendency of the proceedings affecting the child's welfare, shall outline the guardian ad litem's responsibilities, and shall limit the guardian's authority to those matters related to the guardian's effective representation of the minor's best interests.

(2) Indigency determination For appointments to the office of public advocacy under this rule, other than an appointment required because of a conflict of interest with the public defender agency, a person is indigent if the person's income does not exceed the maximum income level for Alaska set forth in 45 CFR 1611, Appendix A, for eligibility for representation by the legal services corporation. A person whose income exceeds the maximum amount for legal services representation may be determined indigent only if a judge makes a specific finding of indigency on the record, taking into account the funds necessary for the person to maintain employment, to provide shelter, and to clothe, feed and care for the person and the person's immediate family, the person's outstanding contractual indebtedness, the person's ability to afford representation based on the particular matter and the complexity of the case, the costs of living and attorneys fees in different regions of the state, and any liquid assets which could be counted as income.

(3) Assessment of costs In an appointment under AS 25.24.310 for representation of a minor, the court shall enter an order for costs, fees and disbursements in favor of the state. If the appointment is made in a proceeding in which custody, support or visitation is an issue, the court shall, if possible, avoid assigning costs to only one party by ordering that costs of the minor's legal representative or guardian services be paid from property belonging to both parents before a division of property is made.

(d) Other appointments at public expense.

(1) 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.

(2) Constitutionally required appointments. If the court determines that counsel or a guardian ad litem should be

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appointed for a 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 inform the administrative director of the specific reasons why the appointment is required. All such appointments shall be made on a rotating basis from the attorney lists compiled in accordance with this rule. Claims for compensation shall be submitted to the Alaska Court System within 30 days following the disposition of a case, on forms provided by the court system. Attorneys appointed under this paragraph shall be compensated at the prevailing rate established by the office of public advocacy for attorney appointments under AS 44.21.410.

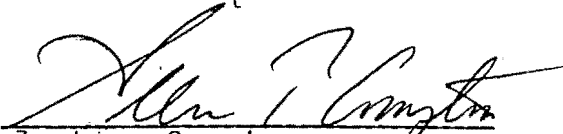
DATED: June 6, 1985

EFFECTIVE DATE: July 1, 1985


Chief Justice Rabinowitz


Justice Burke


Justice Matthews


Justice Compton

Justice Moore

Appendix A of Part 1611

Legal Services Corporation Poverty Guideline

<u>For Alaska; size of family unit</u>	<u>Poverty Guideline</u>
1	\$ 7,800
2	\$10,512
3	\$13,225
4	\$15,937
5	\$18,650
6	\$21,362
7	\$24,075
8	\$26,787

For family units with more than eight members, add \$2,500 for each additional member in a family

(Sec. 1007(a)(2) Legal Services Corporation Act; (42 USC 2996(f)(a)(2))) [42 FR 24731, June 15, 1984]