

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
23-03
Corrected
Superseding/Vacating PJO 21-14

**AMENDED 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. Courts and lawyers across the district have been required to follow PJO 21-14, which this order supersedes. That order required a "stipulation" to be filed. However, the use of a stipulation presupposes oversight or supervision by the court of the administrative process between the agencies. No such supervision is required and is most likely not advisable.⁹ The court's overriding role is to ensure the expeditious appointment of counsel to indigent defendants and the uninterrupted provision of effective representation.¹⁰

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 A quotation often attributed to Otto von Bismarck might be appropriate here: "If you like laws and sausages, you should never watch either one being made." Unless there is a disagreement or a controversy, it is simply unnecessary for the court to be made aware of stipulations, agreements, or administrative processes between the two agencies.

¹⁰ "[W]hen the Public Defender Agency informs a trial court that it may have a conflict of interest, the court should actively monitor the case to ensure that the potential conflict is resolved, or substitute counsel appointed, within a reasonable period of time." *Perez v. State*, No. A-13666 (Alaska Ct. App. Nov. 18, 2022). See also *Sackett v. State*, 518 P.3d 289, 292 (Alaska Ct. App. 2022) ("As the United States Supreme Court wrote more than eighty years ago,

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.¹¹ Nothing in this order is intended to restrict or expand the right to court appointed counsel.

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 **“SUBSTITUTION OF COUNSEL”** (referred to in this order as “substitution”) 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.¹²
2. The substitution shall contain:
 - a. The case caption;
 - b. The name of the newly substituted lawyer; and
 - c. A certification that all discovery has been received or demanded from prior counsel.
3. Filing this substitution shall constitute a “formal written appearance” as required by Criminal Rule 50(a) on behalf of the lawyer substituting as court-appointed counsel.
4. The lawyer substituting 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 substitution 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

“The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.” (*citing Avery v. Alabama*, 308 U.S. 444 (1940))).

¹¹ 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 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.

¹² By virtue of this order, the substitution itself will be adopted by the court as a de facto order extending the original appointment order in each case to the newly substituted lawyer.

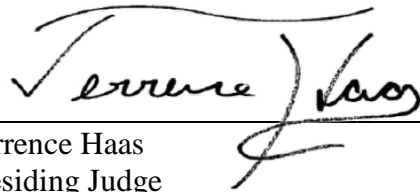
based on a conflict of interest.¹³ **No agency shall file a stipulation, motion, proposed order, or any other document related to withdrawal and substitution of counsel.**¹⁴

6. Indigent criminal defendants shall be provided uninterrupted representation by court-appointed counsel.¹⁵
7. Any motion to withdraw filed after the date of this order shall be rejected by the clerk of court as deficient.

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

IT IS SO ORDERED.

Dated this 11th day of April, 2023 at Bethel, Alaska.



Terrence Haas
Presiding Judge

Distributed via email:

Chief Justice
Administrative Director's Office
4th District Everyone
4th District PDA, OPA, DA
Sam Cherot - PD
James Stinson - OPA

¹³ 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.

¹⁴ Because the speedy appointment of counsel is of utmost importance to the fair administration of justice, Fourth District clerks will docket all such filings as a “substitution of counsel” and the filing attorney shall be listed as counsel of record. Repeated violations of this order will be referred to the presiding judge as appropriate.

¹⁵ Conflicted counsel will be required to appear at any hearing occurring before the filing of a substitution. This is consistent with Rules of Professional Conduct 1.16(c) and (d).