

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

IN THE MATTER OF: )  
Appointment of Conflict )  
Counsel (Fairbanks) )  
\_\_\_\_\_ )

**PRESIDING JUDGE'S STANDING ORDER 18.4**

This order supersedes and replaces Presiding Judge Order No. 05-05.

In cases in which the court appoints counsel for a party, the attached Memorandum Of Agreement between the Fairbanks Trial Courts, the Alaska Public Defender Agency, and the Office of Public Advocacy shall apply, but only during the following timeframe: The Agreement shall apply for the first 90 days for all misdemeanor, Class C, and Class B felony cases. The Agreement shall apply for the first 45 days for all Class A and unclassified felony cases. The Agreement shall apply for the life of the case for any other matters. The time referred to in this order begins with Rule 5 arraignment or superior court arraignment, whichever is first.

Civil Rule 81 allows an attorney to withdraw when there is a conflict of interest. In an effort to save duplicative filing of motions and service by state agency staff and court personnel, a quicker and more efficient process is appropriate when the parties agree a conflict exists and a different court-appointed attorney should appear. This process will provide counsel to indigent parties on a more expedited basis, especially in criminal, child-in-need-of-aid, and juvenile delinquency cases. The limited timeframe is necessary to prevent abuse of this process and to protect the rights of criminal defendants and the victims of crimes to a prompt and efficient resolution of their cases.

Therefore IT IS HEREBY ORDERED:

1. When the Public Defender Agency and the Office of Public Advocacy agree that a conflict exists in a case in which a client is eligible for court-appointed counsel, the attached Memorandum of Agreement shall be followed, as long as the substitution of counsel occurs within the timeframe set out above.

2. A court-appointed attorney may file a "Superseding Entry of Appearance" that will be accepted by the Court if the procedure described in the Memorandum of Agreement is followed and if the Superseding Entry is filed within the timeframe set out above.

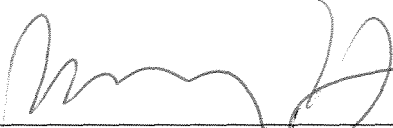
3. When a court-appointed attorney is permitted to withdraw from a case and conflict counsel is appointed, the attorney who is withdrawing shall ensure that discovery in the case is provided to conflict counsel within 10 days of the date that the attorney withdraws. The attorney who is withdrawing shall be responsible for overseeing the process by which the discover is transferred to conflict counsel and shall be responsible for ensuring that the transfer happens within the time indicated in this Order.

IT IS FURTHER ORDERED:

If a conflict is identified by court-appointed counsel outside of the timeframe identified in this order, counsel shall file a motion to withdraw that must clearly state: (1) the good cause that exists to allow the motion to withdraw, including a citation to the Rule(s) of Professional Conduct that would be violated by continued representation of the client, (2) whether conflict counsel is ready to substitute for the attorney who wishes to withdraw, (3) any other information required by Civil Rule 81, and (4) that counsel will ensure that discovery in the case is provided to conflict counsel within 10 days of an order granting the substitution of counsel and will oversee that process.

This order is effective immediately.

9/26/18  
Date

  
BETHANY S. HARBISON  
Presiding Judge  
Fourth Judicial District

Distribution:

- Christine Johnson, Administrative Director
- Ron Woods, Area Court Administrator
- Ruth Meier, Clerk of Court
- Chad Holt, Office of Public Advocacy
- Quinlan Steiner, Public Defender Agency
- Amy Bennett, Fairbanks Public Defender
- Brent Bennett, Fairbanks OPA
- JB Brainerd, OCC

MEMORANDUM OF AGREEMENT BETWEEN  
THE FAIRBANKS TRIAL COURTS, THE PUBLIC DEFENDER AGENCY,  
AND THE OFFICE OF PUBLIC ADVOCACY

This agreement, negotiated between Presiding Judge Niesje J. Steinkruger, Fairbanks Clerk of Court Ruth Meier, Public Advocate Joshua P. Fink, Supervising Attorney and Assistant Public Defender Paul Canarsky, Fairbanks Office, Supervising Attorney and Assistant Public Advocate David Allen, Fairbanks Office of Public Advocacy, and Supervising Attorney and Assistant Public Advocate Lori Bodwell, Office of Conflict Counsel, Fairbanks Section, Office of Public Advocacy, establishes the following procedure on the assignment of court-appointed counsel in criminal, juvenile delinquency, and child-in-need-of-aid cases:

1. The Court will appoint the Public Defender Agency (PD) in all cases where the defendant/client is entitled to publicly appointed counsel except where a conflict is obvious to the court requiring the appointment of the Office of Public Advocacy (i.e. – jointly charged defendants);
2. PDs will do their best to perform a timely conflict check based on information available to them shortly after appointment;
3. PDs will call or email the supervising attorney of Fairbanks OPA if they determine that they have a conflict precluding their representation of the client, and shall explain the conflict if they are able to do so;  
  
(If the PD cannot share the conflict because it is confidential, the PD shall file a motion to withdraw);
4. If the Fairbanks OPA supervising attorney or his or her designee agree that there is a conflict precluding representation by the PD, he or she will then inform pre-trial services via email or phone; (if agreement cannot be reached, the PD will file a motion to withdraw);
5. Pre-Trial services will then issue an amended or new order of appointment appointing OPA, serving all parties;
6. If a conflict exists with OPA, OPA will make the conflict counsel appointments. OPA Fairbanks, Office of Conflict Counsel Fairbanks Section, or a private OPA contractor will then enter a Superceding Entry of Appearance, serving the PD, the State, and the client; and
7. The presiding judge will enter an Order allowing Superceding Entry of Appearances to be filed in Fairbanks where the PD and OPA agree that a conflict precludes the PD from representing the defendant.
8. This agreement is effective on the date of the last parties' signature.