

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 328

Amending Criminal Rule 39
by Establishing
Procedures for Determining
a Defendant's Ability to
Pay All or a Portion of
the Costs of Representation.

IT IS ORDERED:

Criminal Rule 39 is amended by adding a new paragraph (c) to read:

(c) Ability of Defendant to Pay Cost of Counsel;
Determination by Court; Order; Execution.

(1) In any case in which the defendant is furnished counsel, either through the Public Defender Agency or private counsel appointed by the court, upon or prior to the conclusion of the criminal proceedings in the trial court, the court may, after a hearing, make a determination of the defendant's present ability to pay all or a portion of the cost of representation.

(2) At the hearing, the defendant shall be entitled to have, but shall not be limited to

(i) the opportunity to be heard in person,

(ii) to present witnesses and other documentary evidence,

(iii) to confront and cross-examine adverse witnesses, and

(iv) disclosure of the evidence against him pertaining to his ability to pay for representation.

(3) If the court, after the hearing, determines that the defendant has the present ability to pay all or part of the cost, it may order payment of the sum to the state general fund in any installments and in a manner which it believes reasonable and compatible with the defendant's financial ability. The court shall file written findings, a copy of which shall be provided to the defendant. No default or failure in the making of any such payment shall in any way affect or reduce the rendering of services on appeal or any other phase of the defendant's case. The order shall not be enforceable by contempt. Execution on the order is to be made by the attorney general, in the same manner as on a judgment in a civil action.

(4) The cost of services of counsel shall be calculated at the hourly rate provided in Administrative Rule 15(f). At the hearing, counsel for the defendant shall provide evidence of

(i) the hours he or she has expended to date;

(ii) an estimate of the hours, if any, still required to be expended on behalf of the defendant;

(iii) any costs and expenses that are expected to be incurred or that have actually been incurred by private counsel or by the Agency, including a reasonable estimate of the cost to the Agency of any services provided on behalf of the defendant by investigators employed by the Agency. Reimbursement for costs and expenses incurred by private counsel shall not exceed \$250.00 unless authorization was obtained in accordance with Administrative Rule 15(f).

(5) Prior to the furnishing of counsel in the trial court, the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the cost of representation. The court shall also give notice that, if the court determines that the defendant has such present ability, the court may order him to pay all or part of such cost. The notice shall inform the defendant that the order shall have the same force and effect as a judgment in a civil action and shall be subject to execution.

(6) In making a determination of the defendant's present ability to pay all or a portion of the cost of representation, the court shall take into account the defendant's current income, assets and obligations, including necessary living expenses of the defendant and his dependents, if any. The defendant may not be required to pay any amount, or to liquidate any property that would be exempt from execution by law.

(7) The court may refer matters under (c) of this rule to a master.

DATED: August 24, 1978

EFFECTIVE DATE: January 1, 1979

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