

HB

151

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

() STATE OF ALASKA)
 ())
)
 Plaintiff,)
)
 vs.)
)
)
 Defendant.)

CASE NO. _____ CR
 REQUEST FOR APPOINTED COUNSEL

I wish to have a lawyer and cannot afford to pay for one. I request that the court appoint a lawyer to represent me.

STATEMENT OF FINANCIAL RESPONSIBILITY

I understand that if the court decides I am able to pay for part of the costs of my defense (lawyer's services and other costs), the court may order me to pay for these items.

FINANCIAL STATEMENT

Name _____ Phone _____
 Address _____ Date of Birth _____
 _____ Soc. Sec. No. _____

Present employer _____
 (If not now employed, state last employer and date terminated.)

Employer _____
 Address _____ Phone _____

Member of Union yes no Which One? _____

I. DEPENDENTS	Name	Age	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

II. INCOME INFORMATION (after taxes, but before other deductions)		Yourself	Your Spouse
a.	Current Monthly Income	_____	_____
b.	Income during last 12 months:	_____	_____
	Wages	_____	_____
	Public Assistance	_____	_____
	Unemployment	_____	_____
	Other _____	_____	_____
	(specify)	_____	_____
	TOTAL YEARLY INCOME	_____	_____

III. FAMILY ASSETS - Present Value

Cash on hand or in bank _____
 Land, buildings, or trailers _____
 Motor vehicles _____
 Securities: stocks, bonds, notes _____
 Businesses _____
 Snow machines, boats, airplanes _____

TOTAL ASSETS _____

IV. FAMILY DEBTS

Mortgages _____
 Loans _____
 IRS _____
 Child support arrearages _____
 Others (charge cards, bills, etc.) _____

TOTAL DEBT _____

V. MONTHLY EXPENSES

Food _____
 Rent _____
 Utilities _____
 Car payments _____
 Furniture & TV payments _____
 Child support or alimony _____
 Mortgages _____
 Loans _____
 IRS back taxes _____
 Others (charge card, bills, etc.) _____

TOTAL EXPENSES: _____

GENERAL WAIVER

I authorize anyone, including my past employers, to release to the Alaska Court System all information concerning any income source I have had for a period of three years immediately preceding my first court appearance in which an appointed lawyer is representing me.

OATH

I declare, under oath, that I have read or have had read to me the state of Financial Responsibility on page one and the above General Waiver, and I understand them. I further declare, under oath, that the above Financial Statement is true.

I understand that this Financial Statement may be made available to the Attorney General after the conclusion of this case, and that if I give false information in this statement, the false information may be used to prosecute me for perjury under Alaska Statute 11.56.200.

_____ Date

_____ Defendant's Signature

Subscribed and sworn to or affirmed before me on _____, 19 _____,
 at _____, Alaska.

(SEAL)

 Clerk of Court, Notary Public or other person
 authorized to administer Oaths.
 My commission expires: _____

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

() STATE OF ALASKA,)
())
Plaintiff,)
vs.)
Defendant.)
DOB: _____)

CASE NO. _____ CR

JUDGMENT FOR COST OF APPOINTED COUNSEL

IT IS ORDERED that defendant pay to plaintiff \$_____ for the cost of appointed counsel. This judgment shall accrue interest at the annual rate of 10.5 % from the date of judgment until paid. Payment shall be made directly to the plaintiff at the address indicated at the bottom of this form and not to the court.

If defendant refused or failed to execute the assignment of defendant's Alaska Permanent Fund dividend as ordered by the court, the clerk of court or the clerk's designee is ordered to execute the assignment pursuant to Criminal Rule 39 and Civil Rule 70.

Defendant is ordered to apply for Alaska Permanent Fund dividends every year in which defendant is an Alaska resident eligible for a dividend until the judgment is paid in full. If defendant fails to apply, defendant may be held in contempt of court. Criminal Rule 39(c)(2)(D).

This judgment has the same force and effect as a judgment in a civil action.

- Enforcement may begin three years after defendant is released from incarceration.
- The court finds good cause not to delay enforcement of this judgment because the defendant is not being incarcerated or is being incarcerated for a period of time that should not affect defendant's ability to pay the judgment.
- _____
- This judgment may be enforced at any time because it is entered under Criminal Rule 39(e).

After this judgment is collected, the plaintiff shall file a satisfaction of judgment.

Effective Date
(at least 10 days after date of Notice)

Judge
Type or Print Judge's Name

I certify that on _____
a copy of this judgment was sent to:
Defendant

- AC's Collections Unit, 1031 W 4th Ave, Suite 200, Anchorage, AK 99501. Phone: 269-5205
- Collections Office, _____
(address) (city) (state) (ZIP) (phone)

Clerk _____



Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

April 1, 1993

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Taylor:

I am writing to request that the Judiciary Committee schedule House Bill 151, relating to payments by indigent persons for legal services and related costs. This bill was introduced by the House Judiciary Committee at the request of the Alaska Supreme Court.

Under both the United States and Alaska Constitutions, a criminal defendant has the right to an attorney. If he cannot afford an attorney, the state must appoint one to represent him. In Alaska, defense services for indigents are generally provided by the Public Defender or the Office of Public Advocacy.

Until 1990, AS 18.85.120(c) authorized a court to order a defendant to pay for defense services, to the extent that the defendant could afford to pay. For a variety of reasons, this statute was ineffective in obtaining repayment of defense costs from indigent defendants. These reasons included the difficulty and expense of enforcing this type of repayment order, and the fact that the statute related to a defendant's current ability to pay, ignoring his future ability. This was very restrictive when compared to the system used in many other states, which allow a court to order repayment from a defendant's future earnings.

In 1990, at the request of the judicial branch, the legislature amended AS 18.85.120(c) to allow civil judgments to be entered against defendants who are represented by the public defender or OPA without considering the defendants' current ability to pay. If a defendant became solvent at a future date, the judgment could be enforced; if not, the judgment could not be enforced. This change ensured that indigent defendants would

The Honorable Robin Taylor
April 1, 1993
Page 2

receive counsel, but that they would repay some of the costs of that representation if they were no longer indigent at some later date. However, one major problem with this revision was that it allowed a three-year moratorium on repayment to follow a defendant's release from incarceration.

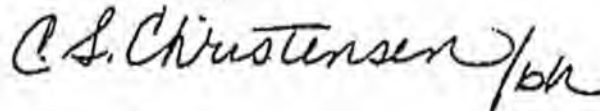
CSHB 151 (FIN) proposes several changes to AS 18.85.120(c). First, it would eliminate the three-year moratorium on repayment that follows incarceration. This moratorium makes it substantially more difficult for the state to recover defense costs in a timely manner, it imposes a significant administrative burden on the Department of Law, and the policy behind it is questionable. There is no reason, for example, to grant a grace period to a person who is sentenced to 72 hours in jail for a DWI; that person does not need three years to get back on his feet. Even in the case of defendants incarcerated for longer terms, the three-year period is an arbitrary length of time. Many persons will have substantial income soon after leaving prison, and virtually all will receive permanent fund dividend checks during the three-year period. Additionally, many persons leave the state by the third year following their release from incarceration, and then there is no hope of ever recovering defense costs.

Second, CSHB 151 (FIN) codifies language currently contained in Criminal Rule 39. This language is intended to ensure that the repayment requirement is imposed in a fair manner. It includes a provision which allows a court to stay enforcement of a repayment judgment during the pendency of a defendant's appeal; a provision which allows a person subject to a repayment judgment to petition the court at any time to remit, reduce or defer the unpaid portion of the judgment upon a showing of financial hardship; and a provision which allows a court to remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the person or the person's immediate family.

Like all judgment debtors, a person subject to a repayment order would have a certain amount of property and income automatically protected from seizure by the Alaska Exemptions Act (AS 09.38). This act ensures that low-income debtors are protected from the unreasonable demands of creditors. A defendant's income, including the permanent fund dividend, could also be protected under the "manifest hardship" procedure discussed above.

Thank you for your courtesy. Please let me know if I can provide any additional information.

Very truly yours,



C. S. Christensen III
Staff Counsel

NATE COMMITTEE REPORT

DATE: 3/31/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 12 April 1993

JUDICIARY Committee considered CS FOR HOUSE BILL NO. 151(FIN)

"An Act relating to payment by indigent persons for services of representation and court costs; providing for stays of enforcement of a judgment during the pendency of an appeal of a conviction; allowing petitions for remission, reduction, or deferral of judgment; permitting a court to remit or reduce a judgment or to change the method of payment; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (_____)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Public Defender	3-4-93	✓	
Public Advocacy	3-22-93	✓	
LAW	3-8-93		✓
Trial Courts	2-18-93	✓	

Appropriation No Fiscal Note

DO PASS:

Rich Halford

OTHER RECOMMENDATIONS:

George T. ... No Rec.

Suzanne Klette No Rec

Adrian L. Taylor Do Pass

Chair: Signature and Recommendation

proceedings if the trial judge finds that the defendant's rights would be prejudiced by use of the system.

(c) Facsimile telecopy orders issued in proceedings conducted under this rule are acceptable as originals for the purposes of release or detention by correctional officers.

(d) Nothing in this rule diminishes any other existing right of a criminal defendant.

(Added by SCO 719 effective August 1, 1986; amended by SCO 863 effective July 15, 1988).

Rule 39. Appointment of Counsel.

(a) **Informing Defendant of Right to Counsel.** The court shall advise a defendant who appears without counsel for arraignment, change of plea, or trial of the right to be represented by counsel, and ask if defendant desires the aid of counsel. The court shall not allow a defendant to proceed without an attorney unless the defendant understands the benefits of counsel and knowingly waives the right to counsel.

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

(1) If defendant desires the aid of counsel but claims a financial inability to employ counsel, the court or its designee shall determine whether defendant is an "indigent person," as defined by statute, by placing defendant under oath and asking about defendant's financial status, or by requiring defendant to complete a signed sworn financial statement. The court shall order defendant to execute a general waiver authorizing release of income information to the court. The court may require defendant to attempt to arrange private representation before the court makes a final determination on indigency.

(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 the judgment.

(3) If the court or its designee determines that the defendant is an "indigent person," the court shall appoint counsel pursuant to Administrative Rule 12 and notify counsel of the appointment.

(4) In the absence of a request by a defendant otherwise entitled to appointment of counsel, the court shall appoint counsel unless the court finds that the defendant understands the benefits of counsel and knowingly waives the right to counsel.

(5) If the trial court denies defendant's request for appointed counsel, defendant may request review of this decision by the presiding judge of the judicial district by filing a motion with the trial court within three days after the date of notice, as defined in the Criminal Rule 32.3(c), of the denial. The trial court shall forward the motion, relevant materials from the court file, and a cassette tape of any relevant proceedings to the presiding judge. The presiding judge or his or her designee shall issue a decision within three days of receipt of these materials.

(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 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.

(B) Defendant may oppose entry of judgment by filing a written opposition within 10 days after the date of notice, as defined in Criminal Rule 32.3(c), of the court's intent to enter judgment. 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.

(C) If no opposition is filed within the time specified in section 39(c)(1)(B), the clerk shall enter judgment against defendant for the amount shown in the notice. If a timely opposition is filed, the court may set the matter for a hearing and shall have authority to enter the judgment.

(D) The judgment must be in writing. A copy of the judgment shall be mailed to defendant's address of record. The judgment shall bear interest at the rate specified in AS 09.30.070(a) from the date judgment is entered.

(2) *Collection.*

(A) The judgment has the same force and effect as a judgment in a civil action in favor of the prosecuting authority and is subject to execution, except that no action may be taken to enforce the judgment for three years after the defendant is released from incarceration unless, for good cause shown, the court considers it appropriate to enforce the judgment earlier.

(B) All proceedings to enforce the judgment shall be in accordance with the statutes and court rules applicable to civil judgments. The judgment is not enforceable by contempt. Payment of the judgment may not be made a condition of a defendant's probation. Default or failure to pay the judgment may not affect or reduce the rendering of services on appeal or any other phase of a defendant's case in any way. A defendant does not have a right to be represented by appointed counsel in connection with proceedings under subparagraph 39(c) or any proceedings to collect the judgment.

(C) Upon showing of financial hardship, the court shall allow a defendant subject to a judgment under this rule to make payments under a repayment schedule. A defendant may petition the court at any time for remission, reduction or deferral of the unpaid portion of the judgment. The court may remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the defendant or defendant's immediate family.

(D) Notwithstanding section 39(c)(2)(B), a defendant may be held in contempt for failing to comply with an order under this rule to apply for a permanent fund dividend.

(3) *Appeal.*

(A) If defendant appeals the conviction, enforcement of the judgment may be stayed by the trial court or the appellate court upon such terms as the court deems proper.

(B) If defendant's conviction is reversed, the clerk shall vacate the judgment and order the prosecuting authority to repay all sums paid in satisfaction of the judgment, plus interest at the rate specified in AS 09.30.070(a).

(d) *Schedule of Costs.* The following schedules govern the assessment of costs of appointed counsel under paragraph 39(c). If a defendant is convicted of more than one offense in a single dispositive court proceeding, costs shall be based on the most serious

offense of which the defendant is convicted. If a defendant is otherwise convicted of more than one offense, costs shall be separately assessed for each conviction. For good cause shown, the court may waive the schedule of costs and assess fees up to the actual cost of appointed counsel, including actual expenses.

Misdemeanors

Trial	\$500.00
Change of plea	200.00
Post-conviction relief or contested probation revocation proceedings in the trial court	250.00

Felonies

	Class B & C	Class A and Unclassified (Except (Murder)	Murder in the 1st and 2nd Degrees
Trial	\$1,500.00	\$2,500.00	\$5,000.00
Change of plea after substantive motion work and hearing and before trial commences	1,000.00	1,500.00	2,500.00
Change of plea post-indictment but prior to substantive motion work and hearing	500.00	1,000.00	2,000.00
Change of plea prior to indictment	250.00	500.00	750.00
Post-conviction relief or probation revocation proceeding in trial court	250.00	500.00	750.00

(e) *Review of Defendant's Financial Condition.*

(1) The court may review defendant's financial status at any time after appointment of counsel to determine (A) whether defendant continues to be an "indigent person," as defined by statute; or (B) whether defendant was an indigent person at the time counsel was appointed.

defendant is convicted. If a defendant is convicted of more than one offense, the court may assess fees up to the amount shown, the court may assess fees up to the amount shown, the court may assess fees up to the amount shown, including actual costs.

5500.00
2000.00

250.00

Classified by 1st and 2nd Degrees
0.00

55,000.00

2,500.00

2,000.00

750.00

750.00

Financial Condition

defendant's financial condition continues to be an indigent person at the time

(2) If the court determines that defendant is no longer an indigent person, the court may

- (A) terminate the appointment; or
- (B) continue the appointment and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against the defendant for the actual cost of appointed counsel, including actual expenses, from the date of the change in the defendant's financial status through the conclusion of the trial court proceedings.

(3) If the court determines that defendant was not an indigent person at the time counsel was appointed, the court may

(A) terminate the appointment and enter judgment against defendant for the actual costs of appointed counsel, including actual expenses, from the date of appointment through the date of termination; or

(B) continue the appointment; and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against defendant for the actual cost of appointed counsel from the date of the appointment through the conclusion of the trial court proceedings.

(4) A defendant may request review of the court's decision to terminate the appointment according to the procedure set out in subparagraph 39(b)(5).

(5) Judgment may be entered against a defendant under this paragraph regardless of whether the defendant is convicted of an offense.

(6) Action may be taken at any time to enforce a judgment entered under this paragraph.

(Adopted by SCO 4 October 4, 1959; amended by SCO 90 Effective July 24, 1967; by SCO 157 effective February 15, 1973; by Amendment No. 4 to SCO 157 dated March 12, 1973; by SCO 187 effective July 2, 1974; by SCO 328 effective January 1, 1979; by SCO 448 effective November 24 1980; by SCO 677 effective June 15, 1986; and by SCO 888 effective July 15, 1988; rescinded and re-promulgated by SCO 1088 effective July 1, 1992)

Annotations

Cases

- I. Right to Counsel
 - A. In General
 - B. Indigents
- II. Waiver of Right to Counsel
- III. Effective Assistance of Counsel

I. Right to Counsel

A. In General

A defendant in a criminal proceeding has a constitutional right to court appointed counsel at a preliminary hearing only when the preliminary hearing is in the nature of a critical stage of the proceedings. *Merrill v. State*, Op. No. 392, 423 P2d 686 (Alaska 1967).

Where the court over defendant's explicit protest, dismisses counsel from a public defender agency on the belief that the agency has exhibited a lack of preparation and then appoints unwanted counsel to represent the defendant, the court deprives the defendant of his right to counsel of his choice. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

Where a defendant has been denied the right to be represented by his chosen counsel, the subsequent entry of a plea of guilty or nolo contendere does not shield a conviction from challenge on appeal, since the voluntariness and reliability of such a plea is inherently suspect. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

The advice given to a nonindigent defendant concerning the right to counsel must include at least a brief explanation of the benefits of counsel. *Swensen v. Municipality of Anchorage*, Op. No. 2179, 616 P2d 874 (Alaska 1980).

It is within the court's discretion to allow both defendant and counsel to participate actively in the trial, so that a defendant may represent himself and also have the assistance of counsel. *Cano v. Municipality of Anchorage*, Op. No. 20, 627 P2d 660 (Alaska 1980).

B. Indigents

Even when read in relation to recent United States Supreme Court decisions, AS 12.25.150(b) does not require the appointment of counsel for an indigent immediately after his arrest. *Martinez v. State*, Op. No. 389, 423 P2d 700 (Alaska 1967).

Mere speculation as to what might have been done by a defense counsel during an interval between arrest and appearance for arraignment when counsel was assigned cannot be a basis for inferring that indigent defendant in a criminal case was deprived of counsel during a critical stage of the proceedings. *Martinez v. State*, Op. No. 389, 423 P2d 700 (Alaska 1967).

Where the direct penalty for conviction of an offense may be incarceration, loss of a valuable license, or a fine heavy enough to indicate criminality, such offense is a "serious crime" within the public defender statute. A defendant who is charged with any such misdemeanor and who cannot afford to hire his own lawyer is eligible for representation by a public defender. *Alexander v. City of Anchorage*, Op. No. 738, 410 P2d 910 (Alaska 1971).

A indigent defendant is not entitled to representation by any particular attorney. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

Once counsel is appointed to represent an indigent defendant, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

II. Waiver of Right to Counsel

To be valid, a waiver of the right to counsel must be made with an apprehension of the nature of the charges, the offenses included within them, the range of punishments, possible

defenses, mitigating circumstances and all other facts essential to a broad understanding of the whole matter. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

Magistrate must ascertain whether defendant understands benefits of counsel by recorded colloquy with defendant before right to counsel may be waived. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

When defendant is unable to make an intelligent choice as to waiver of right to counsel it is the duty of the court to assign counsel. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

When defendant pleads guilty without the assistance of counsel, the plea is invalid unless defendant waived his right to counsel. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

Failure of arraignment or trial record to demonstrate that defendant understood what he was giving up by declining the assistance of counsel was cause for reversal even though record showed that defendant had been advised of his right to counsel. *O'Dell v. Municipality of Anchorage*, Op. No. 1588, 576 P2d 104 (Alaska 1978).

Failure of court to ask questions of defendant to assure that he understood precisely what rights he was giving up by declining legal representation at sentencing hearing required vacation of sentence. *Smith v. State*, Op. No. 134, 651 P2d 1191 (Alaska App. 1982).

Trial judge committed reversible error in not allowing defendant, charged with drunk driving in 1984, to have a 1975 drunk driving conviction set aside on the ground that, although informed by the magistrate taking his guilty plea in 1975 of his right to an attorney, he was not informed of what an attorney could do for him. *Petranovich v. State*, Op. No. 547, 709 P2d 867 (Alaska App. 1985).

Failure of the trial court to assure by an on-the-record inquiry that the accused understood the benefits of counsel and the dangers of self-representation prior to waiving his right to counsel was reversible error notwithstanding the accused's previous contacts with the criminal justice system. *James v. State*, Op. No. 669, 730 P2d 811 (Alaska App. 1987).

Defendant's waiver of his right to counsel prior to pleading guilty to a DWI charge was valid where the magistrate advised him of the maximum and minimum penalties for the offense and after he responded affirmatively to the question: "Do you know what a lawyer is?". *Tobuk v. State*, Op. No. 683, 732 P2d 1099 (Alaska App. 1987).

III. Effective Assistance of Counsel

A defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations. *Risher v. State*, Op. No. 1053, 523 P2d 421 (Alaska 1974).

All that is required of counsel in rendering effective assistance of counsel is that his decisions, when viewed in the framework of trial pressures, be within the range of reasonable actions which might have been taken by an attorney skilled in the criminal law, regardless of the outcome of such decisions. *Risher v. State*, Op. No. 1053, 523 P2d 421 (Alaska 1974).

A defendant does not suffer an unconstitutional deprivation of effective assistance of counsel because of an error commit-

ted by his attorney which in no manner contributes to the conviction. *Risher v. State*, Op. No. 1053, 523 P2d 421 (Alaska 1974).

A defendant who has not demonstrated that he understands the benefits of counsel cannot be said to have waived counsel. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

Rule 40. Time.

(a) **Computation.** Except as otherwise specifically provided in these rules, in computing any period of time, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When a period of the prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) **Enlargement.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) Upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34 and 35 except as otherwise provided in those rules, or the period for taking an appeal.

(c) **Unaffected by Expiration of Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(d) **For Motions — Affidavits.** A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown, such an order may be made on *ex parte* application. Copies of all photographs, affidavits, other documentary evidence and a brief, complete written statement in support of the motion, shall be served with the motion. The opposing party shall serve either