

**HB**

**221**

<TARGET><BILL>HB 221</BILL><SUBJECT>HB  
221</SUBJECT><COMM>HFIN27</COMM></TARGET>

# FISCAL NOTE

STATE OF ALASKA cost # codes  
 2012 LEGISLATIVE SESSION

Bill Version HB 221  
 Fiscal Note Number 3  
 Publish Date 2/29/12 (H)

Identifier (file name) HB221-ACS-TRC-02-24-2012 Dept. Affected Alaska Court System  
 Title Appointment of Counsel for Persons Accused of Crimes Appropriation Trial Courts  
 Allocation \_\_\_\_\_  
 Sponsor Representative Chenault  
 Requester \_\_\_\_\_ OMB Component Number 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services	362.5		362.5	362.5	362.5	362.5	362.5	362.5
Travel								
Services	32.4		27.0	27.0	27.0	27.0	27.0	27.0
Commodities	72.0		9.0	9.0	9.0	9.0	9.0	9.0
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>466.9</b>	<b>0.0</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF	466.9	398.5	398.5	398.5	398.5	398.5	398.5
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>466.9</b>	<b>0.0</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>	<b>398.5</b>

POSITIONS							
Full-time	2.0		2.0	2.0	2.0	2.0	2.0
Part-time	4.0		4.0	4.0	4.0	4.0	4.0
Temporary							

CHANGE IN REVENUES							
--------------------	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Nancy Meade, General Counsel  
 Division Alaska Court System  
 Approved by Nancy Meade for Christine Johnson, Administrative Director  
Alaska Court System

Phone 907-463-4736  
 Date/Time 2/24/2012 1:00 P.M.  
 Date 2/24/2012

FISCAL NOTE #3

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB 221

**Analysis**

HB 221 includes a direct rule amendment that will impact the way the Court System determines whether a criminal defendant who requests it is eligible for a court-appointed counsel at public expense. Currently, appointments of public counsel may be made after an oral inquiry on the record with the defendant under oath. The judge asks questions about the defendant's financial resources, and determines from the responses whether public counsel is justified, or whether additional information is needed. If additional information is needed, the defendant is often asked to complete a financial statement, usually with the assistance of a court employee. The revision will require the court or its designee to require each defendant who requests public counsel to complete a signed sworn financial statement. A majority of current public counsel appointments are completed after the oral inquiry only; the bill's change to also require a signed sworn financial statement from each defendant will require changes in processing procedures at all criminal initial appearance hearings.

In FY 2011, the court opened 38,798 felony and misdemeanor cases statewide; the defendant in each of those cases is entitled to court-appointed counsel if he or she cannot afford a private attorney. Of that total number of criminal defendants, the court estimates, based on statistics about how many defendants actually receive appointed counsel in existing cases, that 80% request court-appointed counsel. Each of these defendants will need to fill out the sworn financial statement, for a total of 31,038 statements.

The court will incur costs in implementing this change because it will need to provide assistance to all defendants who request public counsel in filling out the financial statement. The court's actual experience with the many defendants who currently do fill out a financial statement (rather than receiving an appointment after an oral inquiry by a judge) is that each statement takes an average of 15 minutes of time for a member of the court staff, who assists the defendant with answering and explaining questions. This time varies depending on the defendant's level of literacy, proficiency with English, and other individual factors. To provide this assistance in a way that is minimally disruptive to the court's arraignment hearings, the court would need six additional staff positions (two full-time and four part-time), at a Range 10, to assist the defendants who request court-appointed counsel.

The number of additional staff needed varies by court location; in some courts, the numbers of defendants seeking counsel would not justify adding a new position, but would cause an existing employee to add a number of overtime hours. As shown on page three, the cost of the six new positions is \$362,500. As also shown on page 3, the new staff members would require office equipment and supplies. The court would also need interview stations and physical space in the five busiest courts for the staff members to work with the defendant, at an estimated cost of \$24,000.

Finally, it is anticipated that the financial statement would need to be translated into other languages at a cost of \$5,400 (a four-page form with 847 words, plus an informational booklet, with 2,023 words, at .30 per word), and that the court would need to provide language interpreter services to non-English-speaking defendants at a cost \$15,000 (\$75/hour for on-site interpreting or use of the language line as appropriate).

HB 221's total fiscal impact on the court system in FY 2013 will be \$466,900.

FISCAL NOTE #3

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB 221

Analysis Continued

Alaska Court System					
HB221 - Calculation of Costs (Based on FY11 Criminal Case Filings)					
Location	Cases Filed in FY2011	Cases Requiring Interview (80%)	Duration of Interview	Number of Minutes	FTE Requested
Anchorage	15,242	12,194	15	182,910	2.00
Bethel-Area	2,510	2,008	15	30,120	0.30
Dillingham/Naknek/Unalaska	1,083	866	15	12,990	0.15
Fairbanks Area	5,359	4,287	15	64,305	0.80
Kenai/Homer/Seward	3,298	2,638	15	39,570	0.50
Juneau (Southeast Alaska)	4,082	3,266	15	48,990	0.50
Second District	2,371	1,897	15	28,455	0.30
Palmer	3,474	2,779	15	41,685	0.50
Kodiak, Sand Point, Valdez, Cordova, Glenallen, St. Paul	1,379	1,103	15	16,545	0.20
<b>Totals</b>	<b>38,798</b>	<b>31,038</b>		<b>465,570</b>	<b>5.25</b>
Calculation of FTE (Productive Hours to Conduct Interviews):					
Total Hours/Year	1,950				
Less: 12 Holidays @ 7.5 hours	(90)				
Less: 4 Weeks Leave	(150)				
<b>Net Work hours/FTE</b>	<b>1,710</b>				
<b>Deputy Clerk Range 10A</b>	<b>FTE Full Time Salary</b>	<b>Benefits @ 34.6%</b>	<b>Health Insurance</b>	<b>FTE's</b>	<b>Total by Location / Area</b>
Anchorage	34,064	11,786	15,960	2.00	123,620
Bethel-Area	51,096	17,679		0.30	30,949
Dillingham/Naknek/Unalaska	46,668	16,147		0.15	14,133
Fairbanks Area	35,086	12,140	15,960	0.80	53,740
Kenai/Homer/Seward	34,064	11,786	7,980	0.50	30,905
Juneau (Southeast Alaska)	35,767	12,375	7,980	0.50	32,051
Second District	51,096	17,679		0.30	30,949
Palmer	34,064	11,786	7,980	0.50	30,905
Kodiak, Sand Point, Valdez, Cordova, Glenallen, St. Paul	37,811	13,083		0.20	15,268
				<b>5.25</b>	<b>362,521</b>
Furniture/Equipment Six New Postions (two full-time, four part-time)					
Computer/Printer/Desk/Chair	39,000	\$6,500 per Position			
Software @ \$2,000/Position	12,000				
Office Supplies @ \$1,500/Position	9,000				
Interview Stations/Equipment	24,000	Anchorage (2), Fairbanks (1), Kenai (1), Juneau (1), Palmer (1)			
Interpreter Services	15,000	Language Line and On-Site Interpreters as Needed			
Forms Translation Services	5,400	Translation of Financial Statement Form and Information Booklet			
<b>Total Non-Personal Services</b>	<b>104,400</b>				
<b>Total Personal Services</b>	<b>362,500</b>				
<b>Total Fiscal Note</b>	<b>466,900</b>				

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version HB 221  
Fiscal Note Number 2  
(H) Publish Date 2/29/12

Identifier (file name) HB221-LAW-CRIM-02-17-12 Dept. Affected Law  
Title An Act relating to the appointment of counsel for Appropriation Criminal  
persons accused of crimes. Allocation Criminal Justice Litigation  
Sponsor Representative CHENAULT  
Requester (H) Judiciary OMB Component Number 2202

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

	FY13	FY13	FY14	FY15	FY16	FY17	FY18
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Prgm (DGF)							
1037 GF/MH (UGF)							
1178 temp code (UGF)							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS**

	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Full-time							
Part-time							
Temporary							

**CHANGE IN REVENUES**

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager  
Division Administrative Services  
Approved by Michael C. Geraghty, Attorney General  
Department of Law

Phone 465-5427  
Date/Time 2/17/2012 4:00PM  
Date 2/17/2012

FISCAL NOTE #2

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB 221

**Analysis**

House Bill 221 requires an applicant for the services of court-appointed counsel to provide information about the financial resources of the person.

The bill also requires an applicant for court-appointed counsel to swear both orally and in writing that the information the person is giving the court is accurate, and provides that the person who gives the information does so under penalty of perjury.

The fiscal impact to the Department of Law is zero.

# FISCAL NOTE

STATE OF ALASKA cost # codes  
 2012 LEGISLATIVE SESSION

Bill Version HB 221  
 Fiscal Note Number 1  
 Publish Date 2/29/12 (H)

Identifier (file name) HB221-DOA-PDA-1-27-12 Dept. Affected Administration  
 Title Public Defender Appointment Procedures Appropriation Legal and Advocacy Services  
 Allocation Public Defender Agency  
 Sponsor Representative Chenault  
 Requester House Judiciary OMB Component Number 1631

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>FUND SOURCE</b>		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>POSITIONS</b>								
Full-time								
Part-time								
Temporary								

<b>CHANGE IN REVENUES</b>								

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Not applicable, initial version

Prepared by Quinlan Steiner  
 Division Public Defender Agency  
 Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 907 334-4414  
 Date/Time 1/27/12 10:19 AM  
 Date 1/27/2012

FISCAL NOTE #1

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB 221

**Analysis**

This bill amends AS 18.85.120(b) by requiring that persons requesting the services of the Public Defender submit the factors relative to both their ability to pay and their financial resources in writing and under oath. Rule 39.1(e) of the Rules of Criminal Procedure is also amended to require the defendant to submit to inquiry regarding their eligibility for services by the court or the court's designee and to complete a signed sworn financial statement, subject to penalties of perjury.

It is not possible to reliably predict whether or not this bill will have a fiscal impact. It will, however, allow for the appointment process to be more easily audited. The Agency, therefore, submits a zero fiscal note.

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779



145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

### SPONSOR STATEMENT HOUSE BILL 221

*"An act relating to the appointment of counsel for persons accused of crimes; and amending Rule 39.1, Alaska Rules of Criminal Procedure"*

The Alaska Court System is tasked with appointing legal representation for citizens who cannot afford an attorney. The Public Defender Agency and the Office of Public Advocacy provides attorneys for those people who request a Court appointed counsel since they cannot afford an attorney.

For several years, it has come to the attention of our office that there is no financial verification for those who have been criminally charged and ask the Court for counsel. Our office regularly receives complaints that after making requests for appointed counsel, defendants leave the parking lot in new vehicles or live in nice homes.

One of the most egregious cases in recent history is the prosecution of a scheme to defraud.

The defendant, in a statement to the Court, claimed to be indigent in 2009. Subsequently, this person was appointed five different attorneys for 55 different events and well over 100 filings. The best accounting for court appointed representation was over \$219,000 by the Department of Law. This does not take into consideration Court time as well as court employee time.

In a pretrial hearing, testimony was provided that the defendant had hundreds of thousands of dollars in the bank as a result of payment for services rendered by the defendant. This was in violation of several court orders against the defendant.

The defendant was convicted of several felonies. Post-conviction, the defendant was able to find the funds to hire a merger attorney as well as a sentencing specialist. After sentencing, the defendant appealed his sentence again claiming indigence. The State of Alaska is currently paying for the defendant's appellant attorney.

In conclusion, there must be changes in Court Rule 39.1 to determine eligibility and to allow for the defendant to sign a sworn statement subject to penalties for perjury. House Bill 221 allows for both those changes and would open the door for prosecution. Since there are in fact many defendants who are indigent, defendants who perjure themselves are taking funds that could be used by the truly needy.

# Alaska State Legislature

State Capitol, Room 208  
Juneau, Alaska 99801-1182  
Phone: 907-465-3779  
Fax: 907-465-2833  
Toll Free: 800-469-3779



145 Main St. Loop  
Second Floor  
Kenai, Alaska 99611  
Phone: 907-283-7223  
Fax: 907-283-7184

## REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

### SECTIONAL ANALYSIS

#### HOUSE BILL 221

*"An act relating to the appointment of counsel for persons accused of crimes; and amending Rule 39.1, Alaska Rules of Criminal Procedure"*

**Section 1:** Amends AS 18.85.120(b), Determination of indigency; repayment. Allows for material factors relative to the defendants financial resources and the ability to pay to be considered for Court appointed counsel.

**Section 2:** Amends Court Rule 39.1(e), Alaska Rules of Criminal Procedure, Determining Eligibility. Adds the word AND removes the word or. This change will allow the Court or its designee to ask about the defendant's financial status AND requiring the defendant to complete a signed sworn financial statement. Adds the phrase SUBJECT TO PENALTIES OF PERJURY.

The main purpose of House Bill 221 is to allow for the prosecution of a defendant who lies or misrepresents their financial status to gain Court appointed legal representation by committing perjury.

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 committed 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).

### LAW REVIEW COMMENTARIES

"Sentenced By Tradition: The Third Party Custodian Condition of Pretrial Release in Alaska," 26 Alaska L. Rev. 317 (2009).

## Rule 39.1. Determining Eligibility for Court-Appointed Counsel.

(a) **Scope of Application.** This rule specifies the procedure courts shall follow to assess whether a defendant is eligible for court-appointed counsel in a criminal case.

### (b) Eligibility for Appointment.<sup>1</sup>

(1) *Standard.* A defendant is eligible for court-appointed counsel if the court finds that the total financial resources available to the defendant are not sufficient to pay allowable household expenses and the likely cost of private representation through trial.

(2) *Exception.* The court may determine that a defendant is ineligible for court-appointed counsel under AS 18.85.170(4) if the defendant has disposed of assets in order to qualify for appointed counsel.

### (c) Financial Resources Defined.

(1) *Resources to be Considered.* In assessing the defendant's ability to pay the likely cost of private representation through trial, the court shall consider all resources available to the defendant, including all sources of expected income, cash, the value of assets readily convertible to cash, and credit or borrowing ability.

(2) *Parents' Resources.* If the defendant is a minor or an adult who cannot live independently, the court shall consider the resources of both the defendant and the defendant's parents, unless the parents were victims of the alleged offense or the court finds other good cause to treat their resources as being unavailable to the defendant.

(3) *Income.* Income includes all categories of income listed in Section II, Parts A and B of the Commentary to Civil Rule 90.3, including permanent fund dividends.

(4) *Cash.* Cash includes cash on hand and accounts in financial institutions. All savings should be considered, except where the use of the savings would deprive the defendant or the defendant's family of food, clothing, shelter, or necessary medical care.

(5) *Assets.* The court shall consider the value of all assets that are readily convertible to cash, other than health aids, clothing, and ordinary household furnishings. With the following exceptions, in valuing an asset, the court shall consider either the amount the defendant would realize if the asset were sold or the amount the defendant could borrow using the asset as collateral, whichever is greater.

(A) The court shall consider the loan value of tools and equipment essential to employment or to subsistence activity. Tools and equipment are essential only if the defendant could not earn a living or provide basic necessities without them. If the defendant cannot borrow against these assets while continuing to have use of them, the court shall disregard their value in calculating the defendant's available resources.

(B) In valuing the defendant's principal residence, the

RULES OF CRIMINAL PROCEDURE

Rule 39.1

court shall consider the entire loan value or the amount of the sale value that exceeds the homestead exemption allowed under the Alaska Exemptions Act.<sup>2</sup> If the defendant cannot borrow against the residence and would realize less than the homestead exemption amount if the residence were sold, the court shall disregard the value of the residence in calculating the defendant's available resources.

(C) In assessing the loan value of essential tools and equipment and the principal residence, the court shall consider only the amount the defendant can realistically afford to repay.

(6) *Credit.* Available credit includes amounts available on credit cards and amounts that can be borrowed against life insurance policies or from pension or savings plans. In assessing available credit, the court shall consider only the amount the defendant can realistically afford to repay.

(d) **Likely Cost of Private Representation.**

(1) For purposes of this rule, the following amounts represent the likely cost of private representation through trial:

	<i>Estimated Total Cost of Representation</i>
Misdemeanor	\$ 2,000
C Felony	5,000
B Felony	7,500
A or Unclassified Felony	20,000

(2) The court may adjust these amounts under the following circumstances:

(A) If the court finds that the scheduled amount differs from the amount charged by local attorneys, the court may use the amount charged locally.

(B) If the court finds that no local attorneys are available to handle the case, the court may adjust the scheduled amount to include the additional fees and travel costs that an out-of-town attorney would charge.

(C) If the court finds that the case has special characteristics that are likely to increase the cost of private representation, such as the need for expert witnesses, special investigations, or expensive tests, the court may adjust the scheduled amount to include this additional expense.

(3) In assessing a defendant's ability to pay the likely cost of private representation, the court should assume that at least 50 percent of the likely fee must be

paid immediately and that the total fee must be paid within four months.

(e) **Determining Eligibility.** The court or its designee shall determine whether a defendant is eligible for court-appointed counsel by placing the defendant under oath and asking about the defendant's financial status, or by requiring the defendant to complete a signed sworn financial statement. A defendant who requests appointed counsel must execute a general waiver authorizing the release of financial information to the court as required by AS 18.85.120.

(f) **Presumptive Eligibility.** The court may appoint counsel without further inquiry if:

(1) the defendant currently receives public assistance benefits through a state or federal program for indigent persons, such as Aid to Families with Dependent Children, the Alaska Temporary Assistance Program, Adult Public Assistance, General Relief, Food Stamps, Medicaid, or Supplemental Security Income (SSI);

(2) counsel was appointed for the defendant within the past twelve months based on an examination of the defendant's financial circumstances, and the defendant's financial condition has not significantly improved; or

(3) the gross annual income available to the defendant is less than the adjusted federal poverty guidelines amount for the defendant's household size, and other financial resources (cash, assets, and credit) available to the defendant are worth less than 50 percent of the amount shown in (d)(1) (the likely cost of private representation through trial).

(g) **Other Eligibility.** If the court does not find that the defendant is presumptively eligible under paragraph (f), the court shall conduct an inquiry sufficient to determine whether the defendant is eligible for court-appointed counsel under the standard stated in paragraph (b). The court may make this determination based on the information then available to the court or, when appropriate, may

(1) require the defendant to submit a completed financial resources affidavit with supporting documentation of income;

(2) require the defendant to submit information or documentation concerning particular assets or expenses;

(3) require the defendant to appear at a representation hearing or a pretrial services interview; or

(4) require the defendant to make reasonable efforts to retain private counsel and to report these efforts to the court orally or in writing.

(h) **Allowable Household Expenses.**

(1) *Allowable Expenses.* The following household expenses are allowable to the extent they are reasonable:

(A) housing;

(B) utilities;

(C) food;

(D) health care;

(E) child care;

(F) insurance;

(G) transportation (for one vehicle for each person whose income is considered);

(H) minimum loan and credit card payments; and

## Rule 40

## ALASKA COURT RULES

(I) mandatory child support and other court-imposed obligations; and

(J) other expenses that the court deems essential.

(2) *Alternative to Calculating Actual Expenses.* As an alternative to calculating actual household expenses, the court may assume that these expenses are approximately equal to the adjusted federal poverty guidelines amount for the defendant's household size.

(3) *Expenses Paid by Other Persons.* The expenses described in (h)(1) and (h)(2) are allowable only to the extent they are paid (or were supposed to be paid) by the defendant. If another person, such as a spouse, relative, or roommate, pays some or all of the household expenses, the court shall disregard the portion of the expenses paid by that person. If the defendant is married, the court should assume, absent a showing of good cause, that each spouse pays an amount proportionate to that spouse's relative income.

(i) **Adjusted Federal Poverty Guidelines.** The "adjusted federal poverty guidelines amount" is the federal poverty guidelines amount for Alaska increased by the geographic cost-of-living adjustment established in AS 39.27.020 for the court location nearest the defendant's residence.

(j) **Responsibilities of Administrative Director.** The administrative director shall

(1) publish annually an administrative bulletin specifying the adjusted federal poverty guidelines amount for each court location;<sup>3</sup> and

(2) periodically review the efficacy of the appointment procedure established by this rule.

(Adopted by SCO 1351 effective May 15, 1999.)

### Editor's notes.

#### Notes

<sup>1</sup> AS 18.85.170(4) defines "indigent person" for purposes of public defender appointments as "a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or the party's dependents of food, clothing, or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing eligibility for assistance under this chapter."

<sup>2</sup> For the current homestead exemption amount, See 8 AAC 95.030. This Department of Labor regulation, rather than AS 09.38.010, establishes the amount of the homestead exemption. See AS 09.38.115.

<sup>3</sup> See Admin. Bulletin 65.1

### LAW REVIEW COMMENTARIES

"Sentenced By Tradition: The Third Party Custodian Condition of Pretrial Release in Alaska," 26 Alaska L. Rev. 317 (2009).

## 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 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 time prescribed or allowed is less than seven days, not counting any period for mailing added under subsection (d) of this rule, 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) **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed period after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 273 effective June 15, 1977; by SCO 661 effective March 15, 1986; by SCO 1007 effective January 15, 1990; by SCO 1126 effective July 15, 1993; by SCO 1639 effective October 15, 2007; and by SCO 1694 effective October 15, 2009)

**Note:** Ch. 77 SLA 2002 (HB157), Section 2, adds new Chapter 26 to Title 6 of the Alaska Statutes, concerning providers of fiduciary services. According to Section 9 of the Act, AS 06.26.760(b)(2) has the effect of amending Criminal Rule 40 by postponing the deadlines set in the Alaska Rules of Criminal Procedure for the filing of documents by a trust company in a criminal action when the Department of Community and Economic Development has taken possession of the trust company.

Sec. 18.85.120. Determination of indigency; repayment.

(a) The determination of a person's indigency shall be made by the court in which an action against the person is pending. The determination shall be made by the court and shall set out the basis for the finding that the person is indigent.

(b) In determining whether a person is indigent and in determining the extent of the person's inability to pay, the court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of dependents. Release on bail does not preclude a finding that a person is indigent. In each case, the person, subject to the penalties for perjury, shall certify under oath, and in writing or by other record, material factors relative to the person's ability to pay that the court prescribes.

(c) Upon the person's conviction, the court may enter a judgment that a person for whom counsel is appointed pay for services of representation and court costs. Enforcement of a judgment under this subsection may be stayed by the trial court or the appellate court during the pendency of an appeal of the person's conviction. Upon a showing of financial hardship, the court (1) shall allow a person subject to a judgment entered under this subsection to make payments under a payment schedule; (2) shall allow a person subject to a judgment entered under this subsection to petition the court at any time for remission, reduction, or deferral of the unpaid portion of the judgment; and (3) 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 person or the person's immediate family. Payments made under this subsection shall be paid into the state general fund.

(d) Except as provided in AS 18.85.100(e), as a condition of receiving services under this chapter, a person shall affirm indigency under oath to the court and execute a general waiver authorizing the release to the court of income information regarding any income source the person has had for a period of three years immediately preceding the person's first court appearance in connection with each cause. At the conclusion of all services by the public defender to the person, the court shall upon request release to the attorney general all information received under this subsection except information that might incriminate or tend to incriminate the person.