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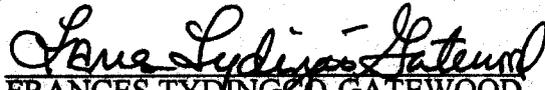
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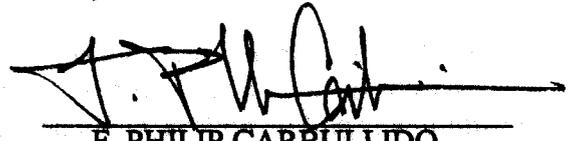
IN THE SUPREME COURT OF GUAM

RE:) PROMULGATION ORDER NO.: 02-009
AMENDMENTS TO THE)
RULES FOR APPOINTMENT)
OF COUNSEL FOR INDIGENT)
DEFENDANTS)

The Supreme Court, sitting *en banc*, upon the recommendation of the Unified Judiciary Committee, hereby adopts and promulgates the attached Rules for Appointment of Counsel for Indigent Defendants as Rule 13 of the Rules of the Superior Court of Guam

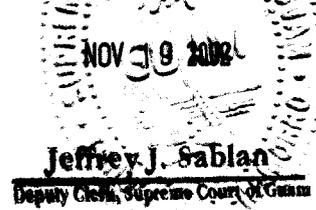
SO ORDERED, this 19th day of November, 2002.


FRANCES TYDINGCO-GATEWOOD
Associate Justice


F. PHILIP CARBULLIDO
Associate Justice


PETER C. SIGUENZA, JR.
Chief Justice

I do hereby certify that the foregoing is a true and correct copy of the original of the same in the office of the clerk of the Supreme Court of Guam
Dated at Hagåtña, Guam

NOV 19 2002

Jeffrey J. Sablan
Deputy Clerk, Supreme Court of Guam

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RULE 13

RULES FOR APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

PREAMBLE

The Rules for Appointment of Counsel for Indigent Defendants contained in the Guam Bar Journal, RAINY SEASON - 1981, Volumes 3 & 4, and all subsequent amendments are hereby repealed. Pursuant to its authority under Title 7 Guam Code Annotated, section 3107(b), the Supreme Court of Guam, *sitting en banc*, herein enacts Rule 13 of the Rules for the Superior Court of Guam governing the appointment of counsel for persons financially unable to obtain adequate representation in criminal and quasi-criminal matters in the courts of Guam.

These rules shall be effective upon *en banc* order of the Supreme Court of Guam. Except that appointments from the Private Attorney Panel, as provided in Rule 13.3, shall not be made until the Unified Judiciary Committee certifies such Panel. Until the certification of the Panel, the priority of appointment shall be: Public Defender, court contracted law firms or lawyers, active members of the Guam Bar.

These Rules are not intended to apply in other situations, such as the appointment of a guardian ad litem. However, the appointment of counsel as guardian ad litem in Person in Need of Services (“PINS”) cases shall be governed by Title 19 Guam Code Annotated, section 13308(a) and future rules to be adopted specifically for such appointments.

Rule 13.1. REPRESENTATION

A. Mandatory. The court shall appoint counsel for a person financially unable to obtain adequate representation who is:

1. charged with (a) a felony; (b) a misdemeanor; (c) a petty misdemeanor except those filed in Traffic Court (d) juvenile delinquency for the commission of an act which, if committed by an adult, would be considered a felony or misdemeanor; or, (e) a violation of probation or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of probation
2. in custody as a material witness;
3. under arrest, when representation is required by law; or,
4. entitled to appointment of counsel under the Sixth Amendment to the United States Constitution, or facing loss of liberty and Guam law, the United States Constitution, or the applicable provisions of the Organic Act, require the appointment of counsel.

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

B. Discretionary. The court may appoint counsel for a person who is financially unable to obtain representation who is:

1. charged with civil or criminal contempt and facing loss of liberty;
2. seeking collateral relief from a judgment in a criminal matter; or,
3. a person whose rights under the United States Constitution (or the Organic Act) may be substantially infringed without the appointment of counsel.

RULE 13.2. DETERMINATION OF NEED

A. Determination. Before the appointment of counsel under these Rules, the court shall inquire into, and make a finding, as to whether the person is financially able to obtain adequate representation. The court shall inquire as to the information requested in the Financial Declaration (a copy of which is attached hereto as Appendix A.) All statements by the person in such inquiry shall be under penalty of perjury. All persons seeking counsel under these Rules shall submit the Financial Declaration to the court. The court may appoint counsel subject to the submission of the Financial Declaration.

B. Need. The court shall determine the person's ability to obtain adequate representation according to the financial guidelines then in effect established by the Public Defender Service Corporation.

C. Redetermination.

1. If, at any stage of the proceedings, the court determines pursuant to these Rules, that a party, who previously had not had counsel appointed, has become financially unable to obtain adequate representation, the court may then appoint counsel for that person.
2. If at any time after appointment under these Rules, counsel obtains information that the person is now financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of such information is not protected as a privileged communication, counsel shall so advise the court.

RULE 13.3. MANNER OF APPOINTMENT

A. Priority. The Court shall appoint counsel in the order set forth below:

1. Public Defender Service Corporation;
2. Law firms or lawyers contracted by the Court to provide representation under these Rules;

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

3. Attorneys on the Private Attorney Panel established under these Rules on a rotational basis;
4. Active members of the Guam Bar Association.

The court may, in extraordinary circumstances, appoint counsel in derogation of the order set forth above. The court shall ordinarily appoint the same lawyer or law firm for the same client when said client has more than one pending matter.

More than one attorney may be appointed in any case determined by the court to be extremely difficult, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

B. Private Attorney Panel.

1. The Supreme Court of Guam shall establish a Private Attorney Panel (“Panel”) consisting of attorneys qualified and willing to be appointed counsel to persons financially unable to obtain adequate representation. The Panel shall be divided into three or more subparts, distinguishing those attorneys qualified and willing to be appointed in certain types of proceedings, such as criminal, appellate, or juvenile matters.
2. The addition, and removal, of attorneys to or from the Panel shall be supervised by the Supreme Court of Guam.
 - a) The Supreme Court of Guam shall establish a Panel Attorney Standing Committee (“Committee”), who will contact counsel who may be appropriate for membership on the Panel, review applications for membership, and prepare a list of potential Panel members. This list shall be distributed to all members of the Committee, and to all judges and justices of the courts of Guam. The Committee members and jurists reviewing the list of potential Panel members shall identify any attorney who should not be included on the Panel, and state, as specifically as possible why that attorney should not be a Panel member, with all such comments being confidential. The Committee shall, by majority vote, determine whether any attorney shall become a Panel member, and accordingly make such recommendations to the Supreme Court of Guam.
 - b) The Committee shall periodically review new applications for Panel membership.
 - c) Any attorney who has been suspended or disbarred by the Supreme Court of Guam or any other jurisdiction shall be immediately suspended from the Panel, unless otherwise ordered by the Supreme Court of Guam.

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

d) Any complaints as to the performance of a Panel member shall be referred to the Committee, which may also take notice of any apparent deficiencies on its own. The Committee shall notify the attorney as to the nature of the complaint, and the attorney may request a hearing before the Committee. The attorney shall have the appropriate due process rights at any such hearing, which shall remain confidential. The Committee may, upon majority vote, recommend that the Supreme Court of Guam remove an attorney from the Panel.

3. Rotation of Appointments. All appointments shall be made in an orderly manner to ensure fair distribution of appointments amongst Panel members. Appointments from the Panel shall be in alphabetical order, but the next qualified attorney may be appointed when the court determines that:

- a) there is a conflict of interest;
- b) the attorney lacks sufficient experience in a serious felony matter;
- c) the attorney is unavailable to promptly handle the matter; or,
- d) an immediate appointment of counsel is required.

C. Records. The Clerk of the Superior Court and Clerk of the Supreme Court shall each maintain:

- 1. a current roster of all attorneys on the Panel;
- 2. a public record of all appointments, including the numbers and types of cases as assigned to the various law firms and attorneys described in Rule 13.3(A) and (B) above; and,
- 3. current data on the status of invoices and payment for all court appointments.

D. Counsel appointed under these Rules shall, unless excused by order of the court, continue to act for the person throughout the proceedings in this court. Appointed counsel is expected to appear personally at all proceedings, with substitutions or the filing of additional appearance permitted only with leave of the court. The judge before whom a case is pending may, in the interest of justice substitute one appointed counsel for another at any stage of the proceedings.

In all criminal cases, counsel shall advise the defendant of the right to appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and shall continue to represent the defendant, until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; until the appointment is terminated by court order; or until the attorney

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

is relieved by the court.

RULE 13.4. INVESTIGATIVE, EXPERT AND INTERPRETATIVE SERVICES.

A. The court may authorize counsel appointed under these Rules to retain the services of investigators, experts and interpreters upon a showing that such services are necessary for adequate representation of the person.

B. Prior to retaining the services of investigators, experts or interpreters, counsel appointed under these Rules shall submit an application for approval of such services by the court. Failure to obtain approval prior to retaining such services may bar payment or reimbursement from the court for same, absent a finding by the court of sufficiently compelling circumstances.

C. The hourly rate for services under this section shall not be less than \$25.00.

D. Where counsel has received prior authorization for services under this section, the maximum total shall not exceed \$1,500.00. However, court appointed counsel may seek approval above the maximum limit from the judge or justice assigned the case. Final approval above the maximum limit shall come from the Presiding Judge, for cases in the Superior Court, or the Chief Justice for cases in the Supreme Court, upon a showing in writing of reasonable justification.

E. An investigator shall not be paid for time in court unless called as a witness in the case.

F. The total cost of all services obtained without prior authorization may not exceed a total of \$250.00 and expenses reasonably incurred.

RULE 13.5. COMPENSATION

A. Unless otherwise provided for, by contractual or other provision, the hourly rate for legal services by counsel appointed under these Rules shall not be less than \$90.00 per hour. This rate shall be paid for legal services rendered in and out of the courtroom.

B. No counsel appointed under these Rules may request or accept any payment, or promise of payment, for such representation unless such payment is approved by order of the court.

C. Application for payment by appointed counsel shall be submitted on the appropriate form to the Judge assigned to the case and Clerks of Superior Court and Supreme Court, whichever is applicable. The assigned Judge and the Clerk of Court shall have thirty (30) days to act on the submitted voucher. Failure to act within the thirty-day time period shall be deemed an approval of the submitted vouchers. Appointed counsel may request review of the reduction by the Subcommittee on Indigent Defense.

FINANCIAL DECLARATION

IN SUPPORT OF REQUEST FOR LEGAL COUNSEL WITHOUT PAYMENT OF FEE
 IN THE UNITED STATES TERRITORY OF GUAM: Family Court Superior Court Supreme Court

IN THE CASE OF:

_____ vs. _____
 PERSON REPRESENTED (show your full name):

DOCKET NUMBER

SOCIAL SECURITY NUMBER: _____

CHARGE/OFFENSE (describe if applicable & check box):

1 <input type="checkbox"/> Defendant - Adult	4 <input type="checkbox"/> Provation Violator
2 <input type="checkbox"/> Defendant - Juvenile	5 <input type="checkbox"/> Habeas Petitioner
3 <input type="checkbox"/> Appellant (if so, was counsel previously appointed for you <input type="checkbox"/> Yes <input type="checkbox"/> No	6 <input type="checkbox"/> Other (specify)

Felony Misdemeanor

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

Are you now employed? Yes No Self Employed. Name and address of employer:
IF YES, how much do you earn per month?
EMPLOYMENT **IF NO**, give month and year of last employment. _____ How much did you earn per month? \$
 If married, is your spouse employed? Yes No **IF YES**, how much does your spouse earn per month? \$
 If a minor under age 21, what is your parents' or guardian's approximate monthly income? \$

Have you received within the past year any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, spousal support payments, or other sources? Yes No

OTHER INCOME	RECEIVED	SOURCES
IF YES, GIVE THE AMOUNT	\$ _____	_____
RECEIVED & IDENTIFY	\$ _____	_____
THE SOURCES	\$ _____	_____

Are you currently receiving welfare benefits of any kind? Yes No **IF YES**, give the amount per month and describe the benefit.

	AMOUNT	TYPE OF BENEFIT
	\$ _____	_____
	_____	_____

CASH Have you any cash on hand or money in savings or checking accounts? Yes No **IF YES**, state total amount \$ _____

PROPERTY Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes No

	VALUE	DESCRIPTION
IF YES, GIVE VALUE AND DESCRIBE	\$ _____	_____
	_____	_____
	_____	_____

DEPENDENTS MARITAL STATUS Total No. of List persons you actually support and your relationship to them.

Single Dependents: _____

Married () _____

Widowed _____

Separated or Divorced _____

DEBTS & MONTHLY BILLS	APARTMENT OR HOME	Creditors (List all creditors including banks, loan companies, charge accounts, etc.)	Total Debts	Monthly Payments
	_____	_____	\$ _____	\$ _____
	_____	_____	\$ _____	\$ _____
	_____	_____	\$ _____	\$ _____

I declare under penalty of perjury, the foregoing is true and correct. In addition, by my signature below, I hereby agree to make available to the courts of Gam any and all documents within my possession, or within the possession for the Department of Revenue and Taxation, relating to my financial status.

SIGNATURE OF DEFENDANT (or person to be represented): _____

WARNING: A FALSE OR DISHONEST ANSWER TO A QUESTION IN THIS DECLARATION MAY BE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH. See Title 9, Guam Code Annotated, Sections 52.15 and 52.20.