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IN THE SUPREME COURT OF GUAM

RE:) PROMULGATION ORDER NO.: 04-004
)
AMENDMENTS TO THE)
RULES FOR THE SUPERIOR)
COURT OF GUAM FOR THE)
APPOINTMENT OF COUNSEL)
FOR INDIGENT DEFENDANTS)

On February 27, 2004, through Promulgation Order 04-003, the Supreme Court amended the Rules for Appointment of Counsel for Indigent Defendants by repealing and reenacting the second paragraph in the Preamble, Rules 13.3.A, 13.3.B, 13.5.A, and 13.5.C, and adding a new Rule 13.3.C to the Rules.

When the new Rule 13.3.C was added by Promulgation Order 04-003, due to an administrative oversight there already existed both a Rule 13.3.C and a Rule 13.3.D which remain in existence. For clarification regarding the numbering of sections within Rule 13, Rules 13.3.C and 13.3.D as they existed prior to Promulgation Order 04-003 are hereby renumbered as Rule 13.3.D and Rule 13.3.E respectively.

Furthermore, the Supreme Court, pursuant to 7 GCA § 3107 (as amended by P.L. 27-31), hereby repeals the third paragraph of the Preamble, and amends Rules 13.3.C.2, "Formation of Private Attorney Panel," 13.3.C.3, "Adding and Removing Attorneys from the Private Attorney Panel," and 13.3.C.4, "Assignment of Cases to the Private Attorney Panel," of the Rules for Appointment of Counsel for Indigent Defendants to create four sub-panels of the final Private Attorney Panel on which the final Private Attorney Panel attorneys will be placed; to allow Justices of the Supreme Court and Judges of the Superior Court to make final decisions regarding membership on the four sub-categories of the Private Attorney Panel as well as other matters regarding the Private Attorney Panel attorneys; and to expand the types of proceedings in which attorneys on the Pending Application List are allowed to sit second chair

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to a Private Attorney Panel attorney for purposes of training.

For the purposes of clarity, and to avoid any confusion regarding Rule 13 of the Rules for Appointment of Counsel for Indigent Defendants, the complete Rule 13, including those changes made by Promulgation Order 04-003, as well as the renumbering clarification, partial repeal and amendments articulated in this present Promulgation Order 04-004, is attached hereto as Exhibit A.

SO ORDERED, this 9th day of March, 2004.



ROBERT J. TORRES
Associate Justice



FRANCES M. TYDINGCO-GATEWOOD
Associate Justice



F. PHILIP CARBULLIDO
Chief Justice

EXHIBIT A

RULE 13 OF THE RULES FOR THE SUPERIOR COURT OF GUAM

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 promulgation by the Supreme Court of Guam. The priority of appointments shall be: Public Defender, Interim Private Attorney Panel, active members of the Guam Bar. Until the Standing Committee and regular Private Attorney Panel are formed under Rule 13.3.C, appointments are to be made from the Interim Attorney Panel as provided herein.

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.

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

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

(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 Supreme Court and each Judge of the Superior Court shall appoint counsel in the order set forth below:

1. The Public Defender Service Corporation;
2. The Private Attorney Panel; and
3. Active members of the Guam Bar Association.

The Supreme Court or a Judge of the Superior Court may, in their discretion, appoint counsel in derogation of the order set forth above. The Supreme Court or a Judge of the Superior Court shall ordinarily appoint the same lawyer or law firms 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 Supreme Court or the Judge of the Superior Court assigned to the case 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. Interim Private Attorney Panel.

1. Until the Standing Committee and regular Private Attorney Panel are formed under Rule 13.3.C herein, appointments of counsel for indigent defendants are to be made from an Interim Private Attorney Panel (herein "Interim Panel"). The Chief Justice is authorized to establish a list of attorneys from the Guam Bar Association to be members of the Interim Panel. The Interim Panel shall continue until the formation of the Private Attorney Panel.

2. The Provisions of Rule 13.3.C.4 and 5 shall apply to the Interim Panel.

3. Compensation for attorneys appointed from the Interim Panel shall be in accordance with Rule 13.5.

RULE 13 - APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

C. Private Attorney Panel.

1. Formation of a Standing Committee to Oversee the Private Attorney Panel.

a) The Supreme Court of Guam shall create a Standing Committee to oversee the Private Attorney Panel ("PAP"). The Standing Committee shall consist of five (5) attorneys, each a voting member, who possess sufficient experience and interest in the local criminal justice system to administer the PAP.

b) The Public Defender of Guam, or his or her representative, will be a permanent voting member of the Standing Committee. The Clerks of the Superior and Supreme Courts of Guam, or their respective designees, shall be an ex officio, non-voting members of the Standing Committee.

c) In addition to the Public Defender, or his or her representative, two (2) of the members of the Standing Committee will be appointed by the Chief Justice for a one-year term and the remaining two (2) members for a two-year term. Thereafter, appointments will be made for two-year terms. The Standing Committee will be permitted to use the staff of the Clerks Office of the Supreme and Superior Court for clerical and record-keeping matters for respective trial and appellate matters.

d) The Standing Committee shall elect from its members who are private attorneys a chairperson, who shall preside over its meetings and serve as the liaison between the PAP, the Judiciary and the community.

e) The Standing Committee shall meet formally at least once per year. In addition to reviewing and determining PAP membership, the Standing Committee shall identify and define any operating difficulties encountered in the administration of the PAP and make recommendations to the Supreme Court for appropriate changes to this rule.

f) The Standing Committee shall also coordinate with the Public Defender Service Corporation of Guam in providing training for the PAP. Such training shall include correspondence with PAP attorneys on substantive and procedural changes in the law, local rules, and other matters affecting the PAP attorneys, and shall also include regularly scheduled seminars for PAP attorneys, and if possible, the private bar.

2. Formation of the Private Attorney Panel.

a) Pursuant to the terms of this Rule, PAP attorneys shall be members of the Guam Bar Association. In addition to bar membership, the PAP attorneys should have when applicable, prior criminal trial experience, significant involvement in serious or complex criminal cases, knowledge of the Rules of Criminal Procedure and the bail statutes, knowledge of other relevant areas of criminal practice, clinical experience or participation in trial advocacy programs, prior juvenile, guardian ad litem, and or appellate experience.

b) The PAP shall consist of attorneys recommended and approved by a majority of the Standing Committee.

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c) An attorney who is interested in becoming a member of the PAP shall complete and submit the attached Private Attorney Panel Application (**Appendix B**).

d) The Standing Committee shall compile and review all applications, and prepare a list of applicants who possess the qualifications required for the PAP. The Standing Committee shall also compile a pending applications list, which will include those attorneys requiring more training prior to being placed on the regular PAP list.

e) These two lists shall be distributed to all members of the Standing Committee, all Justices and Judges, as well as to the Clerk of each Court. Each person receiving the lists shall review them and return them to the Standing Committee with the names of any attorneys absent from the list who should be contacted to ascertain their interest in participating on the PAP. Attorneys interested in being included on the PAP would then be given an opportunity to complete an application.

f) Those receiving the lists shall also review them to identify the individuals who should not be included on the PAP, and shall state the reason(s) for such recommendation. The reason(s) should be based on the following factors: (a) a perceived lack of competence or knowledge; (b) a perceived lack of interest and motivation; (c) a perceived lack of training; (d) an unwillingness to make the necessary commitment to the PAP; or (e) a lack of willingness to provide the quality of representation deemed necessary. The person making the recommendation should be as specific as possible, concerning the reasons, with all such recommendations being confidential. The Standing Committee, by majority vote, will make a recommendation to the Supreme Court Justices or Superior Court Judges, whichever is appropriate, concerning whether the prospective PAP member should be included on the final PAP. Supreme Court Justices will decide all matters dealing with the Appellate Panel. Superior Court Judges will decide all matters dealing with the Criminal, Juvenile and Guardian Ad Litem Panels. Final decisions regarding membership on the PAP will be made by a majority vote of the Supreme Court Justices or Superior Court Judges, whichever is appropriate.

g) The final PAP shall consist of approximately 10 - 15 members in each of the following four (4) categories: Criminal (misdemeanor and felony), Juvenile, Guardian Ad Litem, and Appellate.

h) Creation of a Pending Applications List.

i) A "Pending Applications List" shall be established, consisting of lawyers who have applied for membership on the PAP and who do not yet possess sufficient skill, knowledge or experience to be on the PAP. Pending final approval of their applications, such attorneys shall receive training and shall serve, without compensation, in a second chair capacity to a PAP attorney on a given case, or aspects of a given case, including, but not limited to, bail hearings, sentencing proceedings, and appellate arguments.

ii) Each Clerk's Office and the Standing Committee shall maintain the pending applications list. PAP attorneys will be advised of the existence of such a list and will be expected to contact the appropriate Clerk's Office or a Standing Committee member to obtain the names of people seeking to serve in a second chair capacity. The Standing Committee shall then

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periodically review the pending applications list and make recommendations to the Supreme Court Justices or Superior Court Judges, whichever is applicable, as to which attorneys should be moved onto the regular PAP.

3. Adding and Removing Attorneys from the Private Attorney Panel.

a) Additions.

i) The Standing Committee shall monitor the operation of the PAP to determine whether it meets the needs of current case load requirements. Additions to the PAP shall be made through the approval of new applications and by moving attorneys from the pending applications list to the regular PAP. New applications shall be collected by each Clerk's Office and referred to the Standing Committee for periodic review.

ii) By majority vote, the Standing Committee shall decide which applicants need further training, thereby remaining on the pending applications list, and which ones are to be referred to the Supreme Court Justices or Superior Court Judges, whichever is applicable, for inclusion on the PAP. Final decisions on inclusion will be made by a majority of the Supreme Court Justices or Superior Court Judges, whichever is applicable.

b) Suspensions.

i) Attorneys who have been suspended or disbarred from a court of any state, territory, commonwealth or possession of the United States and who are the subject of reciprocal discipline pursuant to the Supreme Court of Guam Rules for the Discipline of Attorneys, or who are presented for discipline in the Supreme Court of Guam, shall be suspended from the list pending disposition of the ethics proceedings. If the attorney is counsel of record in a pending case, the trial Judge or the Chief Justice shall be notified by their respective Clerk's Office. If the attorney is suspended or disbarred, the attorney shall be removed from the PAP, and will be eligible to reapply only if he or she later becomes a member Guam Bar Association in good standing.

c) Removals.

i) Any complaints about the performance or commitment of a PAP attorney shall be referred to the Standing Committee. The Standing Committee shall also take notice of such deficiencies on its own and make recommendations to the Supreme Court Justices or Superior Court Judges, whichever is applicable, for removal from the PAP. At the request of a Justice, Judge, Clerk of each court, or individual Standing Committee member, the Standing Committee shall review complaints about a PAP member. The receipt and handling of complaints will be confidential.

ii) The PAP attorney shall be notified of any complaint, and shall have the right to request a hearing before the Standing Committee. At the hearing, the attorney shall have all due process rights, including representation by counsel, the right to be informed of the nature of the complaint and the right

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to present testimony on his or her behalf. A recommendation for or against removal shall be by majority vote and forwarded to the Supreme Court Justices or Superior Court Judges, whichever is applicable, for appropriate action. Removal of the attorney from the PAP shall be by majority vote of the Supreme Court Justices or Superior Court Judges, whichever is applicable.

4. Assignment of Cases to the Private Attorney Panel.

a) The Clerk's Office of the Supreme Court and the Judges of the Superior Court shall be responsible for overseeing the assignment of cases to PAP attorneys in the respective courts. Assignments shall be made on a rotational basis, except under circumstances where a Judge or Justice directs otherwise. PAP attorneys may refuse or "pass" an appointment when unavailable to assume the case due to scheduling conflicts, workload, or other good cause. Reasons for passing appointment shall be given to the Clerk of the Supreme Court or the Judge of the Superior Court overseeing the case, and passing may not be done more than three times during a calendar year.

b) The Clerk's Office of the Supreme Court and each respective Judge of the Superior Court shall maintain a master list of PAP appointments, which will include the date of each appointment, the case name, the date of each pass by a PAP attorney, and the reason for each pass.

c) If the Clerk's Office of the Supreme Court or a Judge of the Superior Court determines that a PAP attorney has repeatedly passed assignments, the Clerk's Office of the Supreme Court or a Judge of the Superior Court may refer the name of the attorney to the Standing Committee. The Standing Committee shall then consider the information provided by the Clerk's Office of the Supreme Court or a Judge of the Superior Court and make such further inquiry or recommendation to the Supreme Court Justices or Superior Court Judges, whichever is applicable, as it deems appropriate, including removal from the PAP.

d) The Clerk's Office of the Supreme Court and the Superior Court shall also maintain a public record of assignments to the Public Defender Service Corporation of Guam, to the PAP, as well as current statistical data reflecting the proration of appointments.

e) The Public Defender Service Corporation of Guam will make such arrangements with local investigative and police agencies as will adequately assure that at the earliest practicable stage, persons arrested under circumstances where representation is required by law may promptly have counsel furnished to them.

5. Rotation of Appointments. All appointments shall be made in an orderly manner to ensure fair distribution of appointments amongst PAP members. Appointments from the PAP shall, unless a Judge in his or her discretion determines otherwise, 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;

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- c) the attorney is unavailable to promptly handle the matter; or
- d) an immediate appointment of counsel is required.

D. 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.

E. 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 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.

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RULE 13.5. COMPENSATION

A. Unless otherwise provided for, the hourly rate for legal services by counsel appointed under these Rules shall be \$90.00 per hour for legal services rendered in and out of the courtroom, subject to the following maximums:

1. Not more than \$7,500.00 shall be paid for felonies.
2. Not more than \$2,500.00 shall be paid for misdemeanors.
3. Not more than \$2,500.00 shall be paid for juvenile cases.
4. Not more than \$2,500.00 shall be paid for each level of appeal in a particular case.

Counsel appointed under these rules may apply to the Administrator of the Courts to exceed these maximums. Counsel must demonstrate extraordinary circumstances and good cause to justify an exception to the maximums. Approval of any amount in excess of the limits herein shall be approved by the Administrator of the Courts with the concurrence of the Justice or Judge presiding over the case.

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 Clerks of the Superior Court and Supreme Court, whichever is applicable. The Administrator of the Courts shall have sixty (60) days to act on the submitted voucher. Failure to act within the sixty-day time period shall be deemed an approval of the submitted voucher.

PRIVATE ATTORNEY PANEL APPLICATION

Name: _____ Social Security No.: _____

Address: (include firm name, if any) Telephone No.: _____

Date of Bar Admissions:

State/territorial courts (specify jurisdiction): _____

Have you ever served on a panel of this nature? _____ Yes _____ No

(If yes, state where and when)

QUESTIONS RELATING TO CRIMINAL COURT, JUVENILE AND GUARDIAN AD LITEM EXPERIENCE:

Have you ever been employed as a Public Defender? _____ Yes _____ No

(If yes, state where and when)

Have you ever worked as a prosecuting attorney? _____ Yes _____ No

(If yes, state where and when)

Have you ever attended training programs focusing on criminal practice?

Bail statutes 9 GCA Chapter 40: _____ Yes _____ No

(If yes, state where and when)

Other: _____ Yes _____ No

(If yes, state where, when & nature of seminar)

How Many Trials Have You Personally Conducted?

_____ % Jury Trials _____ % Court Trials
_____ % as Defense Attorney _____ % as Prosecutor
_____ % Primarily Responsible _____ % Second-chaired

Please give range regarding lengths of these trials. _____

How many guilty pleas have you handled? _____

_____ % as Defense Attorney _____ % as Prosecutor _____

Please describe the types of cases you have handled.

APPENDIX "B"

Please indicate your juvenile litigation experience by providing examples of your practice, type of case (JD, J.P., Guardian Ad Litem), fact finding involvement, length, etc.

Miscellaneous Information:

Please indicate your civil litigation experience by providing examples of your practice, types of cases, trial involvement, length, etc.

Please explain any other relevant experience which explains why you would like to be on the PAP.

QUESTIONS RELATING TO APPELLATE EXPERIENCE:

Please explain your appellate experience by providing the following information: Number of appellate briefs written to the Guam Supreme Court, District Court of Guam Appellate Division, Ninth Circuit Court of Appeals, U.S. Supreme Court or any other appellate courts.

Please explain your appellate experience by providing the following information: Number of oral arguments you participated in before the Guam Supreme Court, District Court of Guam Appellate Division, Ninth Circuit Court of Appeals, U.S. Supreme Court or any other appellate courts.

I have read the rule which governs the Private Attorney Panel. By making this application I am hereby agreeing to abide by the provisions as outlined in the rule.

Dated: _____

Signature

Applications should be returned to either the Clerk of the Supreme or Superior Court, whichever is applicable.