

## **INDIGENT DEFENSE**

### **MR 1.1. Appointment of Counsel for Indigent Defendants.**

**NOTE:** These rules were adopted by the Judicial Council in 1981 and published as the Rules for Appointment of Counsel for Indigent Defendants in the Guam Bar Journal, RAINY SEASON - 1981, Volumes 3 & 4. On November 19, 2002, in Promulgation Order 02-009, the Supreme Court of Guam amended and revised these rules as Rule 13 of the Rules of the Superior Court of Guam. On May 3, 2007, in Promulgation Order 06-006-01, the Supreme Court re-codified this rule as MR 1.1 of the Miscellaneous Rules of the Local Rules of the Superior Court of Guam. Amendments to these rules are herein indicated.

#### **MR 1.1.1. 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.

**SOURCE:** Added by Sup. Ct. of Guam Prom. Order No. PRM02-009 (Nov. 19, 2002).

#### **MR 1.1.2. 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. The court shall not appoint counsel unless a Financial Declaration is submitted.

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.

**SOURCE:** Added by Sup. Ct. of Guam Prom. Order No. PRM02-009 (Nov. 19, 2002).

### **MR 1.1.3. MANNER OF APPOINTMENT.**

A. Priority. The Chief Justice and each Judge of the Superior Court shall appoint counsel in the order set forth below:

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

The Chief Justice or a Judge of the Superior Court may, appoint counsel in derogation of the order set forth above for good cause shown, such good cause to be entered on the record. The Chief Justice 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 Chief Justice 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. 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 PAP attorneys approved at the time of this promulgation are identified in Appendix B. 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, and the Chairperson of the Judiciary’s Subcommittee on Indigent Defense shall be 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 **(TO BE DELETED: “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.
- c) An attorney who is interested in becoming a member of the PAP shall complete and submit the attached Private Attorney Panel Application (Appendix C).
- d) The Standing Committee shall review each application, and determine whether the applicant possesses the qualifications required for the PAP, and if so, approve the application. If the applicant does not possess the necessary qualifications, the Standing Committee shall place the applicant on a pending applications list, which will include those attorneys requiring more training prior to being placed on the regular PAP list.
- e) Each approved application shall be distributed to all Justices and Judges, who shall have 14 days to review and comment on the application. Those reviewing the application shall 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.
- f) After the 14 day review period, whether or not comments or recommendations are received, each application shall be transmitted to the Chief Justice who shall review each application, comments and recommendations and approve or disapprove the application.
- 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 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 the Chief Justice.

#### 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 Chief Justice 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 to present testimony on his or her behalf. A recommendation for or against removal shall be

by majority vote and forwarded to the Chief Justice for appropriate action. Removal of the attorney from the PAP shall be by the Chief Justice.

d) Resignations.

i) Any member of the PAP who desires to voluntarily resign from the PAP, shall submit a written request to the Chief Justice setting forth reasons and justification for such resignation. The Chief Justice shall determine whether the resignation will have a detrimental effect on the ability of the court to appoint counsel before allowing the member to resign.

ii) Any member of the PAP who is subject to suspension or removal from the PAP pursuant to this rule shall not be permitted to request resignation from the PAP until the suspension or removal issue is decided.

4. Assignment of Cases to the Private Attorney Panel.

a) The Chief Justice 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 for good cause 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 Chief Justice 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. Upon an appointment, the PAP attorney shall immediately determine if a conflict of interest exists preventing representation and inform the court. No payment shall be made by the court for the determination of a conflict. PAP attorneys shall not charge the court for determining whether a conflict exists.

b) The respective Clerk’s Offices of the Supreme Court and Superior Court and each respective courtroom clerk of the Superior Court shall maintain a master computer generated 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 Chief Justice of the Supreme Court or a Judge of the Superior Court determines that a PAP attorney has repeatedly passed assignments, the Chief Justice 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 Chief Justice of the Supreme Court or a Judge of the Superior Court and make such further inquiry or recommendation to the Chief Justice as it deems appropriate, including removal from the PAP.

d) Each of the respective Clerk’s Offices of the Supreme Court and the Superior Court shall also maintain a public record of assignments to the Public Defender Service Corporation of Guam, Alternate Public Defender, the PAP, and active members of the Guam Bar Association 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 the Chief Justice or Judge for good cause 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;
- c) the attorney is unavailable to promptly handle the matter; or
- d) an immediate appointment of counsel is required.

#### C. Records.

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

- a) a master computer generated list of all attorneys on the Panel;
- b) a master computer generated list for the public record of all appointments, including the numbers and types of cases as assigned to the various law firms and attorneys described in MR 1.1.3(A) and (B) above; and,
- c) current data on the status of invoices and payment for all court appointments.

2. The Public Defender and the Alternate Public Defender shall prepare monthly reports on court appointments and submit such reports to the Administrator of the Courts.

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 is relieved by the court.

**SOURCE:** Added by Sup. Ct. of Guam Prom. Order No. PRM02-009 (Nov. 19, 2002), amended by PRM04-003 (Feb. 27, 2004), repealed and reenacted by PRM05-004 (May 3, 2005). Rules 13.3 (C)(2), (3) & (4) and Rules 13.3 (D) and (E), amended and renumbered, respectively, by PRM04-004 (Mar. 9, 2004). MR 1.1.3. (A)(2), (B)(1)(a-b), (B)(2)(d-f), (B)(3)(a)(ii), (B)(3)(c), (B)(4)(d), (C)(2), and (B)(3)(d), amended and added, respectively, by PRM06-006-03 (Oct. 2, 2007).

#### **MR 1.1.4. INVESTIGATIVE, EXPERT, INTERPRETATIVE AND PARALEGAL 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. The hourly rate for investigators, experts and interpreters shall not be less than \$25.00.

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. Where counsel has received prior authorization for investigators, experts and interpreters, the maximum total shall not exceed \$1,500.00. Counsel appointed under these rules may apply to the Administrator of the Courts to exceed this maximum. Counsel must demonstrate extraordinary circumstances and good cause to justify an exception to the maximum. Approval of any amount in excess of the limit herein shall be approved by the Administrator of the Courts. The Superior Court Judge presiding over the case may provide input in this regard.

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

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

F. An attorney appointed under these rules may, in her discretion, use the services of a paralegal. A paralegal hired under these rules shall not be paid more than \$45.00 per hour and such services shall not be separately charged to the court.

**SOURCE:** Added by Sup. Ct. of Guam Prom. Order No. PRM02-009 (Nov. 19, 2002).

#### **MR 1.1.5. 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 each felony case.

**However, in any case where the defendant faces life imprisonment, such as a homicide or criminal sexual conduct case, the maximum shall be not more than \$15,000.00.**

2. Not more than \$2,500.00 shall be paid for each misdemeanor case.

3. Not more than \$2,500.00 shall be paid for each juvenile delinquency cases.

4. Not more than \$2,500.00 shall be paid for each level of appeal in a particular case.

5. Not more than \$1,000.00 shall be paid for work performed in any given year for a period of up to five (5) years for attorneys appointed in juvenile special proceedings cases or appointed to provide guardian ad litem services. Notwithstanding the maximum compensation herein, the services of the appointed attorney may continue beyond the five (5) year period.

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. The Superior Court Judge presiding over the case may provide input in this regard.

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 voucher form to the Clerks of the Superior Court and Supreme Court, whichever is applicable. Appointed counsel shall submit vouchers on a monthly basis. The Clerks for each court shall not approve payments unless vouchers are submitted as herein provided. 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.

**SOURCE:** Added by Sup. Ct. of Guam Prom. Order No. PRM02-009 (Nov. 19, 2002). Rule 13.5(A) and (C) repealed and reenacted by PRM04-003 (Feb. 27, 2004). Rule 13.5(A) and (C) amended by PRM05-004. MR 1.1.5(A)(5) added by Promulgation Order No. 06-006-03 (Oct. 2, 2007).