



Northern Mariana Islands Supreme Court Rules

Title X Rules of Indigent Representation

Effective September 22, 2012



ADMINISTRATIVE
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IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS
SUPREME COURT RULES:
INDIGENT REPRESENTATION RULES

ADMINISTRATIVE ORDER 2012-ADM-0005-RUL

ORDER

¶ 1 On July 24, 2012, the attached *Indigent Representation Rules* of the *Northern Mariana Islands Supreme Court Rules* were submitted to the Seventeenth Northern Mariana Islands legislature for approval. Sixty (60) days have elapsed since its submission and neither house of the Legislature has disapproved of the new body of rules.

¶ 2 IT IS HEREBY ORDERED that the proposed *Indigent Representation Rules* of the *Northern Mariana Islands Supreme Court Rules* are permanent pursuant to Article 4, § 8 of the NMI Constitution. The rules shall become effective immediately.

ORDERED this 1st day of October, 2012.

/s/

ALEXANDRO C. CASTRO
Acting Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

TITLE X. INDIGENT REPRESENTATION RULES

Rule 80. Indigent Defense; Appointment and Compensation of Counsel and Guardians Ad Litem

(a) *Purpose*

The purpose of this rule is to establish procedures for the appointment and compensation of counsel and guardians ad litem for indigent persons with a constitutional or statutory right to appointed counsel or guardian ad litem in court proceedings. This rule supersedes the amended administrative order entitled *In re the Matter of Court-Appointed Counsel for Indigent Criminal and Juvenile Defendants and Appointment of Other Services* issued on December 24, 1998 by the Presiding Judge of the Superior Court.

(b) *Right to Counsel*

The court shall appoint counsel for an indigent person in the following matters:

- (1) An adult charged with a felony or a misdemeanor;
- (2) A juvenile charged with juvenile delinquency by the commission of an act which if committed by an adult would be a misdemeanor or a felony;
- (3) In contempt of court proceedings in which the defendant is in jeopardy of incarceration;
- (4) Probation revocation proceedings in accordance with 6 CMC § 4105(f);
- (5) Involuntary civil commitment proceedings as provided in 3 CMC §§ 2518;
- (6) Uniform Parentage Act proceedings in accordance with 8 CMC § 1719;
- (7) Any other proceedings where the court finds that the indigent person has a constitutional or statutory right to representation.

(c) *Appointment of Guardians Ad Litem*

The court shall appoint a guardian ad litem for indigent persons in matters requiring the appointment of a guardian ad litem pursuant to 8 CMC § 1983. The appointment of a guardian ad litem shall be consistent with Title 8, Division 1 Chapter 10 of the Commonwealth Code and Rule 25 of the Rules of Probate Procedures.

(d) *Eligibility Determination*

(1) The determination as to whether a defendant is indigent or whether a person is unable to afford a private attorney shall be at the discretion of the judge or justice before whom such person is appearing. 1 CMC § 2204. For purposes of determining eligibility, an indigent person is 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 person or his dependents of food, shelter or clothing, and who has not disposed of any assets with the intent of establishing eligibility for indigent representation.

(2) A defendant shall be presumptively eligible if income is equal to or below 125% of the U.S. Health and Human Services Poverty Guidelines for Hawaii but the court may consider other factors, such as real or personal property owned, the age of dependents, outstanding debts or lifestyle. The poverty guidelines are generally published in late January of each year. The court shall use the preceding year's guidelines until 30 days after publication of the new guidelines.

(e) *Representation*

(1) Every lawyer who is admitted to practice law in the Commonwealth of the Northern Marianas Islands has an obligation to represent indigent persons as required by law or the Model Rules Professional Conduct. See, e.g., Model R. Prof. Conduct 6.1 (Voluntary Pro Bono Public Service); Model R. Prof. Conduct 6.2 (Accepting Appointments). This obligation is the responsibility of each individual attorney.

(2) The court shall designate the public defender employed by the Commonwealth as appointed counsel for criminal and juvenile proceedings.

(3) The court shall appoint Micronesian Legal Services in contempt and child support proceedings when the court deems necessary.

(4) If attorneys in the Public Defender's Office or Micronesian Legal Services are not available due to a conflict of interest or other inability that prevents effective representation in accordance with constitutional and professional standards, the court shall designate counsel from a roster of private attorneys approved by the court.

(5) The court shall appoint separate counsel for indigent defendants having interests that cannot be properly represented by the same counsel or when other good cause is shown.

(6) Counsel appointed shall continue to act for the defendant throughout the proceedings in the court in which the appointment is made and in any subsequent proceedings or appeals until the case has been concluded or counsel has been relieved by the court.

(7) The defendant shall not have the right to select counsel to be appointed. If a competent defendant refuses to accept the services of appointed counsel, such refusal

shall be written and signed by the defendant in the presence of the court. In that event, the defendant may act *pro se* without the assistance or presence of counsel.

(f) *How Appointments Will Be Issued*

A judge or justice will issue an order notifying an attorney of his or her appointment as counsel. Guardian ad litem shall be appointed in the same manner.

(g) *Who Will Receive Appointments; Roster*

(1) The Superior and Supreme Courts will distribute indigent defense appointments to all active members the Bar. Excluded from the list of appointments will be any attorney who is a full-time employee of the CNMI government, the United States government, or the Guam government or a former CNMI justice or judge. Government attorneys may, however, volunteer for indigent defense appointments if such representation does not constitute a conflict of interest.

(2) The Clerk of Court shall maintain a roster of active CNMI licensed attorneys from which appointments will be made and the cases to which they are respectively appointed. Priority will be accorded to counsel who volunteer to accept appointments, including any conflicts counsel designation by the Judiciary. To the extent practicable, remaining appointments will be made alphabetically from the roster with attention paid to the indigent defense caseload already assigned to the attorney. Appointments based on the roster shall be assigned to individual attorneys irrespective of firm association. When possible, the court will schedule appointed matters to maximize efficiency and minimize court time for appointments. The Clerk of the Superior Court shall update the roster quarterly and provide to all judges and justices.

(h) *Duties and Responsibilities of Counsel*

Indigent defense services shall be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Commonwealth bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

(i) *Services Other than Counsel*

(1) Upon request, appointed private counsel for a person who is financially unable to obtain investigative, expert, interpretative or other similar services necessary for adequate representation shall request such services in an *ex parte* motion.¹ Upon finding, after appropriate inquiry in an *ex parte* proceeding that the services are required in connection

¹ When requested by counsel, such motions shall be placed under seal.

with the matter over which the court has jurisdiction and that the person is financially unable to obtain the services, the court may authorize counsel to obtain the services in a reasonable amount to be determined by the court.

(j) *Hourly Rate for Appointments of Counsel and Guardians Ad Litem and Services Other than Counsel*

(1) The Judicial Council shall establish the hourly rates and maximum allowable fees for indigent defense appointments and the appointment of guardians ad litem.

(2) If counsel reasonably believes that it is necessary to exceed the maximum allowable fees, he or she must seek prior written approval of the court in an *ex parte* motion.

(k) *Billing and Expenses*

(1) Counsel and guardians ad litem, and any associated service providers authorized pursuant to subsection (j) will be held to a high degree of care in the keeping of records supporting all claims and in the application for payment. Bills submitted for fees must show with specificity the hours of in-court and out-of-court time, with an explanation as to the nature of each entry.

(2) All requests for payment must be submitted to the court presiding over the matter that necessitated the appointment. Bills/invoices for services rendered may be submitted every 90 days during the representation. Bills must be submitted within 90 days of the conclusion of the representation.

(3) Appointed counsel is exempt from payment of the subpoena service fees required by Rule 17(d) of the NMI Rules of Criminal Procedure.

(4) The court shall examine all claims for attorneys' fees and expenses, guardians ad litem fees and any associated services authorized by the court. After such examination and given due consideration to state revenues, the court shall make a determination as to the compensation to be paid to each attorney, guardian ad litem or associated service provider and order payment thereof.

(l) *Transfer of Appointments to Substitute Counsel*

(1) If an appointed attorney chooses not to represent the client, then it is his or her responsibility to find or hire substitute counsel who is competent and willing to serve as counsel. The court reserves the right to reject any substitution which will be contrary to the best interests of the indigent person.

(2) Where the criminal appointment is transferred to another attorney, the "Transfer of Criminal Appointment" form which is available the Clerk of Court must be filed at the Superior Court by the attorneys involved. The transfer form will become part of the case file. The transfer the criminal appointment to substituted counsel, however, does not relieve the substituted counsel of next regular appointment on the rotation list.

(3) For purposes of billing, the court will consider the originally-appointed attorney on the case until the transfer form is filed. Upon the filing of the form, the substitute counsel may submit billings.

(m) *Criminal Appointments for Rota and Tinian Cases*

In addition to the hourly rate, all attorneys who receive appointments for Rota and Tinian cases shall be reimbursed for their airfare and for expenses reasonably incurred.

Whenever possible in matters other than critical stages of the proceedings, attorneys shall arrange appearance in Rota or Tinian courts via telephone or video conference.

(n) *Appearance in Court*

In an effort to lessen the burden on appointed counsel, the court will give calendar preference to private counsel appointments and cases where interpreters and/or experts have been appointed.

(o) *Exceptions*

(1) Where an attorney believes that he or she cannot represent the defendant pursuant to the court order, an affidavit must be submitted to justify, to the court's satisfaction, his or her position. The affidavits will not become part of the case file.

(2) If the privacy rights of counsel are involved, the attorney may meet with the sitting judge or justice to explain the reasons for avoiding the appointment. Under these circumstances, counsel need not submit an affidavit.

(3) Rule 6.2 of the Model Rules of Professional Conduct will govern these exceptions. Rule 6.2 provides:

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause; such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other laws;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely impair the client-lawyer relationship or the lawyer's ability to represent the client.

Counsel should familiarize themselves with the comments to Rule 6.2 of the Model Rules of Professional Responsibility.

(p) *Failure to Follow Rule*

(1) Failure to accept a criminal appointment may result in contempt of court or other appropriate sanctions where: (1) the exceptions of Rule 6.2 of the Model Rules of Professional Conduct do not apply; and (2) the originally-appointed attorney has failed to transfer the case. See 6 CMC § 3307.

(2) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet any of the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

2012 Poverty Guidelines*

Persons in family/household	Hawaii Poverty guideline	CNMI Guideline
		125% multiplier
1	\$12,860	\$16,075.00
2	17,410	\$21,762.50
3	21,960	\$27,450.00
4	26,510	\$33,137.50
5	31,060	\$38,825.00
6	35,610	\$44,512.50
7	40,160	\$50,200.00
8	44,710	\$55,887.50
For each additional person, add	4,550	\$5,687.50

* Based on U.S. Dept. of Health and Human Services Poverty Guidelines for 2012. Guidelines may change annually in accordance with Rule 80(d)(2) without need to amend Rule 80.

BEFORE THE NORTHERN MARIANA ISLANDS JUDICIAL COUNCIL
Resolution 2012- 01

To establish attorney fee rates for indigent appointments

WHEREAS, the Judicial Council proposed Rule 80 entitled Indigent Defense; Appointment and Compensation of Counsel and Guardians Ad Litem after consultation with the Superior Court Judges and the NMI Bar Association. Subsection (j) of Rule 80 provides that the Judicial Council will establish hourly rates and maximum allowable fees for indigent appointments.

WHEREAS, the current rates for appointment of counsel are set forth in *In re the Matter of Court-Appointed Counsel for Indigent Criminal and Juvenile Defendants and Appointment of Other Services* issued on December 24, 1998 by the Presiding Judge of the Superior Court.

These rates are:

- \$40 per hour for time reasonably expended out of court;
- \$60 per hour for time reasonably expended in court;
- \$3000 maximum allowable fees for felonies; and
- \$1000 maximum allowable fees for misdemeanors.

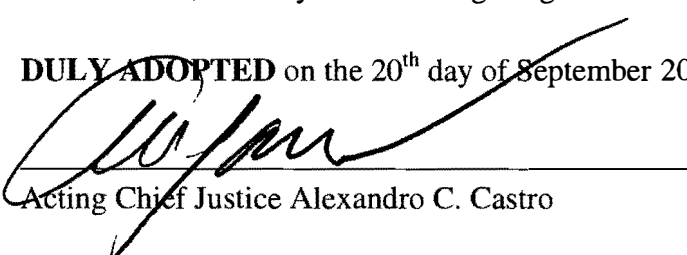
WHEREAS, the Judicial Council finds that the above rates have been stagnant for nearly fourteen years despite the increases in the cost of living and doing business on Saipan. Moreover, the above rates are less than half of the current rates used by the United States District Court for the Northern Mariana Islands and the Unified Courts of Guam (\$125 and \$90 per hour respectively).

THEREFORE BE IT RESOLVED, that beginning on October 1, 2012 the NMI Judiciary will implement the following rate for attorneys appointed pursuant to Rule 80(e)(4):

- \$75 per hour for time reasonably expended in or out of court
- \$4000 maximum allowable fees for felonies; and
- \$2000 maximum allowable fees for misdemeanors.

Until October 1, 2012, the rates established in *In re the Matter of Court-Appointed Counsel for Indigent Criminal and Juvenile Defendants and Appointment of Other Services* issued on December 24, 1998 by the Presiding Judge of the Superior Court will remain effective.

DULY ADOPTED on the 20th day of September 2012 at a meeting of the NMI Judicial Council.



Acting Chief Justice Alexandro C. Castro