

Alabama Rules of Criminal Procedure

Rule 6. Right to counsel: appointment of counsel.

Rule 6.4. Manner of appointment.

(a) ORDER OF APPOINTMENT. Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be given or sent to the defendant, the attorney appointed, and the prosecutor.

(b) APPOINTMENT OF PUBLIC DEFENDER. In counties that have a public defender, the public defender shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. If the public defender cannot represent the defendant, a private attorney shall be appointed.

(c) REQUESTS FOR REPRESENTATION BEFORE GRAND JURY. A request for appointment of counsel under Rule 12.7(a) shall be made and processed as if proceedings had already commenced in circuit court.

(d) APPOINTMENT OF COUNSEL DURING APPEAL. The trial or appellate court shall appoint new counsel for an indigent defendant legally entitled to representation on appeal, when prior counsel is permitted to withdraw.

(e) COMPENSATION. A private attorney appointed to represent an indigent is entitled to compensation for services rendered as provided by law. A private attorney so appointed shall be entitled to compensation for services rendered whether or not a criminal case reaches circuit court.

(f) CONTRIBUTION BY THE DEFENDANT. If the court finds that a defendant for whom counsel has been appointed had, at the time counsel was appointed, or subsequent thereto has acquired, financial resources that enable the defendant to offset all or part of the costs of the legal services which have been or are to be provided, the court shall order that defendant to pay to the state or to the appointed attorney, through the clerk of the court, such amount as the court finds the defendant is able to pay without incurring substantial hardship. Failure to obey an order under this section shall not be grounds for contempt or grounds for withdrawal by the appointed attorney, but an order under this section shall be assessed as part of the court costs. Except as authorized herein, no person, organization, or governmental agency may request or accept any payment or promise of payment for assisting in the representation of a defendant by court appointment.

(g) EXPENSES. As used herein the term "compensation for services" shall include any reasonable expenses necessarily incurred by appointed counsel in defense of an indigent client, including fees and expenses of expert or professional persons, provided that the incurring of such expenses has been

approved in advance by the judge presiding, approval to be within the sound discretion of the court.

Committee Comments

Section (a) is included to assure that adequate records of appointment and service of counsel are maintained by all courts and that the persons involved are properly notified. The papers transferred to the circuit court after a preliminary hearing should contain the order of appointment and the notice of appearance if that attorney made an appearance on the defendant's behalf. See Rule 6.2(a).

Section (b) establishes a preference for appointment of public defenders over private counsel in counties that have a public defender office. Where the public defender's office cannot represent an indigent defendant, as where there is a conflict of interest or if the public defender is unable to provide prompt and adequate representation, then private counsel shall be appointed. See Ala.Code 1975, § 15-12-46.

Section (c) implements the right to counsel contained in Rule 12.7(a).

Section (e) does not change the existing procedures for the payment of public defenders.