



RULES FOR THE APPOINTMENT OF COUNSEL IN PUERTO RICO

SUPREME COURT OF PUERTO RICO

RULES FOR THE APPOINTMENT OF COUNSEL IN PUERTO RICO*

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RULES FOR THE APPOINTMENT OF COUNSEL IN PUERTO RICO

CHAPTER I. CONSTRUCTION

Rule 1. Title and Legal Basis

These Rules will be known as the Rules for the Appointment of Counsel in Puerto Rico.

They are hereby adopted through the inherent power of the Supreme Court of Puerto Rico to regulate the practice of the legal profession in Puerto Rico and establish the necessary procedures to facilitate the sound administration of justice, powers which are reaffirmed in the Judiciary Act of the Commonwealth of Puerto Rico of 2003, as amended. Furthermore, these rules are put forward in accordance with the ethical and professional duty levied by the Canons of Professional Ethics as set forth in *Ramos Acevedo v. Tribunal Superior*, 133 DPR 599 [33 PR Offic. Trans. 48] (1993), and *Pueblo v. Morales*, 150 DPR 123 [50 PR Offic. Trans. 11] (2000).

It falls to the State to ensure that individuals with limited financial resources have access to legal representation, as a corollary of the constitutional principle of equality before the law enshrined in Article II, Section 1 of our Constitution. Pursuant to this duty, a system for the appointment of counsel in civil and criminal proceedings in the court of Puerto Rico is hereby established. This system is financed with State funds as provided by Law No. 17 of March 11, 1995, as amended, and Section 271 of the Code of Criminal Procedure of 1935, as amended, or any other appropriation of funds enacted through legislation to defray court appointment system.

Rule 2. Purpose and Construction

The purpose of these Rules is to implement a system for the uniform administration of court appointments in applicable civil and criminal proceedings, which will encourage pro bono work and will facilitate compliance by all attorneys with their ethical duty to offer legal services free of charge to indigent persons. These rules will be construed in a manner that promotes access to courts through free legal representation to individuals with limited financial resources who qualify as indigents under the rules and procedures established herein and the financial criteria provided by the Office of Court Administration.

Nothing provided in these rules shall limit the court's discretion to order the appointment of counsel to represent an indigent person in a judicial proceeding not recognized expressly by these Rules if, in the court's opinion, said appointment promotes the sound administration of the judicial system and procedural fairness, pursuant to the imperative of access to justice, in accordance with the parameters established herein.

The terms established in these Rules shall be construed as to safeguard the expeditiousness of judicial proceedings, without undermining the governing principles of access to courts and case management. Unless otherwise provided, these terms are of strict compliance, and thus, enlargement is discouraged, except for just cause shown.

Rule 3. Ethical Duty to Render Pro Bono Services as a Result of a Court Appointment

Practicing attorneys have the ethical duty under the Canons of Professional Ethics to ensure that all persons have adequate legal representation and to render pro bono legal services to indigent persons. As officers of the court, and pursuant to this obligation, attorneys must accept court appointments to represent indigent persons, unless just cause is shown under Rule 9(b) hereunder.

Rule 4. Definitions

(a) *Auxiliary Counsel* – An attorney appointed by the court to provide legal representation jointly with another court-appointed counsel. Auxiliary counsel have the same duty regarding their clients as that of the attorney initially or simultaneously appointed to the same case.

(b) *Court-Appointed Counsel* – An attorney authorized to practice law in Puerto Rico who is appointed by the court to represent an indigent person under these Rules. This includes appointments as “auxiliary counsel,” but excludes attorneys admitted by courtesy under Supreme Court Rule 12(f).

(c) *Fiscal Year* – The period from July 1 of a calendar year through June 30 of the following calendar year.

(d) *Certification* – A resolution issued by the court at the request of the court-appointed counsel to approve the hours expended in relation to the tasks performed at the stage of the proceeding before the court.

(e) *Annual Declaration* – A certification all attorneys in Puerto Rico must file electronically each year to claim one of the grounds for exemption set forth in Rule 7(b) hereunder.

(f) *Special Declaration* – A certification attorneys must file to claim one of the grounds for exclusion set forth in Rule 7(a) hereunder or to notify changes in their personal or professional circumstances that may warrant review of an exclusion granted, pursuant to the requirements of Supreme Court Rule 9(j).

(g) *Deferment* – The court’s power to authorize an attorney to withdraw as court-appointed counsel in a particular case with the effect of preserving his or her turn for a subsequent appointment. It includes the deferment for a specific period, which has the effect of postponing an

appointment during the period granted, after which the attorney will return to the position held in the appropriate pool of attorneys for court appointments at the time withdrawal was sought.

(h) *Employee* – A person who provides services to an employer in exchange for wages, salary, daily wages, commission, bonus, gratuity, or any other form of compensation, as distinguished from a “contractor,” who, given the nature of his or her functions and the manner in which services are rendered, is self-employed.

(i) *Public Service Employee* – An attorney who holds a position in the government of Puerto Rico or in the federal jurisdiction in any of the branches of government, agencies, public corporations, municipalities, bodies, or public departments, among other analogous entities.

(j) *Authorized Entities or Organizations* – Law schools, firms, legal professional associations or organizations, departments of the Judicial Branch, nonprofit organizations, and governmental agencies, among other analogous entities, that offer free legal services to individuals with limited financial resources in Puerto Rico through supervised programs or projects in compliance with the standards issued by the Office of Court Administration.

(k) *Exclusion* – The grounds that release the attorney from his or her duty to appear in the pool of attorneys for court appointments indefinitely or for a specific period, pursuant to these Rules.

(l) *Exemption* – The grounds that release an attorney from appearing in the pool of attorneys for court appointments during a given fiscal year.

(m) *Invoice* – A payment requirement or receipt issued per the ordinary course of business that itemizes the service rendered or the articles purchased, the payment date, and the receiver’s signature. If possible, it shall bear the letterhead of the person or company that provides the service.

(n) *State Funds* – The fiscal resources that defray payment of attorney’s fees and the reasonable expenses necessary for the court-appointed representation, which will be disbursed by the Department of Treasury or the governmental agency assigned thereto.

(nn)^[*] *Extraordinary Expenses* – The reasonable expenses which, due to their nature or amount, require the prior authorization of the court or Administrative Judge, where applicable, for reimbursement pursuant to the provisions of Chapter V of these Rules. An expense is extraordinary when it is in excess of \$250 or when related to the procurement of professional services, such as expert witnesses, interpreters, translators, or investigators, among other similar services.

[*] Translator’s note: The letter “ñ” used in the Spanish version of these Rules has been replaced here with “nn.”

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(o) *Reasonable Expenses* – The expenses that are necessary and indispensable for the effective representation of an indigent person, the reimbursement of which may be sought monthly.

(p) *Permanent or Indefinite Disability* – A disease or disability of such nature and magnitude as to prevent the attorney from practicing law or which forces him or her to substantially reduce his or her practice. Upon doubts regarding the element of temporality, it will be understood that a disease or disability is permanent or indefinite if it extends for a period of 6 months or more. Any attorney who is granted an exclusion based on this ground is not released from timely notifying the Supreme Court through motion when said disability period has ended.

(q) *Indigency* – The state of financial insolvency determined in accordance with the standards provided by the Office of Court Administration and pursuant to the procedure established in these Rules.

(r) *Indigent Person* – A natural person who is party to an applicable civil or criminal judicial proceeding and demonstrates his or her state of indigency.

(s) *Administrative Judge* – The Administrative Judge assigned to the judicial region where a civil or criminal proceeding, as defined in Rule 5 hereunder, is held, including the Administrative Judge of the Court of Appeals.

(t) *Chief Justice* – The Chief Justice of the Supreme Court of Puerto Rico.

(u) *Court Appointment Module* – The electronic system that organizes the pool of attorneys for court appointments, which provides the court the parameters to appoint an attorney, per the nature of the proceedings, the complexity of the case, the attorney's years of experience, and his or her legal practice background.

(v) *Basic Human Needs* – It refers to civil judicial proceedings defined in these Rules involving matters such as shelter, sustenance, health, safety, and the rights of parents over their underage children, such as patria potestas (parental rights), custody, filiation, and visitation, including those which by directive of the Office of Court Administration may be established.

(w) *Pro Bono* – Legal services offered free of charge and without the expectation of compensation to individuals or communities with limited financial resources, or to legal persons with limited resources to satisfy attorney's fees and whose core mission is to provide services that directly benefit persons in a state of financial insolvency. Pro bono hours will be accredited by authorized entities or organizations, or through court resolution, when advisory services are rendered pursuant to Rule 5(e) or through voluntary pro bono representation, as provided by Rule 10(b) hereunder.

Regarding court appointments, the first 30 hours rendered in service to indigent persons will be credited as pro bono hours in a court appointment, in compliance with the ethical duty to render legal services to individuals with limited financial resources.

(x) *Master Roll of Attorneys* – The centralized database that gathers the information of persons authorized by the Supreme Court to practice law and the notarial profession in Puerto Rico.

(y) *Court* – A judge of the Court of First Instance who entertained a proceeding under these Rules, whether during a specific stage or in its entirety. It also refers to the panel of judges of the Court of Appeals or to the Supreme Court sitting *en banc* hearing a proceeding on appeal or an interlocutory application.

(z) *Judicial Area* – The grouping of the judicial regions to ensure the equitable distribution of the pool of attorneys for court appointments in criminal and civil cases, based on the criteria established by the Administrative Director of the Courts, pursuant to the powers granted by these Rules.

CHAPTER II. EXTENSION AND OPERATION

Rule 5. Scope of the Rules; applicable judicial proceedings

(a) *Criminal proceedings.* Save for the hearing on probable cause for arrest, these Rules will apply to any criminal judicial proceeding brought in the jurisdiction of the Commonwealth of Puerto Rico where a right to the assistance of counsel is recognized. It will specifically apply to any critical stage of the proceeding, including the first appeal, as a result of which a natural person may be subject to:

(1) the restriction of his or her liberty through arrest,

(2) one or several penalties of imprisonment established in the Penal Code of Puerto Rico, Law No. 146 of July 30, 2012, as amended, any analogous statute adopted in substitution thereof, and special criminal statutes,

(3) one or several of the measures provided by the Puerto Rico Minors' Act, Law No. 88 of July 9, 1986, as amended, or any analogous statute adopted in substitution thereof, or

(4) the modification or revocation of diversion programs or alternatives to imprisonment that entail the loss or restriction of liberty.

(b) *Civil proceedings.* These Rules will apply to civil judicial proceedings where a natural person has been recognized a right to appointed counsel, as well as proceedings involving basic human needs, which,

notwithstanding those the Office of Court Administration may establish through administrative directive, include the following:

- (1) Section 11 of the Mental Health and Addiction Services Administration Act, Law No. 67 of 1993, as amended (3 LPRA § 402j),
- (2) Sections 3.06, 4.19 and 8.22 of the Mental Health Code of 2000, Law No. 408 of 2000, as amended (24 LPRA §§ 6154e, 6155r & 6159u),
- (3) Sections 4 and 21 of the Bill of Rights and Public Policy in Favor of the Older Adults,^[**] Law No. 121 of 2019 [8 LPRA §§ 1514 & 1531],
- (4) Section 3 of the Bill of Rights of Victims and Witnesses of Crime, Law No. 22 of 1988, as amended (25 LPRA § 973b),
- (5) Section 5 of the Bill of Rights of Persons Living with HIV,^[**] Law No. 248 of 2018 (1 LPRA § 528d),
- (6) declaration of incapacity and appointment of guardian, provided there are no assets that suggest a lack of indigency,
- (7) unlawful detainer (eviction), where the defendant is a tenant receiving government benefits under a public-housing or analogous program,
- (8) eviction for lack of title (*deshaucio en precario*),
- (9) mortgage foreclosure,
- (10) habeas corpus,
- (11) termination of parental rights, or
- (12) removal of minors or relinquishment of paternal rights.

(c) *Court discretion.* Exceptionally, these Rules will also apply to judicial proceedings not expressly recognized in subsections (a) and (b) of this rule when the court considers that ordering the appointment of counsel promotes the sound administration of the judicial system and procedural fairness to guarantee access to justice, in accordance with the parameters established in these Rules. Before appointing counsel under this subsection, the court will take into account the factors prescribed in subsection (d) hereunder and will require from the indigent person proof of the steps taken to obtain legal counsel from entities offering free legal services and that such services were denied. The appointment of counsel will not extend to judicial proceedings where the attorney may receive compensation through contingent fees or otherwise.

Should the court consider appointing an attorney to act as guardian ad litem for the benefit of an underage person in a judicial proceeding, the preferential order for appointment under Section 160 of the Civil Code (31 LPRA § 617) must first be exhausted, and this will be reduced to writing in a court order. The appointment of counsel to act as guardian ad litem must

^[**] Translator's note: The English rendition of the titles of the above referenced statutes was provided by the Bureau of Translations of the Supreme Court of Puerto Rico for lack of an official translation.

be contingent upon a finding of indigency. When determining indigency, the court will examine the financial solvency of the underage person, as well as that of his or her parents or persons with custody, to defray the cost of private counsel to discharge the duties of a guardian ad litem. Additionally, the court will weigh the factors provided in subsection (d) hereinafter, where applicable.

(d) *Factors applicable for the appointment of counsel in civil proceedings.* Prior to appointing counsel in a civil judicial proceeding, the court will weigh the following factors:

(1) the ability of the indigent person to adequately represent themselves in the case,

(2) the indigent person's voluntary waiver of self-representation,

(3) the inability of the indigent person to retain counsel by other means, for which the party must submit to the court proof of the steps taken thereto,

(4) the nature and complexity of the action, both factual and legal, including the need for investigating of the facts in dispute,

(5) the likelihood that the matter may be swiftly disposed of without the assistance of counsel for the indigent person,

(6) the potential merits of the claims as set forth in the pleadings, for which the court may consider whether the action has been previously filed,

(7) the procedural stage of the case and the effect a court appointment may have on the management of the case,

(8) the likelihood that a court appointment may abridge the duration of the judicial proceeding and assist in a fair outcome,

(9) whether the interests of justice and of the public will be served by the appointment of counsel, and

(10) any other factor deemed appropriate by the court, in accordance with the particular circumstances of the case and in the balance of the aforementioned factors.

(e) *Appointment as legal advisor.* These Rules will not apply to the advisory service offered by an attorney at the court's request in order to provide legal orientation services to a person who wishes to exercise his or her right to self-representation at any stage of a judicial proceeding. However, the person ordered by the court to render such services to an indigent person may request from the court a certificate of hours worked pro bono for the purpose of:

(1) reporting them as part of the 30 hours required to seek an exemption under Rule 7(b)(1), and

(2) claiming continuing legal education credit hours, pursuant to the provisions of the Rules of the Continuing Legal Education Program.

Rule 6. Scope of the Rules; indigent persons

These Rules will apply to natural persons with limited financial resources that are a party to a criminal or civil proceeding, as defined in Rule 5, and who demonstrate indigency under the process established in subsections (a) and (b) of Rule 8 and the guidelines adopted by the Office of Court Administration pursuant to these Rules.

Upon determining indigency and while it subsists, a person facing a criminal judicial proceeding will be entitled to appointed counsel by the court when the Legal Aid Society or an analogous entity cannot assume said representation due to a duly credited conflict of interests or for just cause.

Likewise, upon determining indigency and while it subsists, the court, at its discretion, may appoint an attorney to a defendant or plaintiff in a civil action in which basic human needs are in controversy, in accordance with the parameters established in these Rules. However, before said appointment, the indigent person must show the court the steps taken to obtain legal representation from entities offering free legal services in civil proceedings, and that such services were denied.

Where the indigent person is the plaintiff or petitioner in a civil action in which basic human needs are in controversy, the court may also appoint an attorney. However, before said appointment, the indigent person must show the court the steps taken to obtain legal representation from any entity offering free legal services in civil proceedings, and that such services were denied.

During emergency proceedings or hearings that require the immediate appointment of counsel, the court may make an appointment without requiring the indigent person to fulfill the aforementioned requirements of showing to the court the steps taken to obtain legal representation from any entity offering free legal services in civil proceedings and that such services were denied.

Rule 7. Scope of the Rules; pool of attorneys for court appointments

All persons authorized by the Supreme Court to practice law in Puerto Rico will be included in the pool of attorneys for court appointments, unless there are grounds for exclusion or exemption, as provided herein.

(a) *Grounds for exclusion.* The following attorneys will be excluded from application of the Rules:

(1) those who do not appear as “active” in the Master Roll of Attorneys, whether by reason of voluntary resignation, an application for change to “inactive” status, definite or indefinite suspension, or disbarment decreed by the Supreme Court,

(2) those who have reached the age of 68,

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(3) those seeking exclusion, by way of a special declaration, for a permanent or indefinite disability, duly evidenced and authorized by the Supreme Court,

(4) those seeking exclusion, by way of a special declaration, as honorary attorney after working for 25 years as a full-time employee in an entity that offers legal services to individuals with limited financial resources, duly evidenced and authorized by the Supreme Court, or

(5) those seeking exclusion, by way of a special declaration, due to an appointment to public office for a fixed term, for which he or she is enjoined from private practice either by legal provision or restrictions of the office, subject to the term of the appointment and while he or she holds said public office; notwithstanding their duty to report immediately any change to the Clerk of the Supreme Court.

(b) *Grounds for exemption.* Attorneys who certify any of the following circumstances will be exempted from the application of these Rules:

(1) those who during the previous fiscal year completed 30 pro bono service hours, duly accredited by an entity or organization authorized by the Office of Court Administration,

(2) those who do not currently practice law or the notarial profession, despite their active status in the Master Roll of Attorneys,

(3) those who neither reside nor practice law or the notarial profession in Puerto Rico,

(4) those who are barred by law from engaging in private practice,

(5) those who hold a full-time position at a nonprofit organization that offers legal services to indigent persons,

(6) those who serve as members of any committee, commission, board, or other groups who render services *ad honorem* to the Judicial Branch, when duly requested and authorized by the Supreme Court, or

(7) those who head a section or module of the Legal Aid Clinic of a law school accredited by the Supreme Court of Puerto Rico.

The exemption under subsection (b)(2) of this rule will apply to individuals who are engaged in another profession or trade unrelated to Law, retirees who do not practice law or the notarial profession, persons who limit their practice of the law exclusively to rendering legal services without compensation and for the purpose of advancing the ethical principles of facilitating access to adequate legal services to persons who cannot pay for them, and attorneys in active military service.

(c) *Annual declaration.* All attorneys who wish to apply for an exemption cited herein must file an annual declaration electronically, through the system enabled for such purposes, with the Supreme Court within the first 30 days of each fiscal year. Said annual declaration will certify that the

attorney's profile in the Master Roll of Attorneys and all the information included therein are up-to-date and confirm that:

(1) the contact information provided (telephone numbers, mailing and physical address of the attorney's home and office, notarial office location—if any—and email addresses) is correct,

(2) his or her employment history has been updated,

(3) his or her legal practice background has been updated, and

(4) he or she commits to submit evidence, at the Supreme Court's request, in support of any grounds for exemption sought, if applicable.

An application for exemption under these Rules will proceed according to Supreme Court Rule 9(q). An exemption, duly accredited and authorized by the Supreme Court, will be valid for the fiscal year in which it was requested. During said term, the exempted attorney will not appear in the pool of attorneys for court appointments.

The filing of an annual declaration or the authorization of an exemption for a fiscal year does not release an attorney from his or her continuing duty to keep his or her profile in the Master Roll of Attorneys updated. A disciplinary proceeding may be brought against any attorney who seeks an inapplicable exemption to evade his or her ethical duty to render legal services to indigent persons under these Rules.

(d) *Special declaration.* When changes in the attorney's personal or professional circumstances may give way to a new exclusion or the review of an exclusion previously granted under these Rules, said attorney must file a special declaration with the Supreme Court in compliance with Supreme Court Rule 9(j).

An application for exclusion will proceed according to Supreme Court Rule 9(q). While the grounds for exclusion persist, the attorney will not appear in the pool of attorneys for court appointments. In like manner, the authorization of an exclusion does not release an attorney from his or her duty to immediately report any change to the Clerk of the Supreme Court.

After the term for filing an annual declaration has lapsed, the attorney must request the applicable grounds for exemption through a special declaration when his or her personal or professional circumstances warrant exemption from the pool of attorneys for court appointments.

CHAPTER III. DETERMINATION OF INDIGENCY AND APPOINTMENT OF COUNSEL

Rule 8. Process for Indigency Determination, Selection of Court-Appointed Counsel and Notice of Appointment Order; duties of the court

(a) *When indigency must be determined.* A determination of indigency will be required for the court to order the appointment of counsel under these Rules.

In all proceedings under these Rules, the court must examine the financial capacity of a person appearing without counsel and who alleges indigence. When determining indigency, the court will apply the indigency standards issued by the Office of Court Administration, and so it will be stated in its resolution.

As a rule, when a person appears without counsel and alleges indigence in a criminal proceeding, as defined in these Rules, the court will refer such person to the offices of the Legal Aid Society or an analogous entity so he or she may be interviewed and the entity may determine if he or she is eligible to receive free legal representation. When making said referral, the following rules will be observed:

(1) When the Legal Aid Society or an analogous entity assumes the legal representation of a person who has been charged with an offense, said entity must file a motion on the day it assumed representation, or on the following day at the latest, notifying the court of said representation.

(2) When the Legal Aid Society or an analogous entity does not assume the representation of a person who has been charged with an offense, said entity must file a motion on the day of the interview, or on the following day at the latest, stating whether or not the person is indigent and the reasons why the person is not eligible for their services, either due to a conflict of interests or for just cause.

When alleging that representation will not be assumed due to conflict of interests, the entity must explain the circumstances that give rise to the alleged conflict, pursuant to subsection (g) of this rule, except where the conflict pertains to the defense of co-defendants charged in the same proceeding.

Persons who are not eligible to receive the services provided by the Legal Aid Society or an analogous entity may request that the court enter an independent indigency determination for the appointment of counsel. When determining indigency, the court will apply the indigency standards issued by the Office of Court Administration, and so it will be stated in its resolution.

(b) *Procedure to determine indigency.* When determining indigency, the court will require that persons seeking a court-appointed counsel submit

sworn evidence, under penalty of perjury, of their state of insolvency and their inability to obtain the financial resources required to defray the services of an attorney. Additionally, the court will require information under the indigency standards provided by the Office of Court Administration, as well as any other evidence the court may deem necessary to determine indigency and substantiate the veracity of what has been stated.

The court that hears the proceeding will provide the indigent person with a copy of the form for determining indigency adopted by the Office of Court Administration. It will contain the basic criteria for determining the individual's state of insolvency and will be attached to the record once it has been completely filled out. In the case of an application filed by a person who is incarcerated, the Office of the Clerk may accept the form without the oath. Nevertheless, on the following court date, the oath will be taken in the courtroom.

Upon filing the form, the court will advise the applicant that providing false information under oath of his or her financial situation or of the possibility of obtaining financial resources for defraying the cost of their legal representation may constitute perjury and contempt of court. The applicant will be further advised of the applicable legal sanctions in case of contempt and of his or her duty to inform the court of any change in his or her financial circumstances such that he or she would have the capacity to defray the cost of legal counsel.

The court will examine the information provided in light of the maximum allowed income pursuant to the directives issued by the Office of Court Administration in order to determine whether a person meets the minimum financial parameters. The court will timely issue its determination by way of a resolution.

The information provided for determining indigency under this rule will not be used against the person alleging indigence, unless within a perjury or contempt proceeding for an act committed after presenting false information to the court or in a proceeding under Rule 19 hereunder. Furthermore, the mere filing of the indigency form will not be understood as a voluntary submission by the applicant to the jurisdiction of the court.

(c) *Selection of court-appointed counsel.* After determining that a person is indigent pursuant to these Rules and after taking into account the factors provided in Rule 5(d) for civil judicial proceedings, the court will appoint counsel through the Court Appointment Module, in the following order.

(1) First, attorneys who voluntarily request to appear among the first available in the pool of attorneys to receive a court appointment shall be selected.

(2) Once the list of volunteers is exhausted, the court shall select the attorney who is next in line in the pool of attorneys for court appointments in order of seniority and judicial area. However, for the purposes of selection by order of seniority and judicial area, the court may not appoint any attorney who has complied with the hours required under Rule 11 until the pool of attorneys for court appointments has been exhausted in the corresponding judicial area. When the pool of attorneys is exhausted in the applicable judicial area, the court will start again with the first attorney in line as suggested by the Court Appointment Module, and so on and so forth as necessary.

To such ends, the Court Appointment Module will organize the legal professionals who are available to receive court appointments in such a manner that volunteers are among the first in the pool of attorneys for court appointments. Thereafter, a second order of appointments is activated, which operates in order of seniority and judicial area.

The Office of Court Administration is authorized to issue such additional directives as necessary so that attorneys may voluntarily appear among the first available in the pool of attorneys, regardless of seniority. Subject to the availability of funds, the Office of Court Administration is also authorized to put into effect a compensation system to allow attorneys who appear first in the pool of attorneys for court appointments to receive compensation for services rendered as soon as the appointment is made, without having to perform a minimum of pro bono hours, at the hourly rate of \$80 both for the time extended to research and prepare the case outside the court and for the hours extended in court, in appearances through videoconferencing, and in the preparation of petitions at appellate stages. Payment per hour will be calculated proportionally in increments of a quarter of an hour.

(d) *Obligation to follow the appointment order as suggested by the Court Appointment Module.* The court will follow the appointment order produced by the Court Appointment Module to ensure the uniform application in the appointment of counsel, unless:

(1) an attorney volunteers to be appointed to represent the indigent party, pursuant to the provisions of Rule 10 on voluntary pro bono representation before the court,

(2) the circumstances set forth in subsection (i) of this rule on the fractioning of representation are present,

(3) there is another judicial proceeding against the indigent person for which the court has appointed counsel, and it deems it convenient to appoint the same attorney in the new judicial proceeding. In the exercise of its discretion, the court will assay whether the issue under its consideration is

related to the other judicial proceeding, in addition the criteria listed in subsection (e) of this rule, or

(4) there are two or more consolidated cases to which the same indigent person is a party.

The court will itemize in the Court Appointment Module the reasons for which it did not confirm the system's recommended appointment.

(e) *Criteria for the selection of court-appointed counsel.* Pursuant to the obligation established in the above subsection, the court's discretion to evaluate whether the initial recommendation of the Court Appointment Module is appropriate for each particular case will be limited to the elements that follow:

(1) the particular complexity of the case and the minimum specialized knowledge to competently handle the specific proceeding before the court's consideration,

(2) the years of experience, the legal practice background as it appears in the Master Roll of Attorneys, and the history of cases illustrating the type of proceeding said attorney typically engages in,

(3) the approximate amount of time the proceeding will last, and

(4) the number of appointments or hours rendered as court-appointed counsel certified by the court for the current fiscal year under these Rules.

If any of these circumstances are present, the court will document the reasons for deferring a particular court appointment in the Module. Deferment will not alter the order of subsequent court appointments. Therefore, the attorney whose deferment is authorized will keep his or her turn in the pool of attorneys for court appointments.

After deferment is authorized for the particular case at hand, the court will evaluate the Module's next recommendation, always considering the above-cited elements, until the corresponding appointment is made.

(f) *Notice of court appointment order.* After selecting the attorney through the Court Appointment Module, the court will serve notice of the order electronically and by phone in a period not exceeding 24 hours. The selected attorney will assume legal representation of the indigent person from the date of service of notice.

The notice of court appointment order will be sent to the attorney electronically with the corresponding resolution of indigency issued by the court. The court appointment order will state, as a minimum, the attorney's name, physical and mailing address, email address and telephone number, the indigent person's contact information, and the next court date. Said order will become part of the judicial record and will provide that the case will proceed *in forma pauperis*.

In criminal proceedings, the appointment order will also inform whether the defendant is out on bail, detained awaiting trial, or imprisoned, in which case the name of the prison institution where the defendant is in custody will be indicated. The order will also include a copy of the charging document and any other additional information or documents ordered by the court.

In civil proceedings, the appointment order will include any additional information or documents ordered by the court to give fair warning as to the controversy and nature of the case. In involuntary commitment proceedings, copy of the order of admission and the place where the person is hospitalized or institutionalized will also be notified.

The court will advise the attorney named in the appointment order of the 5-day term provided in Rule 9(a) to file any substantiated objection through motion to the court.

(g) *Ethical conflicts.* When the attorney from the Legal Aid Society, or any analogous entity, or a court-appointed counsel alleges that he or she cannot assume or continue legal representation grounded on an ethical conflict, he or she will inform the court immediately so that the matter may be decided before another judge. The *ex parte* hearing will be confidential and will be held within a term not exceeding 5 days. In a term not exceeding 2 days from the date of the hearing, the presiding judge will decide whether there is just cause for not assuming representation or to withdraw therefrom for ethical reasons or for conflicts of interests, where applicable. The information disclosed by the attorney at the hearing will only be that which is necessary for the court to decide the matter and will not entail an ethical violation, provided the information disclosed is relevant to the matter at hand.

When the hinderance to representation is due to a successive or simultaneous adverse representation, the attorney will inform the court, but no *ex parte* hearing will be required.

(h) *Criteria to authorize withdrawal from representation.* Once appointed, an attorney may only withdraw from representation by motion to the court for just cause under the legal-ethical framework. The court will assess whether under Rule 9(b) there is just cause to grant leave to withdraw from representation and order a deferment. Should withdrawal from representation lie, the court will assign the case to the next person in line from the pool of attorneys for court appointments.

Indigency befalling a person with private legal counsel will not constitute sufficient cause for withdrawal, unless otherwise provided in subsection (i) of this rule. As a rule, scheduling conflicts will not constitute grounds for withdrawal from representation and deferment in the particular case. However, exceptionally, the court may consider the attorney's approaching court dates and the need to prevent an unreasonable delay in the

particular proceeding to determine whether it lies to authorize withdrawal and grant the deferment sought.

The court will consider the objections raised by the indigent person receiving court-appointed counsel. In such cases, the court will hold a hearing to weigh the evidence in support of the objection. When the indigent person's privacy or other reasons of justice so require, a confidential *ex parte* hearing may be held.

Withdrawal and deferment authorized at the beginning of the legal representation will not alter the order of subsequent appointments or the attorney's corresponding turn. However, should withdrawal from representation be authorized later during the course of the judicial proceeding, the court may defer the attorney to assume the next appointment suggested by the Court Appointment Module. Should the court conclude that the services rendered by the court-appointed counsel at this stage were sufficient and that he or she fulfilled his or her duties to assume representation under these Rules, the court may grant withdrawal without ordering a deferment.

Deferments for a specific period, duly accredited by the attorney to the court's satisfaction and authorized by the Administrative Judge, will be allowed under subsection (k) of this rule.

(i) *Fractioning representation.* The court will discourage fractioning representation by stages.

When a person with private legal counsel in a given civil or criminal proceeding alleges indigence, the court will determine whether to recognize the continuity of the representation as a court appointment under the parameters established in these Rules after determining indigency. The attorney appointed under this subsection will enjoy the benefits and duties established by these Rules from the date of appointment under Rule 8(f).

On the other hand, when the court finds that a party who received the benefit of court-appointed counsel no longer meets the criteria for indigency, it may order the person and his or her legal counsel to reach an agreement in good faith regarding attorney's fees to be paid thereafter. Should no agreement be reached, the court will authorize the attorney's withdrawal and allow the party to continue pro se or will grant such party a reasonable period to appear with private legal counsel.

(j) *Appointment of auxiliary counsel.* The court may appoint an auxiliary counsel to assist the court-appointed counsel when the complexity of the case so requires or where necessary for an adequate representation at appellate stages. Both appointments will be subject to the provisions of these Rules, where applicable.

As a rule, the court may consider the criteria established in subsection (e) of this rule when selecting an auxiliary counsel. However, for

this appointment, it may consider a particular recommendation provided by the court-appointed counsel.

The appointment of auxiliary counsel to represent an indigent person as a court-appointed counsel at appellate stages will not have the effect of authorizing the withdrawal of the attorney who was originally appointed as such. In said case, the principal court-appointed counsel must draft the narrative statement of the evidence or a summary of the facts relevant to the petition or any other valid method for the reproduction of the oral evidence, as applicable and where required, and will assist the auxiliary counsel in the rendering of his or her services.

(k) *Duties of the Administrative Judge.* When the attorney requests: (1) deferment under Rule 8(h) for a specific period, (2) to withdraw as court-appointed counsel for lack of competence to bring an appeal, or (3) the appointment of auxiliary counsel under Rule 9(c), the court will refer the matter to the Administrative Judge, whose will determine whether said request is in order in a term not exceeding 2 days. When the Administrative Judge is the presiding judge and receives any of the requests listed in this subsection, the matter will be referred to the Assistant Administrative Judge, who will dispose of the matter within the same term.

Should a deferment for a specific period be authorized, the grounds for and the term of deferment will be entered in the Court Appointment Module, and the Administrative Judge will instruct the court to make a new appointment, if needed.

Should a motion to withdraw or to appoint auxiliary counsel for appellate stages be authorized, the court will appoint an attorney, whether principal or auxiliary, as the case may be, considering the criteria established in subsection (e) of this rule. Nevertheless, the matter may be referred to an organization offering free legal counsel on appeal, provided the appellant's rights are not impaired.

Rule 9. Process for Indigency Determination, Selection of Court-Appointed Counsel and Notice of Appointment Order; duties of the attorney

(a) *Duties of the attorney served notice of the court appointment order; term to respond.* All attorneys must timely address any appointment-related court notice. The provisions of Rule 18 hereunder notwithstanding, upon service of a court appointment order, attorneys will have a period not exceeding 5 days from the date of service of said order to state through substantiated motion any hindrance for which they cannot assume representation as court-appointed counsel.

(b) *Duties of the attorney served notice of the court appointment order; just cause.* An attorney seeking authorization to withdraw from representation

as court-appointed counsel must explain the reasons warranting deferment and withdrawal from legal representation in that particular case, pursuant to Rule 8(h). In the motion, the reasons constituting just cause must be put forward, which may include situations where:

(1) the appointment would be burdensome considering the amount appointments received or the amount of pro bono hours rendered and certified as court-appointed counsel under these Rules during the current fiscal year,

(2) during the fiscal year, the attorney has received 3 previous court appointments that have required a substantial investment of time. It is understood that an attorney has made a substantial investment of time when the 3 court appointments made under these Rules during the current fiscal year have required:

(i) the aggregate performance of more than 50 certified hours by the court, or

(ii) handling criminal trials on the merits,

(3) the appointment would entail a breach of the ethical duties of diligence and competence, or

(4) there are personal, ethical, or professional conflicts of interests.

It is expressly provided that the aforementioned is not an exhaustive list, for which reason an attorney may move the court to authorize withdrawal from representation in a court appointment for other reasons that constitute just cause.

The contention that the represented person has no meritorious defense will not constitute grounds for withdrawal from representation as court-appointed counsel. It will only constitute grounds to authorize withdrawal from representation and the resulting deferment when, as an exception, an indigent person is the party who instituted the applicable judicial proceeding and the attorney receiving the court appointment affirms, pursuant to his or her professional responsibility, that said action is frivolous. When seeking withdrawal from representation for this reason or for other ethical conflicts as provided in subsection (b)(3) of this rule, the attorney will alert the court via motion of the nature of the conflict, without disclosing confidential information, so the issue may be referred under Rule 8(g), where applicable.

The provisions of Rule 8(h) notwithstanding, neither will scheduling conflicts constitute just cause for withdrawal from representation as court-appointed counsel. If at the time notice is served on the attorney there is a scheduling conflict, the attorney will notify the court thereof within the term provided in subsection (a) of this rule and offer the next available date to schedule the hearing, interview, or proceeding, as applicable.

An attorney may request that the court grant leave to withdraw from representation as a court-appointed counsel without entailing a withdrawal as counsel of record in the applicable judicial proceeding. In said motion, the attorney will certify that he or she has the express and informed consent of his or her client and will set forth the reasons for which the court should grant the request. Should the court grant leave to withdraw from representation as court-appointed counsel, the benefits and duties under these Rules shall cease. When evaluating these requests, the Court must ensure that the indigent person's consent is intelligent and informed.

(c) *Term of appointment.* The attorney will render his or her services diligently and competently to the indigent person upon service of notice of appointment. In criminal proceedings, the court appointment will extend to the proceeding on appeal from the final decision rendered by the Court of First Instance before the Court of Appeals has been completed. In civil proceedings, appointed counsel will not be required to further represent a person who seeks to appeal a final decision of the Court of First Instance.

Where the indigent person is the respondent or appellee in a criminal proceeding before the Supreme Court, court-appointed counsel must file the proper brief. In both instances, the appointed counsel's opinion that the appeal or brief is without merit will not be deemed just cause to withdraw from representation, unless the client consents to the withdrawal.

Where the indigent person wishes to appeal a final decision of the Court of Appeal in a criminal proceeding, the attorney may file the petition with the Supreme Court in accordance with his or her professional opinion. If he or she decides not to file, appointed counsel must notify the client immediately, advising the client on the applicable procedure to file the petition with the Supreme Court and, in keeping with the current legal-ethical framework, will take reasonable measures to avoid the infringement of his or her client's rights, including delivery of the casefile.

Court-appointed counsel who for just cause, including lack of experience in appellate procedures, cannot fulfill his or her duty to represent the client will timely inform the court so it may consider appointing auxiliary counsel for the proceedings on appeal, as provided in Rule 8(j).

(d) *Continuing duty to inform changes in the state of indigency.* Should there be a change in the client's state of indigency, it will be incumbent upon every court-appointed counsel to inform the court as soon as he or she is aware of said change. The court will corroborate whether, in the face of said alleged supervening state of solvency, the indigent person is no longer eligible for court-appointed counsel. After the court finds there is financial solvency, the rights conferred to the person and his or her legal counsel under these Rules will cease.

(e) *Duty to tally the hours served as court-appointed counsel and itemize reimbursable expenses.* An attorney who seeks compensation for services rendered and the reimbursement for reasonable expenses incurred as a court-appointed counsel under these Rules, where applicable, will maintain a detailed record of the tasks performed, the hours served in the appointed case, the expenses incurred, and an itemization of travel dates by automobile for matters related to the investigation of the case, and the purpose and number of miles traveled. When filing the application for payment of attorney's fees and reimbursement of reasonable expenses, the attorney will use the form created and approved by the Office of Court Administration for such ends. Moreover, he or she shall keep the receipts and invoices for reimbursable expenses, copy of which must accompany the motion for reimbursement of reasonable expenses under Rule 16. Court-appointed counsel must keep the original receipts and invoices for a 6-year period, which may be in digital format. The original receipts and invoices must be submitted when the court or the Administrative Director of the Courts so requests as part of the documentation necessary for authorizing reimbursement.

Rule 10. Voluntary Pro Bono Representation before the Court

An attorney who voluntarily wishes to represent an indigent person in a judicial proceeding may request to be among the first in the pool of attorneys for court appointments, to be appointed by the court as such, or that the services rendered be accredited for the purpose of the annual exemption for pro bono services under the following criteria:

(a) *First positions in the pool of attorneys for court appointments.* Attorneys may request to be among the first to be appointed as counsel under Rule 8(c).

(b) *Voluntary court appointment.* Regardless of his or her assigned judicial area, an attorney who voluntarily wishes to be appointed as counsel may file a motion with the corresponding court so that his or her pro bono representation be deemed as appointed by the court. The court may authorize that a voluntary pro bono representation be considered as a court appointment, thus activating the benefits and duties recognized hereunder, provided:

(1) the attorney requests it from the moment he or she assumes legal representation in a judicial proceeding,

(2) services will be rendered in a civil or criminal proceeding, as defined in these Rules, except for misdemeanors where no loss or restriction of liberty is at stake,

(3) the client declares under oath that he or she does not have the financial capacity to defray the cost of legal representation and the court so determines, pursuant to the indigency standards established by the Office of Court Administration, and

(4) the attorney and his or her client certify through joint motion that attorney's fees will not be collected.

Furthermore, the court will consider the complexity of the case and the years of experience and legal practice of the attorney seeking that the court recognize the voluntary pro bono representation as a court appointment. The court's authorization, set forth in a resolution, will constitute an exception to the obligation to appoint counsel following the order suggested by the Court Appointment Module, in accordance with Rule 8(e).

When a voluntary court appointment is denied, the attorney may petition the court to recognize a voluntary pro bono representation, provided he or she complies with the requirements of subdivisions (2) and (3) of Rule 10(b).

(c) *Voluntary pro bono representation.* An attorney who renders pro bono services in a judicial proceeding without being appointed by the court to do so may not enjoy the benefit of fees and reimbursement of expenses under these Rules. However, he or she may petition the court to certify the hours rendered as pro bono service to comply with the 30 hours required to apply for an exemption under Rule 7(b)(1) and continuing legal education credit hours under the Rules of the Continuing Legal Education Program. The court will authorize voluntary pro bono representation, provided:

(1) the attorney notifies it from the moment he or she assumes voluntary legal representation in a judicial proceeding,

(2) the client declares under oath that he or she does not have the financial capacity to defray the cost of legal representation and the court so determines, pursuant to the indigency standards established by the Office of Court Administration, and

(3) the attorney and his or her client certify through joint motion that attorney's fees will not be collected.

The attorney must keep a detailed record of the hours rendered in the case and will attach said record to the application, as provided in Rule 9(e).

CHAPTER IV. COMPENSATION FOR SERVICES AS APPOINTED COUNSEL, PROCESS FOR APPROVAL, DENIAL, AND ADJUSTMENT

Rule 11. Compensation and Accreditation for Court Appointments

Court-appointed counsel will be entitled to attorney's fees, pursuant to the provisions of this chapter. Every fiscal year, an attorney must accumulate a minimum of 30 pro bono service hours as court-appointed counsel before receiving compensation for services rendered, unless otherwise provided in Rule 8(c).

Moreover, an attorney may seek continuing legal education credit hours

for court-appointed pro bono services rendered under to the procedure established in the Rules of the Continuing Legal Education Program. An attorney may request the accreditation of service hours rendered even if he or she has not completed 30 hours of court-appointed pro bono service. In no case may the hours compensated with fees be accredited for continuing legal education.

Rule 12. Fees for Court-Appointed Services

Notwithstanding the provisions of Rule 8(c) on attorneys who volunteer to appear first in the pool of attorneys for court appointments, fees for services rendered as appointed counsel in criminal or civil proceedings in excess of the 30 hours established in Rule 11 will be determined based on a \$60 hourly rate both for the time extended to research and prepare the case outside the court and for the hours extended in court, in appearances through videoconferencing, and in the preparation of petitions at appellate stages. Payment per hour will be calculated proportionally in increments of a quarter of an hour.

Compensation for services rendered by court-appointed counsel will be subject to the compensation limits the Office of Court Administration may establish, if any, for a criminal or civil proceeding per fiscal year. Administrative Judges and the Supreme Court, where the case is under their consideration, may authorize compensation in excess of the limits the Office of Court Administration may establish, if any, in accordance with the criteria provided in Rule 14.

Court-appointed counsel may not accord, accept, receive, or solicit from the indigent client, or from any other natural or legal person, fees for his or her services as appointed counsel. The indigent person will bear, in whole or in part, the cost of any litigation expenses insofar as his or her financial condition allows. Although it is not required, appointed counsel may advance payment of any such expenses in whole or in part.

Rule 13. Certification of Hours Performed in a Court Appointment

Court-appointed counsel must request the certification of hours performed in a court appointment not later than 10 days following the month in which services were rendered. The attorney must submit a verified application itemizing all the services performed in the court-appointed case and detailing the number of hours extended in court and outside the courtroom or at an appellate stage, and the date of each service performed.

The court will review the reasonableness of the hours performed and will exclude hours that are excessive, redundant, or unnecessary. It will consider the novelty and difficulty of the controversies that, ordinarily, require more effort and dedication from attorneys. It will also consider other factors, such as the number of persons charged and witnesses, the complexity of the scientific evidence or of the expert testimonies, and the number of hearings

necessary to dispose of the case.

After evaluating the reasonableness of the request under these criteria, the court under which the service was rendered may approve, adjust, or deny the hours claimed, stating in a resolution the grounds on which its determination rests, within 5 days it is received. In the same, the court will certify the hours performed in the court appointment, where applicable, and the date on which the court made the appointment in the case. The resolution certifying the hours performed will be notified to the attorney who filed the application.

In cases before the Supreme Court, the attorney may request certification of hours performed in a court appointment along with any request for attorney's fees, where applicable, pursuant to Rule 14.

Rule 14. Procedure to Request Fees

The application for payment of attorney's fees in a court appointment will be filed before the Administrative Judge or the Supreme Court, as applicable, not later than 20 days following the month in which services were performed. However, any application for payment of attorney's fees will be dismissed outright when filed 30 days after the end of the fiscal year in which the services were performed. When the compensable hours are accrued as appointed counsel in judicial proceedings held in different judicial regions within the same judicial area, the attorney will file the application for attorney's fees in the judicial region where the oldest active court appointment was ordered.

The request for attorney's fees will contain the following information:

- (1) the case number and courtroom where the case has been assigned,
- (2) the amount of compensation claimed, based on the itemization of hours rendered,
- (3) the date of the court appointment and a copy of the court appointment order,
- (4) the signature of the attorney certifying compliance with the initial pro bono service hours,
- (5) an itemization of the pro bono hours performed in the court appointment and the hours subject to attorney's fees, and
- (6) a copy of the certification or certifications showing the service hours rendered as appointed counsel in that fiscal year.

Should an attorney be interested in the authorization of fees in excess of the compensation limits the Office of Court Administration may establish, if any, the attorney will so indicate in the application and will specify the issues warranting an exception to the compensation limits and provide evidence in support thereof. In an exercise of discretion, the Supreme Court or the Administrative Judge, as applicable, may approve attorney's fees in excess of such limits when the time extended, the complexity of the case, and the novelty

of the issues raised warrant it.

After evaluating the information presented and the correctness of the documents, the Supreme Court or the Administrative Judge will approve payment of the corresponding fees and will specify the amount to be paid within a term of 30 days from date the application was received. If the authorization exceeds the compensation limits, reasons for the determination will be provided. The documents will be forwarded to the Office of Court Administration to continue the process for payment with the Department of Treasury.

CHAPTER V. REASONABLE EXPENSES AND PROCEDURE FOR REIMBURSEMENT

Rule 15. Reasonable Expenses

(a) *Right to request reimbursement of reasonable expenses.* Where appointed counsel chooses to incur reasonable expenses in the representation of an indigent person, he or she will be entitled to reimbursement by the State. Reimbursable expenses may be requested through the court, even where the attorney has not completed 30 hours of pro bono service required under Rule 11.

(b) *Reimbursable items.* The following items will be considered reasonable expenses:

- (1) personal service of process or by publication,
- (2) depositions,
- (3) document reproduction,
- (4) postage,
- (5) long-distance calls,
- (6) travel by automobile for the conduct of business related to the investigation of the case, and
- (7) any other expense, where it is demonstrated as necessary for providing adequate representation and management of the case.

Reimbursement for expenses related to travel by automobile incurred by appointed counsel will be paid at a rate of 30¢ per mile traveled outside the municipality of his or her residence or office, based on the usual, most inexpensive route. However, court-appointed counsel will assume travel expenses for trips within the municipality of his or her residence or office, calls and delivery of documents through local telephone lines, and office overhead expenses when related to the case.

(c) *Requirement of prior authorization for the reimbursement of extraordinary expenses.* Extraordinary expenses will require the prior authorization of the court where the court-appointed representation services are being performed before its reimbursement may be ordered. Before incurring an extraordinary expense, as defined in Rule 4, court-appointed

counsel must file a motion evidencing the need for the service or item required and the reasonableness of the estimated price based on the cost or fair market value of the service or item requested.

The court may authorize reimbursement of fees for translation, interpretation, or expert services subject to an evaluation of reasonableness, considering the usefulness of the service and in light of the particular circumstances of the case. The attorney must justify that this expense is necessary to provide adequate representation and defend an indigent person's rights.

Should the expense exceed \$500, the Administrative Judge's prior authorization will also be required. In these cases, after the court evaluates the reasonableness of the expense, the matter will be referred to the Administrative Judge for authorization of the recommended amount. The power to authorize an extraordinary expense, regardless of its nature or amount, will fall to the Supreme Court in the cases under its consideration.

(d) *Authorization of direct payment to service providers in exceptional circumstances.* Court-appointed counsel may petition the court to authorize direct payment of the corresponding service to the service provider. In the request, court-appointed counsel must demonstrate the injury to the indigent person if the expense is not authorized and that this expense is indispensable for the effective assistance of counsel. A copy of the quote for the service sought or any other analogous document must be included.

After examining the request, the court will issue an order authorizing payment or a well-grounded resolution upon denial thereof. Any authorization will be subject to the provisions of subsection (c) of this rule regarding extraordinary expenses, as defined in these Rules.

Not later than the tenth calendar day of the month following performance of the authorized service, court-appointed counsel will file a motion with the court to proceed with the previously authorized payment to the service provider attaching. The motion should include the court order authorizing payment directly to the provider, a copy of the invoice, and evidence that the service was rendered. After verifying that the service was rendered and that there is correspondence between what was requested and what was authorized, the court will approve the request through resolution, indicating the corresponding amount and the service provider's information so that the State may process the payment.

Rule 16. Procedure to Request Reimbursement of Expenses

Where court-appointed counsel chooses to advance payment of any litigation expenses, reimbursement may be requested by filing a verified application therefor not later than the tenth calendar day of the month

following payment. The request will contain an itemization of all reimbursable expenses, the dates on which such payments were issued, the amount to be reimbursed, and a copy of the proof of payment. Court-appointed counsel must also file the court's prior authorization under Rule 15(c), where applicable.

Within 30 days of receiving a request for payment of reasonable expenses, the court where appointed counsel services were rendered will evaluate whether it lies to pay the expenses sought and the reasonableness thereof. The court may require counsel to present evidence showing the need for the expenditure and the reasonableness of the expense based on cost and fair market value. When determining the reasonableness of the expense, the court will consider the applicable caselaw regarding court costs in what is not incompatible with these Rules.

The court will issue its determination through a well-grounded resolution or order. Should payment be approved, the State will be ordered to issue the corresponding reimbursement and the amount to be paid will be indicated. Any request for payment may be filed after the 10-day term for just cause. However, any request for payment will be dismissed outright if filed one year after the expense was incurred.

The Administrative Judge will examine the documents in the record, including the resolution issued by the court. He or she will certify that the provisions of these Rules have been met and that it lies to reimburse the expenses. The documents will be forwarded to the Office of Court Administration to continue the process for payment with the Department of Treasury. This procedure is entrusted to the Clerk of the Supreme Court in cases brought before this Court.

CHAPTER VI. GENERAL PROVISIONS

Rule 17. Time; computation

The computation of any term prescribed or allowed by these Rules, by court order, or by any applicable statute will be made pursuant to Civil Procedure Rule 68.1.

Rule 18. Review of Determinations Regarding Appointment of Counsel, Compensation, Payment for Services, and Reimbursement of Litigation Expenses

Should court-appointed counsel be aggrieved by a determination of the court regarding issues governed by these Rules, he or she may file a motion for reconsideration within 5 days from the date the notice of the resolution was served. He or she may also file a petition for certiorari at a higher-ranking

court within the 5 day term from the date the notice of the resolution was served, except for just cause shown. Both petitions will be *ex parte*.

After the expiration of 10 days from the date notice of the resolution was served without the court pronouncing itself on the motion for reconsideration and without filing for certiorari, the court's determination will become final and unappealable.

Rule 19. Reimbursement of State Funds

(a) *Obligation to pay or reimburse the State.* The person who obtained the benefits of a court-appointed counsel under these Rules will reimburse the totality of what was paid in any case where the State has defrayed all or part of the fees or litigations expenses if it is shown that said person was not eligible to receive them due to financial solvency at the time of the appointment or supervening during the course of the judicial proceeding. However, if the Office of Court Administration has not sent a payment authorization to the Department of Treasury, the person will pay the attorney directly any litigation expenses incurred and applicable attorney's fees based on the reasonable value of the services rendered.

The court may order payment of the entire debt to the State in a single payment or with a payment plan to the order of the Secretary of Treasury. In case a payment plan is established, the maximum term to satisfy the debt in full may not exceed one year, unless an extension for just cause is timely requested.

(b) *Reimbursement of costs and fees to the State.* When it lies to award attorney's fees by statutory provision or the payment of costs in a civil proceeding, the court will order that the corresponding payment be made to the order of the State.

CHAPTER VII. CONTINUING EVALUATION OF THE COURT APPOINTMENT SYSTEM

Rule 20. Duties of the Office of Court Administration

The Office of Court Administration shall establish the necessary mechanisms to seek efficiency and standardize the implementation of the court appointment system and evaluate its operation. It shall also issue the necessary directives to ensure the proper administration of the court appointment system. With the purpose of achieving these objectives, the following responsibilities are delegated to the Administrative Director of the Courts:

(a) *Annual report to the Permanent Commission for the Evaluation of the Court Appointment System.* The Administrative Director will prepare an annual report with the information provided in the reports submitted by Administrative Judges and the judges who assist with the administrative functions related to the court appointment system in their respective judicial

areas. This annual report will include information pertaining to the appointment of cases by judicial area and payments for court-appointed attorney's fees and authorized expenses, among other information necessary for the effective and continued oversight of the court appointment system. The Administrative Director shall present this report to the Permanent Commission for the Evaluation of the Court Appointment System within the first 30 days of each fiscal year.

(b) *Updating the pool of attorneys for court appointments and publication of lists.* The Administrative Director will establish the mechanisms necessary to maintain the pool of attorneys for court appointments updated and, in coordination with the Clerk of the Supreme Court, will publish in the attorneys' account in the Master Roll of Attorneys the lists of the attorneys available for court appointment by judicial area no later than September 30 and March 30 of each fiscal year. The Administrative Director will also notify any change in the configuration of the judicial areas.

(c) *Periodic review.* Every year, the Administrative Director will review the standards for determining indigency, the list of authorized entities or organizations where the requisite pro bono hours for exemption under Rule 7(b)(1) may be rendered and the composition of judicial areas. Updates must be published on the Judicial Branch's website in a timely manner before the beginning of each fiscal year.

(d) *Administrative directives.* The Administrative Director will adopt the necessary directives for the purpose of regulating administrative aspects related to the implementation of these Rules, including, among other matters, the following: (1) the standards for determining indigency under the court appointment system and any other program instituted by the Judicial Branch to advance access to justice, (2) the additional causes of action that may be included as basic human needs, (3) the procedure for publishing the lists of attorneys available for court appointment, (4) the frequency and manner in which this pool of attorneys for court appointments is updated, (5) the criteria for standardizing the granting of deferments for specific periods, (6) the creation of and changes to judicial areas, (7) the list of authorized entities or organizations where attorneys may provide pro bono services in order to accrue the hours required for exemption under Rule 7(b)(1), (8) the internal procedure for processing the payment of attorney's fees and reimbursement of expenses, and (9) the necessary directives to implement the provisions of Rule 8(c).

(e) *Forms.* The Administrative Director will prepare and periodically review the forms necessary for processing the matters required by these Rules.

Rule 21. Duties of Administrative Judges

Administrative Judges have the responsibility of administering the court appointment system in their judicial regions. This function may be delegated to a judge in their judicial region who will manage the corresponding

process in accordance with these Rules and the directives approved by the Office of Court Administration.

Quarterly, Administrative Judges must submit a report to the Administrative Director of Courts detailing payments for attorney's fees and reimbursements for reasonable expenses per item approved in their judicial region for court-appointed counsel during that fiscal year. The Administrative Director of the Courts may require periodic reports on other matters pertaining to the court appointment system for the purposes of evaluating its operation and timely submitting of the annual report to the Permanent Commission for the Evaluation of the Court Appointment System.

Administrative Judges will ensure that cases with appointed counsel be granted priority in the court calendar. Likewise, where viable, the use of available technology for remote court appearances by appointed counsel, such as videoconferencing, is encouraged in proceedings authorized by the Office of Court Administration.

Furthermore, the Administrative Judges of a judicial area will select among themselves a judge to assist them with the administrative functions related to the court appointment system in their judicial area, who shall discharge the following duties:

(1) *Reports.* Submit the reports that the Administrative Director may request periodically with information pertaining to court appointments and assist the Administrative Director in preparing the annual report to the Permanent Commission for the Evaluation of the Court Appointment System.

(2) *Update and review the pool of attorneys for court appointments.* At least twice a year, verify that the pool of attorneys for court appointments in his or her judicial area is updated. This review must be performed during the dates established by directive of the Administrative Director of the Courts. Nothing provided in this paragraph precludes updating the pool of attorneys for court appointments in their judicial areas as often as needed to achieve the objectives of these Rules.

(3) *Annual review of judicial areas.* Present annual recommendations regarding the composition of judicial areas based on statistical data shared by judicial regions as provided by the Administrative Director of the Courts.

Rule 22. Creation of the Permanent Commission for the Evaluation of the Court Appointment System

Within 45 days of the approval of these Rules, the Permanent Commission for the Evaluation of the Court Appointment System will be created to evaluate the court appointment system, carry out the appropriate studies to further its tasks, and provide assistance with the annual review

process for indigency standards, the additional causes of action that may be included as basic human needs, and the configuration of judicial areas. The Commission will provide recommendations on these specific issues to the Administrative Director of the Courts, who will preside over the Commission.

The Commission will be composed of 9 members, who will provide their services *ad honorem*. These persons are:

- (1) Administrative Director of the Courts,
- (2) Executive Director of the Legal Aid Society,
- (3) Executive Director of a nonprofit organization that provides free legal services in civil proceedings to indigent persons in Puerto Rico,
- (4) Director of a legal aid clinic of one of the law schools in Puerto Rico,
- (5) 2 Administrative Judges, appointed by the Chief Justice of the Supreme Court of Puerto Rico,
- (6) 1 representative of the Puerto Rico Bar Association,
- (7) 1 representative of the Puerto Rico Lawyers Association, and
- (8) 1 representative of the Puerto Rico Notary Association.

The persons named in subsections (3) and (4) of this rule will alternate each year so that all may serve in the Commission. The entities participating in the first year will be determined by a draw.

The Commission will submit a report to the Supreme Court with its recommendations for the improvement of the court appointment system prior to December 31 of the fiscal year under evaluation, except where a timely extension is requested for just cause shown.

The Office of Court Administration will provide the Commission with the necessary information and resources to carry out its tasks and fulfill the purpose for which it was created. The Commission will have the assistance of the Office of Secretariat of the Judicial and Notarial Conference of the Supreme Court for the necessary research aimed at proposing amendments to the court appointment system.

CHAPTER VIII. TRANSITIONAL PROVISIONS, SEVERABILITY, AND EFFECTIVENESS

Rule 23. Severability

If any provision of these Rules or the application thereof to any person is declared null or unconstitutional, this fact shall not invalidate the surviving provisions, which will remain in full effect.

Rule 24. Repeal

The Rules for the Appointment of Counsel in Criminal Proceedings of May 1, 2008, will be repealed after these Rules take effect.

Rule 25. Transitional Provisions

(a) *Transitional provisions applicable to the Office of Court Administration.* Within a term of 120 days following the approval of these Rules, the Office of Court Administration will adopt and publish the following:

- (1) the forms for processing the matters required under these Rules,
- (2) the standards for determining indigency,
- (3) the list of authorized entities or organizations where attorneys may render pro bono services in order to accumulate the hours required for exemption under Rule 7(b)(1), and
- (4) the map showing the configuration of the judicial areas.

The Office of Court Administration must also issue the necessary directives for the implementation of the Rule 7(b)(1) exemption.

(b) *Transitional provisions applicable to attorneys.* All attorneys will file electronically, through the system enabled for such purposes, an initial declaration within the term of 45 days prior to the effective date of these Rules. This initial declaration will include the following:

(1) A certification that his or her profile in the Master Roll of Attorneys and all the information included therein are up to date, confirming that:

- (i) his or her contact information (telephone numbers, mailing and physical addresses of the attorney’s home and office, location of his or her notarial office (if any), and email addresses) is correct,
- (ii) his or her employment history has been updated, and
- (iii) he or she has updated his or her legal practice background.

(2) An application for exemption or exclusion under Rule 7, if the attorney so requests.

Attorneys who at the time these Rules take effect have reached the age of 70, those who have been admitted to practice in this jurisdiction by courtesy, and those who do not appear as “active” in the Master Roll of Attorneys, whether by reason of voluntary resignation, petition for status change to “inactive,” definite or indefinite suspension, or disbarment decreed by the Supreme Court) will not be required to file this initial declaration.

Once the period of 45 days has elapsed, the Clerk of the Supreme Court will serve an electronic Notice of Noncompliance to attorneys who have not complied with their duty to file an initial declaration. Attorneys will then be granted an additional non-extendable term of no more than 30 days from the date of the Notice of Noncompliance to certify compliance before the Clerk. Should this final term expire without the attorney having complied, the matter will be referred to the Supreme Court so it may determine whether to commence a disciplinary proceeding against the attorney.

(c) *Other transitional provisions.*

(1) The provisions of these Rules shall apply prospectively. Concordantly, the payment of attorney's fees and the reimbursement of expenses for a court appointment that is active at the time that these Rules take effect will be governed by to the provisions contained herein. Services rendered in excess of the 30 hours of free legal services and the reasonable expenses incurred through December 31, 2019, in relation to a court appointment under the Rules for the Appointment of Counsel in Criminal Proceedings of 2008 must be claimed within a non-extendable period of no more than 45 days from the effective date of these 2018 Rules, even where the judicial proceedings are ongoing.

(2) The pro bono hours rendered for the purposes of claiming exemption under Rule 7(b)(1) through one of the entities or organizations authorized by the Office of Court Administration, or with the courts by means of the mechanisms established in Rule 5(d) and Rule 10(b), prior to the effective date of these Rules, may not be accredited as continuing legal education credit hours. The Continuing Legal Education Board will establish the necessary guidelines for accrediting pro bono hours authorized pursuant to these Rules.

(3) The transitional provisions provided in the above subdivision notwithstanding, pro bono service hours may be recognized for the purposes of claiming exemption under Rule 7(b)(1), even where they have been rendered prior to the effective date of these Rules. The 30 pro bono service hours may be offered through any one of the entities or organizations authorized by the Office of Court Administration. The pro bono service hours rendered through the mechanisms established in Rule 5(d) and Rule 10(b) for any appointment or legal representation assumed beginning June 3, 2019, will also be recognized. In both cases, the official forms adopted by the Office of Court Administration for the certification of hours must be used.

(4) If for whatever reason the Judicial Branch electronic notification systems are unavailable, the applicable provisions of Rule 8 shall be suspended. Likewise, attorneys may be required to use the forms approved by the Office of Court Administration to file any request under these Rules which otherwise would have been filed electronically.

Rule 26. Effective Date

These Rules shall take effect on January 1, 2020.