

POTENTIAL OPD LEGISLATION FOR 2015 SESSION

Presented to Public Defender Commission Legislative Committee

March 10, 2014

47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(e) If the office files a motion to rescind the court's order, the person may request that the court conduct a hearing on the rescission motion. If the person does request a hearing, the court shall grant that person an opportunity to be heard.

(f) If the person does not request a hearing on the office of public defender's motion to rescind, does not appear at a hearing on a motion to rescind, or refuses to testify at a hearing on a motion to rescind, the court may find the person is not eligible to have counsel assigned for him or her under Title 47.

(g) If the state public defender files a motion to rescind the order to assign counsel on the ground the person is not eligible for services, the court shall determine whether the court agrees with the public defender's evaluation and determination of eligibility, or whether the defendant is entitled to be represented by assigned counsel.

(2) (a) An applicant who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);

or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and
(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section. *A regional deputy public defender or his or her designee may take such action as is necessary to comply with the provisions of Title 47 in cases in which a person is determined not to be eligible for services.*

History: En. Sec. 14, Ch. 449, L. 2005; amd. Sec. 2, Ch. 467, L. 2009; amd. Sec. 7, Ch. 344, L. 2011.