

THIRD JUDICIAL DEPARTMENT

JUDICE BUILDING • EMPIRE STATE PLAZA

ALBANY, NEW YORK 12223

A-66 Court No

474-3603 • 474-3604



OFFICE OF THE  
DIRECTOR OF ADMINISTRATION

RICHARD J. COMISKEY  
DIRECTOR

EDWARD J. MURPHY  
DEPUTY DIRECTOR  
BUDGET AND ACCOUNTS OFFICER

February 15, 1977

MEMORANDUM

TO: All Third Department County, Family and City Court Judges; those Town and Village Justices in Municipalities over 10,000 in Population; County Magistrates Associations; Public Defenders; County Bar Associations; and Administrators of Assigned Counsel Plans.

FROM: Richard J. Comiskey

SUBJECT: Assignment of Attorneys to Represent Individuals who are Financially Unable to Obtain Counsel.

The enclosed standards and questionnaire were prepared by this office in accordance with Presiding Justice Koreman's instructions to respond to concern expressed by judges, attorneys, local and state legislators, and others, as to how attorneys were assigned to represent indigents. We have, therefore, prepared the attached guidelines in the hope that they will be of some assistance to you. Conversely, there have been many who, upon request, contributed their thoughts and ideas to us so that this project could be completed and we thank each of you for such assistance.

We will not be able to supply copies of the questionnaire in quantity, therefore I suggest that you make arrangements locally to have it reproduced.

At the present time the Office of Court Administration is making a study of the assignment of counsel on a State-wide basis. This study may, at some future time, result in the promulgation of State-wide rules or guidelines which, of course, would supplant our guidelines.

If you have any questions concerning the standards or their implementation, please contact Peter Ryan at (518) 474-3603. Mr. Ryan assisted in their preparation and should be able to answer your inquiries.

Standards of Eligibility for the Assignment of  
Attorneys to Represent Individuals who are  
Financially Unable to Obtain Counsel.

These standards are to be used as guidelines in determining who is "financially unable to obtain counsel" under section 722 of the County Law.

The attached questionnaire must be completed by, or for, each person requesting assignment of counsel in a criminal or family court matter. The court may delegate the responsibility for assisting the defendant with completion of the questionnaire to nonjudicial court employees, administrators of assigned counsel plans, the public defender's office, court appointed counsel, or other suitable individuals. However, it should be reviewed and acted upon by the court.

Financial inability to afford counsel is not synonymous with destitution or a total absence of means. Nor are the standards used to determine indigency for other purposes controlling.

Financial inability must be determined on a case by case basis in the context of the charges against the individual, the services required, and the cost of private representation. The key test for determining eligibility is whether or not the defendant, at the time need is determined, is financially unable to provide for the full payment of adequate counsel and all other necessary expenses of representation.

These standards shall be construed to obtain equitable and consistent determinations of eligibility for counsel, to limit the expenditure of public funds to cases where justice so requires, to

obtain contribution from those able to pay part of the cost of their defense, to safeguard the rights of individuals to an adequate defense, and to insure the effective and efficient functioning of the family court and criminal justice system in the Third Judicial Department.

A person charged with a crime, or before the family court and otherwise entitled to assigned counsel, is eligible for assigned counsel when the value of his present net assets and his current net income are insufficient to enable him promptly to retain a qualified attorney, obtain release on bond and pay other expenses necessary to an adequate defense, while furnishing himself and his dependents with the necessities of life.

In determining "present net assets" the emphasis should be placed upon available liquid assets. Items such as a house used for a residence, reasonable household furnishings, or an automobile reasonably necessary for the individual's employment should normally be excluded.

"Current net income" should be determined on the basis of net disposable income available to the individual, (i.e., "take-home pay").

If more than one member of the family domiciled at the same residence is working, total family income should be considered. If the defendant is estranged and domiciled separately from other family wage earners, individual income only should be considered. If the defendant is a college student, inquiry should be made as to the

source of his support. HOWEVER, THE SIXTH AMENDMENT RIGHT TO COUNSEL IS PERSONAL, THEREFORE, ASSIGNMENT OF COUNSEL CANNOT BE DENIED IF OTHER FAMILY MEMBERS REFUSE TO CONTRIBUTE TOWARD THE COST OF COUNSEL.

The cost of living and the amount required to enable an individual to retain a qualified attorney varies greatly from county to county within the Third Department. Therefore, locally determined standards should be established where warranted. However, the following minimum living allowances should generally be applied:

- 1) \$75.00 per week for an individual (net).
- 2) \$100.00 per week for an individual with one dependent (net).
- 3) \$15.00 per week for each additional dependent (net).

An individual whose net liquid assets are insufficient to retain a qualified attorney and whose income does not meet the minimum allowances should automatically qualify for appointed counsel. Other individuals may also be eligible in certain situations.

In determining income eligibility the following points should be kept in mind:

- 1) The cost of private counsel normally increases with the seriousness of the charges. (Each judge making assignments should obtain local data sufficient to allow him to estimate the amount required to enable a person to retain a qualified attorney for the types of charges routinely placed against individuals appearing before him.)
- 2) The above standards should not be applied mechanically. Discretion must always be exercised in determining eligibility.

- 3) Unusual, necessary, recurring expenses can make an otherwise ineligible individual, eligible. (E.g., child care expenses, recurring medical expenses, alimony, or child support.)
- 4) In a questionable case of eligibility, the following additional factors should be considered:
  - a) Type of prior employment or special skills.
  - b) Unusual types of assets, particularly luxury items.
  - c) Actual amount spent by the defendant on the necessities of life.
  - d) Family background and contacts with family (particularly relevant in determining college student eligibility).
  - e) Income during the past two years.
  - f) Age.
  - g) Nature of the charge.
  - h) Whether or not he is in jail.

Whenever it appears that an individual to whom counsel has been assigned is financially able to retain a private attorney or to make partial payment for representation by counsel or other services, counsel may report this fact to the court and the court may terminate the assignment of counsel or authorize payment, as the interests of justice may dictate, pursuant to section 722-d of the County Law.

In questionable cases of eligibility, particularly where justice requires immediate representation or authorization of services, counsel should be appointed or services authorized, with the contribution order being entered at a later date if funds are available.

In Support of Request to be Assigned  
Counsel Without Payment of Fee

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn,  
voluntarily depose and state that I am financially unable to  
employ an attorney to represent me in regard to the charge or  
charges against me and furnish the following information for the  
purpose of enabling the court to determine whether or not I am  
entitled to the appointment of an attorney to represent me.

PERSONAL INFORMATION

- 1) Full Name: \_\_\_\_\_
- 2) Date of Birth: \_\_\_\_\_
- 3) Home Address: \_\_\_\_\_  
\_\_\_\_\_
- 4) Telephone Number: \_\_\_\_\_
- 5) Marital Status: Single \_\_\_\_\_ Married \_\_\_\_\_  
Separated \_\_\_\_\_ Divorced \_\_\_\_\_
- 6) Husband's or wife's full name: \_\_\_\_\_  
\_\_\_\_\_
- 7) Names and ages of children or other dependents supported:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EMPLOYMENT

8) Occupation (if a student, indicate the school attended and the name, relationship, and address of any person who is helping you pay tuition, room and board): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9) Name, address and telephone number of present employer:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10) Amount of pay taken home \$ \_\_\_\_\_;  
The above amount is paid weekly \_\_\_\_\_  
Every two weeks \_\_\_\_\_ Monthly \_\_\_\_\_  
(Check one).

11) How much did you earn in each of the two previous calendar years?  
\$ \_\_\_\_\_ (19\_\_)  
\$ \_\_\_\_\_ (19\_\_).

12) If you are not presently working, indicate where you last worked \_\_\_\_\_;  
when \_\_\_\_\_; and how much you were earning at that time \$ \_\_\_\_\_.

13) If you are unemployed, indicate how you are meeting living expenses: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14) If your spouse is employed, supply weekly take-home pay  
\$ \_\_\_\_\_ and the name and address of employer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15) If you are not living with your wife or children, what are  
their addresses and how much do you contribute to their  
support? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER INCOME

16) Income from rental property, stocks, and bonds \$ \_\_\_\_\_;  
source(s) \_\_\_\_\_;  
and frequency of payment \_\_\_\_\_.

17) Miscellaneous Income (unemployment compensation, social  
security, workmen's compensation, welfare, pension, support  
payments, trust fund) \$ \_\_\_\_\_;  
source(s) \_\_\_\_\_;  
and frequency of payment \_\_\_\_\_.

18) Income from other sources \$ \_\_\_\_\_;  
source(s) \_\_\_\_\_;  
and frequency of payments \_\_\_\_\_.

PROPERTY

19) Real Property

a) Do you or your spouse own your home? \_\_\_\_\_



b) If so, indicate the approximate market value  
\$ \_\_\_\_\_; present amount owed on mortgage  
\$ \_\_\_\_\_; name of the bank to which payments  
are made \_\_\_\_\_.

20) Other Property:

a) Automobile: Make \_\_\_\_\_ Model \_\_\_\_\_  
Year \_\_\_\_\_ Present Value \_\_\_\_\_  
Amount Owed \$ \_\_\_\_\_ Owed to \_\_\_\_\_

Is use of this automobile critical to your employment?

\_\_\_\_\_ Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) Cash on hand, including balance of checking and savings  
accounts \$ \_\_\_\_\_.

c) Total value of any other assets such as insurance  
policies, stocks, bonds, trust accounts or similar  
investments owned in your name or jointly with any other  
person \$ \_\_\_\_\_. Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21) Have you sold, given, or otherwise transferred any real  
property or other asset to any other person (including your  
spouse) during the past six months? \_\_\_\_\_ If so,  
explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22) Total monthly income from all sources, including wages  
\$ \_\_\_\_\_

23) Monthly Expenses:

a) Rent or mortgage payment (including taxes)  
\$ \_\_\_\_\_

b) Food \$ \_\_\_\_\_

c) Installment payments \$ \_\_\_\_\_  
(Indicate to whom paid) \_\_\_\_\_

d) Loan Payments \$ \_\_\_\_\_ (Indicate to whom  
paid) \_\_\_\_\_

e) Utilities (Heat, Telephone, Water, Electric)  
\$ \_\_\_\_\_

f) Automobile Expenses (including payments) \$ \_\_\_\_\_

g) Premiums on insurance policies \$ \_\_\_\_\_

h) Other significant expenses \$ \_\_\_\_\_  
(Specify) \_\_\_\_\_

Total Monthly Expenses \$ \_\_\_\_\_

24). Have you been represented by retained counsel at any time  
while the charges currently in question have been pending?

\_\_\_\_\_ If you have, please state the attorney's  
name and address and the amount he was paid. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

25) Have you tried to hire an attorney? \_\_\_\_\_

Who? \_\_\_\_\_

26) If you have been released on bail, please indicate the amount  
\$ \_\_\_\_\_; How posted \_\_\_\_\_;  
and give the name and address of the person who furnished the  
cash or collateral for your bail bond \_\_\_\_\_

NOTICE: IF AN ATTORNEY IS ASSIGNED TO YOU, YOU MAY BE REQUIRED TO  
REPAY THE COUNTY FOR ALL OR PART OF THE COST OF YOUR DEFENSE.

Under the penalties of perjury, I declare that I have examined  
the above statements made by me and to the best of my knowledge and  
belief, they are true and correct. I hereby authorize the Court, or  
its representative, to verify the answers given in this affidavit.

Signed: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

\_\_\_\_\_  
Judge, Justice or Notary Public

Reviewed by: \_\_\_\_\_

Title: \_\_\_\_\_

Recommendation: \_\_\_\_\_

Reason(s): \_\_\_\_\_  
\_\_\_\_\_