

Public Hearings on Eligibility for Assignment of Counsel

Good afternoon. My name is Tina Hartwell and I work for the Oneida County Public Defenders Office. The Oneida County Public Defenders office has two divisions – the Civil Division that handles all family court matters, and the Criminal Division that handles all criminal court matters. I work for the Criminal Division and I have worked here for almost 14 years.

I am not sure if we are unique but when my boss, Frank Nebush, took over as the Chief Defender of Oneida County in 1981, the Courts did the qualification and assignment of counsel. According to my boss, that system was a mess and did not work toward the best interests of our clients. There was always a delay of counsel assigned to an individual that he felt was unnecessary. Therefore, with the consent of the courts, he instituted a new plan. We, the attorneys of the Criminal Division of the Public Defenders Office, qualified potential clients, and then, we notified the Court whether or not a client qualified for Public Defender services. Our office calls our qualification form a “green sheet”. **[copy provided]**

Our office uses the Federal Poverty Guidelines that are disseminated to us by the NYS Defender’s Association. **[copy provided]** Please note the topic of this memorandum: 2015 Poverty Guidelines for Making an Informed Eligibility Determination. This memo is given to every staff and attorney in our office each year which reminds attorneys, old and new, of the types of considerations to use when determining whether a potential client qualifies for Public Defender services. Our office uses the 125% of the Legal Services Corporation (LSC) income guidelines as our starting point. What does this mean? It means that when interviewing a potential client, our first question is whether they work – if so, part-time or full-time? If so, how much per week, every other week, month or whenever they get paid? If not, we ask whether they receive any type of income such as worker’s compensation, unemployment, SSD or SSI? If so, how much per week or month or whenever they receive the income? The amount is NOT typically given to us in annual income, thus, each year after getting this memo, I break the annual income down to weekly, bi-weekly, semi-monthly and monthly income. **[copy provided]** At this point, we have already established how many people are in the household, and if not, the potential client is asked how many people are in the household and the ages of those individuals. The amount of income given by the potential client, along with the number in the household, are compared to the baseline 125% (LSC) income guidelines. If the income amount is below the baseline, in almost every case, we advise the Court that the individual qualifies for Public Defender services and the Court assigns our office to represent.

If the income amount is borderline, the inquiries do not end there. Our staff attorneys are also trained to ask other questions such as whether the potential client or any household child is in school or college, whether the potential client’s significant other works and if so, where and how much income do they receive. They will also ask about ownership of vehicles and homes, or other income not described. With additional income noted, other factors are considered by the attorneys such as:

- Whether the potential client is in custody and whether they have access to financial funds if custody continues;
- Debt or bankruptcy of the potential client, in particular, student loan debt or current child support or child support arrears;
- The charge/number of charges, the seriousness of the charge(s), and if the charge(s) are in one or more courts;
- The amount of bail set; and,
- The cost of private representation in our area

If the income amount appears over the minimal income amount, the above additional questions are also asked of the potential client. If the income amount appears well over this minimal income amount and the potential client is advised that they are over the amount, we give the potential client the opportunity to meet with an investigator to complete a "long form" [copy provided] qualification form that is sworn to and signed by the potential client regarding their assets and debts. (We will represent pending financial eligibility determination.) A request is made by our office of the court to adjourn for a few days in order to accomplish this task. At the next court appearance the Court is advised whether or not that individual qualifies for Public Defender representation or not.

On occasion, there have been instances where a potential client is well above the income guideline amount with assets that put them further over. However, the client is in custody and has no access to their funds. In those rare occasions, we will notify the court due to exceptional financial circumstances the potential client qualifies for our services. However, in those rare occasions, a private discussion with the potential client occurs outlining if a change in circumstances occurs, i.e. s/he is no longer incarcerated, our representation would no longer be available unless additional financial hardship occurs that would limit their access to their funds, e.g. funds were frozen or seized, etc.

There have also been a few occasions where defendants are appointed to our office by the Court. For example, a defendant is represented by a private attorney who backs out of a case for one reason or another. If the Court relieves that private attorney and the defendant requests Public Defender services, the Court, after a series of financial questions are asked and answered on the record, has appointed the client to our office for representation. In those few cases, our office has accepted the assignment and continued the representation of the client at the stage of the proceedings where the private attorney left off.

In any case where an attorney has determined that the potential client does not qualify for Public Defender services, the potential client can appeal to the main office for consideration through the use of our "long form" qualification form prepared by an investigator and given to a supervisor for approval or rejection of the application for services.