

## **ASSIGNED COUNSEL APPLICATION: INSTRUCTIONS**

The following are instructions for using the Application for Assignment of Counsel under County Law, Article 18-B to determine if an applicant is financially eligible for assignment of counsel.

### **Part I of the Application: Is the applicant presumptively eligible?**

Part I elicits the information needed to determine if an applicant is presumptively eligible for assignment of counsel. An applicant shall be presumed eligible for the assignment of counsel in any one of the following circumstances:

1. If the applicant's net income is at or below 250% of the currently-updated Federal Poverty Guidelines. To make this determination, refer to the FPG Income Eligibility Chart, using the information about the applicant's net (take-home) pay and number of dependents in the household.
2. If the applicant is incarcerated or detained.
3. If the applicant is confined to a mental health facility.
4. If the applicant is currently receiving, or has recently been deemed eligible to receive, any need-based public assistance, including, but not limited to: Family Assistance (pursuant to TANF guidelines), Safety Net Assistance, Supplemental Nutrition Assistance (SNAP), Supplemental Security Income (SSI)/New York State Supplemental Program (SSP) assistance, Medicaid, and public housing.
5. If, within the past six (6) months, the applicant was deemed financially eligible for assigned counsel in another jurisdiction or by a court within the same jurisdiction.

*A presumption of eligibility shall be overcome only if there is compelling evidence that the applicant possesses the current available financial resources to pay for a qualified attorney, the expenses necessary for a competent defense, release on bond, and reasonable living expenses.*

If ANY of the above-stated presumptions applies, the applicant is presumed eligible, and counsel shall be assigned. **The applicant does not have to complete Part II of the application.**

If NONE of the above-stated presumptions applies, Part II of the application must be completed **with assistance** from the Court or screening entity.

*The fact that an applicant does not meet one of these presumptions is not, in and of itself, reason to determine that an applicant is not eligible for assigned counsel.*

## **Part II of the Application: Applicant's resources and living expenses**

For applicants who are not presumptively eligible for assigned counsel, it is essential to consider, in addition to the information elicited in Part I, more detailed information about the applicant's current available resources (income and assets), living expenses, and financial liabilities. Part II of the application elicits this information.

### **Other Income and Assets**

In completing Part II of the application, the following assets shall **NOT** be considered (unless an exception is specified):

- 1) Third-party income, including parental and spousal income (unless the third party indicates a present intent to pay, the applicant consents, and the arrangement does not interfere with the applicant's representation or jeopardize the confidentiality of the attorney-client relationship).
- 2) Receipt of child support payments.
- 3) Receipt of cash or non-cash stipends under a Federal or State need-based program, including, but not limited to, Public Assistance, SSI/SSP, TANF, SNAP, Unemployment, Workers Compensation, Section 8, or Medicaid reimbursements.
- 4) Primary residence of the applicant unless the fair market value of the home is significant, there is substantial equity in the home, and the applicant is able to access the equity in a time frame sufficient to retain private counsel.
- 5) Vehicles: Any vehicle that the applicant and his or her family members use for transportation to work, school, medical appointments, or for other basic life necessities shall not be considered in determining eligibility for assigned counsel.
- 6) Other non-liquid assets: Other non-liquid assets, such as secondary residences and vehicles not used for basic life necessities, shall not be considered as assets *unless* such assets have a demonstrable monetary value and are readily convertible to cash without impairing applicants' ability to provide for the reasonable living expenses of themselves and their dependents.

While non-liquid assets themselves shall generally not be considered in making eligibility determinations, income or revenue generated from such assets may be considered in determining whether an applicant is eligible for counsel. For example, rent received from a secondary home may be considered as an asset.

### **Applicant's Monthly Living Expenses**

The reasonable living expenses of the applicant and dependents (including, for example, minors, parents, spouses, or domestic partners) shall be considered, as well as other debts and financial obligations. These include the following:

- 1) Medical expenses, including health insurance, of the applicant or any dependents.
- 2) Mortgage or rent payments needed to maintain the applicant's primary residence.
- 3) Utility payments.
- 4) Food costs.
- 5) Automobile insurance and loan payments needed to maintain an automobile necessary for work, education, medical appointments, and other basic life necessities.
- 6) Employment- or educational-related expenses, such as child or dependent care, transportation costs, clothing and supplies.
- 7) Child support payments made by the applicant to another.
- 8) Minimum monthly credit card payments.
- 9) Educational loan payments.
- 10) Non-medical expenses associated with age or disability.

### **For Court or Screener:**

#### **Are the applicant's resources insufficient to pay for a qualified attorney, effective representation, release on bond, and reasonable living expenses?**

An applicant is financially eligible for assignment of counsel when the applicant's current available resources are insufficient to pay for a qualified attorney, release on bond, the expenses necessary for effective representation, and the reasonable living expenses of the applicant and any dependents.

This assessment requires consideration of the applicant's financial resources and obligations (elicited in Parts I and II of the application), as well as the resources needed to:

- 1) Pay for bail; and
- 2) Retain a qualified attorney and pay for other costs necessary for effective representation in the relevant jurisdiction, given the nature of the case.

[Factors that may render a case more complex and thus more expensive include, but are not limited to: the seriousness of the charges; the need for investigative services; the need for expert services; the existence of DNA and other forensic evidence; the possibility of life-altering collateral consequences, including immigration consequences and registration or civil commitment; and the need for sentencing advocacy or social work services].

The sections of the application concerning Amount Needed for Bail and Cost of Retaining Private Counsel shall be completed. Based on all of the information elicited in the application, a determination shall be made as to whether the applicant is eligible for assignment of counsel. If it is determined that the applicant is not eligible for assignment of counsel, specify the reason.

### **Notice to the Applicant**

The Applicant must be informed, **in writing**, of a determination that he or she is ineligible for assigned counsel. This written notice must include the reason for the ineligibility determination.

- 1) If the initial recommendation is made by a screening entity:
  - i. Complete the "**Notice of Eligibility Recommendation**," indicate the eligibility recommendation, and provide a copy of the completed Notice to the Applicant. This Notice is available at: [www.ils.ny.gov](http://www.ils.ny.gov).
  - ii. Provide the applicant with a copy of the document entitled, "**Your Right to Seek Review of the Recommendation That You Are Not Eligible for Assigned Counsel**." This notice of rights is available at: [www.ils.ny.gov](http://www.ils.ny.gov).
- 2) If the decision of ineligibility is made by the Court:
  - i. Provide the applicant with a completed copy of the document entitled, "**Notice of Judge's Ineligibility Decision**," which is available at: [www.ils.ny.gov](http://www.ils.ny.gov)