



Office of the  
**Public Defender**  
Monroe County, New York

Maggie Brooks  
*County Executive*

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*Public Defender*

# Memo

To: Attorneys  
From: TPD *TPD*  
Date: December 15, 2014  
Subject: New assignment of counsel procedure pre-arraignment

Effective immediately, we are changing the procedure on how we assert the right to counsel in some pre-arraignment cases.

It has previously been the office practice to request a judicial assignment from the Part I judge when a person subject to a criminal investigation requests representation by this office. Additionally, we have requested judicial assignment when a parent requests we represent their child (under 21 years of age) who has been arrested or detained, or when an existing client is arrested or detained.

Recent standards applicable to indigent defense providers call into question the validity of these procedures. For instance, the ABA Standards for Criminal Justice Providing Defense Services recommend that mandated providers of indigent legal services provide counsel at the "investigation stage". Standard 5-6.1 states that: "[u]pon request, counsel should be provided to persons who have not been charged or taken into custody but who are in need of legal representation arising from criminal proceedings. . . ". Standard 5-8.1 states: "[a] a person taken into custody or otherwise deprived of liberty should immediately be informed, preferably by defense counsel, of the right to legal representation...".

The New York State Bar Association's 2013 Revised Standards for Providing Mandated Representation state that providers of mandated representation should provide counsel at the earliest possible time and that a court order should not be required. Standard B-1 states: "[e]ffective representation should be available for every eligible person whenever counsel is requested during government investigation or when the individual is in custody. Provision of counsel shall not be delayed while a person's eligibility for mandated representation is being determined or verified." Standard B-3

also references the availability of counsel prior to arrest or being taken into custody: “[c]ounsel shall be available when a person reasonably believes that a process will commence that could result in a proceeding where representation is mandated.” Furthermore, standard A-1 states:

. . . In the performance of their legal duties, providers of mandated representation should therefore be free from political influence or any influences, other than the interests of the client that erode the ability to provide quality representation, and should be subject to judicial supervision only in the same manner and to the same extent as all other practicing lawyers.

The Indigent Legal Services Board (chaired by Chief Judge Jonathan Lippman) has mandated that all providers of indigent representation follow the Board’s previously issued *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*. These standards include the requirement that providers “provide representation at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or verified....”. (Standard 5.) The standards also note that counsel should be present “at arraignment or first appearance, or earlier when an individual has invoked a constitutional or statutory right to counsel in an investigatory stage of a case. . .”. (Standard 5 [a].)

**It is important to note that before we begin representation, there must be a request from the person, or a legal guardian, that we provide representation (or the consent of the defendant is assigned by a court).** County Law § 717 states:

The public defender shall represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime as defined in section seven hundred twenty-two-a of the county law in the county or counties in which such public defender serves. When representing an indigent defendant, the public defender shall counsel and represent him at every stage of the proceedings following arrest, shall initiate such proceedings as in his judgment are necessary to protect the rights of the accused, and may, in his discretion, prosecute any appeal, if in his judgment the facts and circumstances warrant such appeal.

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(Id., [emphasis added].)

Thus, effectively immediately, in the above circumstances we will no longer be seeking a judicial assignment before beginning the attorney-client relationship and asserting an attorney appearance on behalf of a client. If a person requests counsel, and we determine s/he is eligible, we will inform the person that we are representing them immediately, and take whatever action is necessary (including contacting the police) to effectuate the client's rights.

Similarly, in circumstances where a parent requests that we represent a minor child (under 21), we will determine eligibility, and if eligible, immediately begin representation.

For existing clients, we will immediately provide representation on any new criminal investigations or charges.

In any of the above circumstances, if you are assigned a case you will no longer be told by the supervisor who assigned you to seek a Part I assignment order. Additionally, you will be expected to immediately protect the client's rights which may include notifying any interrogating police officers to cease interrogation of the client. If, in the course of doing so, you are asked how you were "assigned" do not engage in a discussion with the officer about how you were assigned – simply inform the officer that you are the attorney, ask that the time be noted, and that all interrogation cease. Make sure that you document this information, including the names of the officers and their response to your request.

In other circumstances not covered by the above (friend or relative requesting counsel for a person who has been detained) we may seek judicial assignment. Additionally, there may be cases where the person appears to be eligible, but we lack information to make a determination. In those cases we will discuss with the assigned attorney how to proceed.

# MEMO

**TO:** Staff  
**FROM:** TPD  
**DATE:** December 2, 2009  
**RE:** Eligibility Guidelines

Determining clients' eligibility for services is obviously done on a case-by-case basis. However, in order to provide additional guidelines (and hopefully increased uniformity in how we determine whether a client is eligible for services), Roger, Jill, John, Sharon, Celeste, and I met yesterday to discuss some additional guidelines to assist you in determining whether a potential client is eligible for our services.

Please remember that the information we collect from clients is done in order to make a recommendation to the court on eligibility. Furthermore, the standard is not whether a client is indigent, but whether the client is "unable to afford counsel". (County Law § 722). It is the court's responsibility to make a determination of whether a client is unable to afford counsel.

In addition to the income guidelines, please consider the following:

## Home Ownership

- Determine amount of net equity in home; applicant to provide documentation of mortgage balance if balance is disputed.
- If home is currently in foreclosure, it should be considered to have no equity. Applicant must bring in proof of foreclosure (eg., lis pendens). (Documents may be obtained through County Clerk's Office).
- The amount of available net equity (total equity less 20%) rendering an applicant ineligible is determined by highest offense charged:
  - Misd - \$5k
  - Non-VFO - \$10k
  - Family Court - \$10k
  - VFO - \$20k
  - Murder - \$50k
- If net equity exceeds these levels, applicant is advised to obtain home equity loan.
- If applicant states s/he cannot obtain home equity loan, s/he must bring documentation of loan denial.

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## Under-21 Applicants

- If applicant is under 21 and on public assistance (not simply food stamps or medicaid), s/he is eligible regardless of parent(s)' income.

- If applicant is under 21 and lives with one parent, s/he must provide verification of absent parent's income; if s/he fails to do so, report this information to the court.
- Current policy of not counting victim-parent's income in determining under-21 criminal defendant's eligibility is continued. Income and assets of non-victim parent in two-parent family will be considered.
- Current policy of counting victim-parent or non-applicant spouse's income in determining Family Court eligibility will continue.
- Applicants over 21, even if full-time students living with parents, are determined on basis of their own income (not parents')

### **“Extraordinary” Expenses**

- Extraordinary expenses should be rare. Such expenses do NOT include utility bills (no matter how large). Some examples of legitimate extraordinary expenses or circumstances:
  - Current bankruptcy. If a client is currently in bankruptcy (no final order has been entered), s/he is eligible if documentation is provided establishing the client is in bankruptcy. A prior bankruptcy is not to be considered.
  - Recurring medical expenses. If a client, or dependent, requires recurring medical expenses not covered by insurance, these should be considered in determining eligibility.

### **Use of Prior Eligibilities**

- If applicant currently has an open case in the office, the previous eligibility may be used, but paralegal must update personal information.
- If applicant was previously represented by office on a now-closed case, paralegal may use previously eligibility if not more than 3 months old, but paralegal must update personal information.

If a client is “barely” over the income limits, please make sure you inform the court of the income amount that exceeds the income guidelines (e.g., “Judge, the client is over by \$15 a week”.)

Always remember to note on the eligibility the recommendation you are making to the court. This will assist us in resolving disputes over why we were we assigned to a client's case in one court, despite our recommendation to the contrary, when we are recommending in another court that the client is ineligible.

## INSTRUCTIONS

Please complete the attached form by filling out only the yellow-highlighted areas on both pages of the Statement of Financial Status form.

PLEASE PRINT CLEARLY

COMPLETE THE YELLOW-HIGHLIGHTED AREAS ONLY

When you have completed the form, a staff person will meet with you to review your form and obtain any additional information that is needed. You may have to provide proof of your income and assets. If you are under 21 years of age, you must provide information about your parent(s)' income or assets.

IF YOU HAVE ANY QUESTIONS ABOUT THE FORM, PLEASE WAIT UNTIL A STAFF PERSON MEETS WITH YOU – DO NOT ASK THE RECEPTIONIST

Staff persons do not determine eligibility. The information they collect will be provided to the Court, which will decide whether you qualify for representation by an attorney from this office. Non-attorney staff are not qualified or permitted to give legal advice. Therefore, there is no need to discuss your case with the staff person with whom you will be meeting. In fact, you should not discuss your case with anyone but the lawyer who will be representing you.

On your next court date, you will be advised whether you will be assigned an attorney from this office. If you are assigned a public defender to represent you, you will be provided with the name and telephone number of the attorney. You may then contact the attorney by phone, and either set up an appointment or discuss your case by phone at that time.

If you are told at some point you do not qualify, you should attempt to hire a private attorney to represent you at your next court appearance. As you make an effort to do this, you should keep track of the names of the attorneys you call, the dates you call them, and what they tell you about whether they can represent you. Bring this information to court with you on your next court date.

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IF YOU WERE IN THE MILITARY, PLEASE FILL OUT THE VETERAN'S  
INFORMATION SHEET (located at the back of the form)

Monroe County Public Defender's Office  
10 N. Fitzhugh Street, Rochester, New York 14614  
(585) 753-4210 ◦ fax: (585) 753-4234

STATEMENT OF FINANCIAL STATUS  
PUBLIC DEFENDER OF MONROECOUNTY

MoRIS# \_\_\_\_\_

NAME \_\_\_\_\_ D.O.B.: \_\_\_\_/\_\_\_\_/\_\_\_\_ SS# \_\_\_\_\_  
First MI Last

ADDRESS \_\_\_\_\_ Apt. \_\_\_\_\_ Zip \_\_\_\_\_ Yrs in Rochester \_\_\_\_\_

Ph (H) (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (C) (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Sgl Marr Sep Div Wid No. of Children Under 21 \_\_\_\_\_

Alt Contact \_\_\_\_\_ Relationship \_\_\_\_\_ Addr. \_\_\_\_\_ Ph. \_\_\_\_\_

SEX: M F U.S. Born Y N US Citizen Y N Green Card Y N No. In Household \_\_\_\_\_

INCOME: Employed? Y N Employer \_\_\_\_\_ Net income per wk/mo \$ \_\_\_\_\_

Other Income: Public Assistance? Y N Unemp. \$ \_\_\_\_\_ SSI, SSD \$ \_\_\_\_\_ Child Support Rec'd \$ \_\_\_\_\_

Spouse's net income \$ \_\_\_\_\_ Spouse's Employer \_\_\_\_\_ Contact No. \_\_\_\_\_ - \_\_\_\_\_

Parent income (if under 21) Father \$ \_\_\_\_\_ Mother \$ \_\_\_\_\_ Contact No. \_\_\_\_\_ - \_\_\_\_\_

If no income/benefits, how do you support yourself? \_\_\_\_\_

ASSETS: Real Property owned by Applicant, Spouse or Parent (if under 21)

Address \_\_\_\_\_ Owner \_\_\_\_\_ Market Val: \$ \_\_\_\_\_ Mtge Bal: \$ \_\_\_\_\_

Auto, Motorcycle, Boat, etc. owned by Applicant, Spouse or Parent (if under 21)

Year, Make, Model \_\_\_\_\_ Owner \_\_\_\_\_ Balance Owed: \$ \_\_\_\_\_ Monthly Pymt: \$ \_\_\_\_\_

MONTHLY EXPENSES: Mortgage/Rent \_\_\_\_\_ Utilities \_\_\_\_\_ Child Support \_\_\_\_\_ Child Care \_\_\_\_\_

Car Payment \_\_\_\_\_ Other Debt/Extraordinary Expenses \_\_\_\_\_

I consent that copies of this statement may be provided to the court to assist in determining whether the Public Defender should be appointed in my case. Financial information provided may be investigated. Incorrect information may be reported to the court.

Signed: \_\_\_\_\_ Date \_\_\_\_\_ Interviewer \_\_\_\_\_ Appears Eligible Y N

OFFICE USE ONLY

Top Charge: \_\_\_\_\_ DKT/CR#: \_\_\_\_\_ Stat. \$ \_\_\_\_\_

Addtl. Chgs. \_\_\_\_\_ Court: \_\_\_\_\_ Judge \_\_\_\_\_

Arrest Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Arrn. Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Counsel Pres: Y N PD Assn 722-d

NCD \_\_\_\_/\_\_\_\_/\_\_\_\_ Time/For \_\_\_\_/\_\_\_\_/\_\_\_\_ GJ Present \_\_\_\_/\_\_\_\_/\_\_\_\_ Interp: Span Other \_\_\_\_\_

Custody Status: IN: Bail \$ \_\_\_\_\_ OUT: App Tkt Bail Posted Y N ROR Pretrial

Other Holds \_\_\_\_\_ O.O.P.: No Contact / No Off. Contact \_\_\_\_\_ (protected person)

Curr Probation: Y N 1Y 3Y 5Y 6Y 10Y Life \_\_\_\_\_ Curr Parole Y N Until \_\_\_\_\_

CONFLICT Name \_\_\_\_\_ D.O.B. \_\_\_\_/\_\_\_\_/\_\_\_\_

Type: Co-def Co-def (unchg'd) Co-def (prior) Wit Wit (prior) Vic Vic (prior) Prior Player

Court Ordered Confidential Other \_\_\_\_\_ (Family Court Only) Pet Resp Co-Resp Curr Client

Assigned to: \_\_\_\_\_

Date: \_\_\_\_\_



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**VETERAN'S INFORMATION SHEET**

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Court: \_\_\_\_\_ Judge: \_\_\_\_\_ Next Court Date: \_\_\_\_\_

**BRANCH:**

- |                               |                                    |                                      |   |
|-------------------------------|------------------------------------|--------------------------------------|---|
| <input type="checkbox"/> Army | <input type="checkbox"/> Marines   | <input type="checkbox"/> Coast Guard | <input type="checkbox"/> National Guard |
| <input type="checkbox"/> Navy | <input type="checkbox"/> Air Force | <input type="checkbox"/> Reserves    | <input type="checkbox"/> Active Duty    |

**Type of Discharge:**

- |                                       |   |   |
|---------------------------------------|---|---|
| <input type="checkbox"/> Honorable    | <input type="checkbox"/> Under Honorable Conditions (General) | <input type="checkbox"/> Other Than Honorable |
| <input type="checkbox"/> Dishonorable | <input type="checkbox"/> Convenience of Gov't.                | <input type="checkbox"/> Medical              |
| <input type="checkbox"/> Bad Conduct  | <input type="checkbox"/> Undesirable                          |   |

**Period of Service: (check all that apply)**

- |  |   |
|--|---|
| <input type="checkbox"/> Pre-WWII (11/18-11/41)                          | <input type="checkbox"/> WWII (12/41-12/46)       |
| <input type="checkbox"/> Pre-Korean (1/47-6/50)                          | <input type="checkbox"/> Korean War (7/50-1/55)   |
| <input type="checkbox"/> Between Korean and Vietnam Eras (2/55-7/64)     | <input type="checkbox"/> Post-Vietnam (5/75-7/90) |
| <input type="checkbox"/> Vietnam Era (8/64-4/75)                         | <input type="checkbox"/> Post-Persian Gulf        |
| <input type="checkbox"/> Persian Gulf (8/90- )                           | <input type="checkbox"/> Iraq (9/01- )            |
| <input type="checkbox"/> Afghanistan (9/01- )                            |   |
| Combat Service: <input type="checkbox"/> Yes <input type="checkbox"/> No | MOS _____   |

VA Benefits:  Receive;  Do Not Receive;  Eligible;  Do Not Know

**I consent to this information being released to Veteran's Outreach Center, Veteran's Administration and/or Monroe County Veteran's Court, and Monroe County Veteran's Service Agency.**

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