

Agency's Recommended Indigency Screening Model

The Committee asks the Commission on Indigent Defense to provide a model for indigency screening that it recommends, as well as additional information related to where it should be piloted. The agency provides the response below in its September 7, 2018 letter to the Committee.¹

Information includes:

- Areas to examine in pilot circuits, if model is implemented in pilot circuits first;
- Input from potentially impacted parties;
- Explanation of how the recommended model differs from the screening process in H.4830, which was filed during the last General Assembly; and
- Recommended model.

Areas to examine in pilot circuits, if model is implemented in pilot circuits first

Piloting the implementation of the model will allow for the examination of the Accept/Reject rates on applications, the effectiveness of a state-wide process in counties of different sizes, the time needed to conduct verified screening, and the additional costs necessary to implement the process state-wide. In essence, it will allow for a cost-benefit analysis to be performed. Piloting should occur in a mixture of counties instead of the entire circuits. The mixture should be of small, medium and large counties. We suggestion the following counties to be included in the pilot program:

| | | | | |
|-----------|---------|-------------|----------|----------|
| Allendale | Chester | Clarendon | Marlboro | Laurens |
| Florence | Aiken | Spartanburg | Horry | Richland |

Input from potentially impacted parties

We pulled together a workgroup that included representatives of the Clerks of Court, Public Defenders, PPP, and Magistrate Court Judges. Four meetings have been held to discuss the issues and possible options to address the issues. All members of the workgroup have attended the meetings and had the opportunity to provide feedback that was used to create the recommended process. It is noted that the Clerk of Court representative has made it clear that the Clerk of Courts do not want to be the entity to conduct the screening and noted that as an association they voted to oppose this task. However, this vote took place prior to the workgroup's discussions and prior to the workgroup taking the position that the \$40 application fee should go to the screening entity to help fund the screening costs and that the \$40 application should not be waivable only deferred.

The Clerks recently expressed concern about a "one size fits all" approach for all 46 counties. They stated that a single approach that might work in a small county does not always work in a large county, or vice versa. Differences in case load, staffing sizes and county budgets are major factors that will impact any solution, but there are other factors to consider that may not exist in every county. For example, Greenville has an indigent screening office that is under the Department of Public Safety. Another example is Charleston, where the Public Defender performs most of the screening, but the Charleston County Criminal Justice Coordinating Council has hired a number of employees that also perform screening at the jail. These positions were created and are currently funded out of a MacArthur Grant. If a "one size fits all" approach is adopted, it may eliminate the option for counties to tap into grant or other funding sources or to even explore better solutions. The "other appropriate official" language in §17-3-30 provides room for each county to implement a solution that will work for them.

Explanation of how the recommended model differs from the screening process in H.4830, which was filed during the last General Assembly.

H.4830 designates PPP as the screeners. The recommendation designates the Clerk of Court as the screener because the Clerks' offices are better equipped to conduct the screening by having the court records located in the courthouse and being already set up to collect money and report it.

H.4830 provides for 14 required questions on the Affidavit/Application form. This information is already included on the form however H.4830 requires 5 years of the information. This requirement is needless and does not go to the question of a person's current financial condition. The recommended model revised the Affidavit/Application to request similar information in H.4830 without requiring unnecessary information.

The recommended model spells out supporting documents that an applicant must provide as verification of the information in the application. The documents required in the recommended model are documents that are readily available and accessible to the applicant. The list of supporting documentation provided in H.4830 places an undue burden on the applicant and would create a delay in the screening process and drive up the cost of screening by requiring unnecessary documents. The list also imposes additional financial burdens and obligations on people that are applying for indigency status.

The recommended model requires the applicant to acknowledge that the information in the application is true and honest and subject to perjury charges. H.4830 creates an unnecessary new crime that is already covered by the perjury statute.

H.4830 requires the application to be notarized at the applicant's expense. The recommendation requires that the screener be a South Carolina notary public and administer the oath to the applicant at no charge.

The recommended model provides a specific process for the review of the Affidavit/Application to determine if a person is indigent. H.4830 only provides general guidelines of what the review is to determine. The determination in H.4830 appears to be a determination of whether the information is accurate or not and not if the person is indigent.

H.4830 would create a continuing duty for PPP to continuously monitor and review the financial condition of persons applying for counsel. This duty would be extremely onerous on PPP. The recommendation allows for continuous review and gives all parties the opportunity to request a review of the person's financial condition.

The recommendation provides for a process to allow a person to make a timely request for a review of a denial of his application by the Circuit Court. This was not provided in H.4830

The recommendation provides clarity to a) what income is considered and b) who is considered as a household member.

The recommendation provides for Presumptions. This will help streamline the screening process by allowing the finding of indigency by another State/Federal entity to be accepted for people receiving such benefits. Likewise, it will allow incarcerated persons to get appointed counsel without the need to submit documentation that they may not have access to while incarcerated. The recommended model provides that upon posting bond, the incarcerated person would be required to submit an application, supporting documentation and the application fee and be screened like all non-incarcerated persons.

Recommend Model

See next page.

INDIGENT SCREENING WORK GROUP

I. INTRODUCTION

The South Carolina Commission on Indigent Defense (SCCID) oversees the delivery of indigent defense services in those matters in which a person has a constitutional, statutory, or rule based right to counsel, if the person is “indigent”. Thus, the type of case must be one in which the party has a right to counsel and the party must be indigent. If one of those conditions is not met, indigent defense services are not provided.

This work group has discussed and submits this report to address a statewide process for the accepting of applications for appointed counsel and the determination of indigency in a way that will be cost efficient and will not create an undue burden to those applying for indigent defense services or undue delay within the court system.

II. INDIGENT STANDARD

A person is indigent if it is determined that he is financially unable to retain/employ adequate legal counsel.

III. HOW TO APPLY

A. Where to Apply

A person seeking indigent defense services must go to the office of the Clerk of Court (Chief Magistrate) for the county where the case is pending to apply for the appointment of counsel.

In criminal cases, if the person is incarcerated in the local county detention center, the Circuit Public Defender, or his designee, shall visit the jail to take the person’s Affidavit of Indigency & Application for Counsel. The Circuit Public Defender shall forward all applications to the Clerk of Court (Chief Magistrate) office for determination on eligibility and qualification.

The Clerk of Court shall file the application and supporting documents in the Court’s file for the case. (The Chief Magistrate shall forward the application and supporting documents to the Clerk of Court for filing the documents in the Court’s file for the case)

B. Application Process

Applications for appointed counsel shall be made on the current Affidavit of Indigency and Application for Counsel (Form II), as provided and approved by the South Carolina Supreme Court. The person should be reminded that the information they provided on this application form is given under oath and penalty of perjury applies, and that false information could result in penalties.

A person seeking indigent defense services has the burden of showing that he qualifies for indigent defense services. Appointed counsel will not be provided unless a properly completed affidavit/application is submitted, with supporting documentation, and it has been determined that the person qualifies for appointed counsel.

1. When to apply?

If a person believes he needs counsel and is financially unable to employ/retain counsel, he should apply as soon as possible to allow for the early appointment of counsel to assist in his case. This will assist case processing and protect constitutional rights.

The Bond Court Judge or Family Court Judge at detention hearings (in juvenile matters) shall advise a person before the court of his right to counsel and right to the appointment of counsel if he is financially unable to employ/retain counsel and provide in writing the requirements to apply for the appointment of counsel.

2. Who should apply?

The person in need of the indigent defense services must personally complete the application at the Clerk of Court (Chief Magistrate) office. If the person is incarcerated, a representative of the Circuit Public Defender's office will meet with them to complete an application and forward the completed application to the Clerk of Court (Chief Magistrate) for approval.

In juvenile matters, the parent(s) or legal guardian(s) should complete the application based upon their financial status. If the parent(s) refuse to complete the application, the court should order the parent(s) to do so. If the parent does not do so, or is absent from the jurisdiction, the child can fill out the application with the parent's information to the best of the child's ability.

3. Application Fee

Pursuant to SC Code § 17-3-45, there is a \$40 application fee which is due at the time an application is submitted.

The application fee shall be retained by the screening entity to defray the costs of the screening of applications.

This fee should be paid at the time the application is submitted. However, if the applicant is unable to pay the fee when the application was submitted, the amount is added to any costs that are ordered to be reimbursed after the case. The applicant may pay the fee at any time after submission of the application and prior to the conclusion of the case on the trial level. The fee shall be waived while the applicant is incarcerated.

An application cannot be declined because the application fee is not paid at the time the application is submitted.

4. Supporting Documentation

All persons submitting an Affidavit of Indigency & Application for Counsel shall submit documentation to support the information provided in their application. Supporting documentation includes:

- a. Paystubs for past 30 days.
- b. Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.) *(obtained from Agency providing assistance)*
- c. Printout of any child support that is either being paid or received. *(obtained from Family Court)*
- d. A copy of tax returns from previous year.
- e. Social Security Income report for past 12 months *(obtained from the SS Administration.)*
- f. Letter from current or former employer (if no longer working).
- g. Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.

One of the above supporting documents must be provided for each source of income. *For example, if a person has a part-time job, is receiving Disability and get child support, then the person can provide copies of pay stubs, a Disability printout and a child support printout.*

IV. DETERMINING INDIGENCY

A. Review of Application

1. Review of applications for indigent defense services should be done by the Clerk of Court (**Chief Magistrate**) or his designee. Review of applications should be delegated only to those persons who have been provided appropriate training on (1) the circumstances under which a person is entitled

to appointed counsel; (2) the circumstances under which additional information is required before determining eligibility; and (3) the financial guidelines for eligibility.

The Screener shall be a Notary Public who can place the applicant under oath.

2. In reviewing the application, the Clerk of Court (Chief Magistrate) shall determine the following:
 - a. The household income of the applicant.
 - b. If there are any applicable presumptions of indigency.
 - c. If the applicant's income, debts, assets and family situation create an exception to the person's income exceeding the poverty guidelines or if it rebuts the presumption of indigency.
3. Review of applications should be made within 24 hours of submission of the completed application with supported documentation and payment of the application fee, unless waived or otherwise deferred, and the applicant shall be promptly notified of the decision.

If the decision is that the applicant is eligible, an Order Appointing the Public Defender shall be forwarded to the Circuit Public Defender or his designee. If the decision is that the applicant is not eligible, **Clerk should notify the Chief Administrative Judge and the Solicitor to arrange a date/time to present applicant to the Judge to review the decision.**

B. Determining Eligibility

1. General Guidelines
 - a. Close questions regarding a person's indigency should be resolved in favor of eligibility. The Circuit Court Judge may review and determine if the person will be assessed to pay a portion of the cost of representation.
 - b. Early appointment of counsel is desirable. Therefore, it is important that prompt determination be made as to eligibility.
 - c. Any indication of anticipatory transfer of assets by an applicant to create the conditions for eligibility for indigency should be scrutinized and dealt with decisively.
 - d. The initial determination of indigency is subject to review by the Court if there appears to be a substantial change in the applicant's financial status, no longer making the applicant indigent. The appointed counsel may have the person re-screened to review their status. If it is determined that the

applicant no longer qualifies for services, the Court shall issue an order to that effect and may release counsel from the representation. The Court may find that the case has progressed to the point that releasing counsel will have an extreme disruption on the flow of the court proceeding or affect the applicant's rights and order that the representation continue and assess a portion or all the cost of the representation to the applicant.

2. Presumption of Indigency

A presumption that a person is indigent shall be created if any of the following circumstances exist:

- a. The applicant's net household income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income shall mean gross income minus deductions required by law.
- b. The applicant is personally receiving any state or federal government benefits including but not limited to Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) (food stamps, employment and training services), Food and Nutrition Programs, SC Voucher Program, Supplemental Security Income (SSI), and Medical Assistance for the Elderly. These benefits are determined based on poverty threshold guidelines, and include asset limitations. The applicant must attach documentation that he personally receives one of these benefits to be presumed indigent.
- c. The applicant has been incarcerated in the local detention or a state prison for 10 consecutive days.

If the person is released from custody within 60 days of being appointed counsel, the representation shall continue for 10 days to allow the person to re-apply for appointed counsel by submitting an Affidavit of Indigency & Application for Counsel form, supporting documentation, and the application fee at the office of the Clerk of Court (Chief Magistrate). If the person does not re-apply within the 10 days of release, counsel shall be relieved from the representation. If the applicant is released more than 60 days of being appointed counsel, the representation may continue. The applicant shall be re-screened and the Court shall determine if the applicant shall have to pay an amount towards the cost of the representation.

3. Factors to be Considered in Determining Indigency

When determining whether an applicant is eligible for an appointed counsel, consideration should be given to the following factors:

a. Income Resources

The financial guidelines use to assess indigency are set at 100% of the federal poverty guidelines or less. The US Department of Health and Human Services makes an annual determination of the poverty level threshold and publish them each year in January.

Applicants with income resources in excess of 100% of the federal poverty level will not generally qualify for indigent defense services. However, consideration should be given to documented exceptional factors.

To determine income resources, the Clerk of Court (Chief Magistrate) must determine the applicant's total income resources and the applicant's household size.

The applicant's income resources include the net income of the applicant and those persons who are legally responsible for the applicant. Net income shall mean gross income minus deductions required by law.

1) Sources of Income Resources

- a. Money, wages and salaries minus deductions required by law
- b. Income from self-employment minus deductions required by law
- c. Regular payments from Social Security, veteran's benefits, training stipends, alimony, child support and military allotments or regular support from an absent family member or someone not living in the household, or foster care payments;
- d. Public or private employee pensions or regular insurance or annuity payments;
- e. Income from dividends, interest, rents, royalties, estates or trusts;
- f. Benefits from a governmental income maintenance program (unemployment, state or county assistance, home relief)
- g. Money received from the sale of real or personal property; or from tax refunds, gifts, insurance payments or compensation for injury;
- h. Value of Public Assistance Benefits.

2) Who is legally responsible for the Applicant

A husband and wife have a mutual duty of support. Therefore, the spouse's income and assets should be considered when determining whether the applicant qualifies for appointed counsel. If there is some reason in a specific case why the spouse's income or assets should not be considered, the applicant should indicate this on the application form, and give a detailed explanation. Documentation may be required.

A natural parent or adoptive parent is legally responsible for any applicant who is under the age of 18 years.

Indigency of a child under the age of 18 should be determined by the financial status of the parents.

A step-parent, guardian, or parent whose rights have been terminated is not legally responsible for an applicant.

Parents or other relatives who provide housing or other care for the applicant who is 18 years of age or older generally will not have a legal responsibility for the applicant.

Eligibility for appointed counsel for an adult under guardianship is based upon the resources of the applicant, not the resources of the guardian.

3) Household Size

All individuals who are dependent on the applicant for financial support should constitute a single household for purposes of assessing income levels.

The applicant, the applicant's spouse, and children who are the legal responsibility of the applicant are included as members of a single household. Adult children, stepchildren, grandchildren, parents, other relatives, girlfriends/boyfriends or their children, and other non-related persons who reside in the home will generally not be considered the legal responsibility of the applicant and should not be counted as part of the household for purposes of determining eligibility. In exceptional circumstances, such persons can be considered as part of the household (for example, applicant's grandchildren live with the applicant but the parents of the children are absent and not supporting the children).

The applicant has the burden of providing a specific reason why the income and assets of his/her spouse should not be included in the determination of the household size.

b. Non-Income Resources

Non-income resources include, but is not limited to, real property, line of credit, insurance proceeds, inheritances, investments, and other property that can be liquidated to pay for the services of an attorney.

Absent exceptional circumstances, an applicant with equity in real and/or personal property more than \$15,000 will be NOT be considered indigent.

c. Exceptional Factors

(Factors to consider that may or may not justify a finding that an applicant is eligible for the appointment of counsel even though the applicant otherwise does not meet the eligibility criteria.)

An applicant whose income resources and/or non-income resources exceed the poverty guidelines may still be eligible to receive an appointed attorney based on the following factors:

- i. Seasonal variations in income.
- ii. Age or physical infirmity of household member(s).
- iii. Extraordinary medical bills or other necessary expenses which the applicant is paying for the applicant or a household member.
- iv. Liquidity or non-liquidity of applicant's non-income resources.
- v. Court ordered child support obligation is a large percentage of the applicant's income AND the applicant is currently paying towards the obligation.
- vi. Estimated cost of private attorney fees and costs with respect to the matter for which representation is sought.
- vii. The nature of the criminal charge (Class A or B Felony).

To consider exceptional factors, written documentation must be provided to support the exceptional factor.

C. Denial of Eligibility

(A more definite process on handling denials and getting them reviewed by Circuit Court Judge)

V. REVIEW OF DETERMINATION OF ELIGIBILITY

It is in the interest of all parties, the court and the public, to ensure that indigent defense services are available and provided in appropriate cases. At times, review screening is necessary to curb abuses, and to ensure that services are being provided to those who are truly indigent. The initial determination that a person is indigent shall be subject to review by the Circuit Court if it subsequently appears that the applicant is no longer indigent, has obtained counsel of his own, or for other good cause shown. This review may be held at the request of the State, appointed counsel or sua sponte by the Judge.

If it is determined that the applicant is no longer indigent, the Court may enter an Order relieving appointed counsel. If the case has progressed to the point where relieving counsel from representation will have an extreme disruption on the flow of the court proceedings, representation may be continued and the Court shall order the applicant to reimburse the Office of Indigent Defense the cost, or a portion thereof, of the representation.

ATTACHMENT A

[illegible]

STATE OF SOUTH CAROLINA)
)
 vs.) AFFIDAVIT OF INDIGENCY AND
) APPLICATION FOR COUNSEL
 _____)

REQUIRED FEE: You must pay a \$40 application fee when submitting this application. If you cannot pay the entire fee at the time of your application, you may sign an Acknowledgement of Debt Form and pay the fee prior to your case being resolved or the unpaid amount will be due at the conclusion of your case including being added to any costs you are ordered to pay by the Court.

NOTICE: You are required to submit verification of your household income which may include (1) most recent pay stub, or (2) most recent W-2, or (3) most recent Tax Return, or (4) a Written Statement from your Employer. All questions must be answered truthfully. False information in the application may lead to criminal prosecution for perjury.

Section A: Case Information

Type of Case: ☐ Criminal ☐ Juvenile ☐ Family Court

Charging Document/Case Numbers: _____

Name(s) of Co-Defendant(s): _____

Section B: Personal Information

Full Name: _____

Alias: _____

Address Where You Live: _____

Phone Number(s) You Can be Reached at: _____

Email Address: _____

Have you ever had an appointed lawyer? ____ Yes ____ No If yes, who? _____

Are you currently in jail? _____ Yes _____ No If no, how much was your bond? _____

Do you personally receive any State or Federal governmental benefits? ____Yes ____No

If yes, what benefits? _____

Section C: Household Information

Please list the total number of persons in your home that you are financially responsible for:

| Name (or Initial if under 18) | Relationship | Age |
|-------------------------------|--------------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Are you court ordered to pay child support? Yes No (Provide Printout from Family Court)

Amount court ordered to be paid per month? _____ Actual amount paid per month? _____

Section D: Job Information

For Applicant:

Employer Name: _____ Job Title: _____

Supervisor's Name: _____ Phone: _____

Hours Worked Per Week: _____ Monthly Net Pay (after deductions) _____

If in jail, is your job waiting? ____ Yes ____ No Unemployed? ____ Yes ____ No

If unemployed, what type of work you do and when do you expect to return to work?

If your income is different than it has been in the last 12 months, please describe why: _____

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS FOR THE PAST 2 YEARS)

| Employer | Dates of Employment | Net Monthly Income |
|----------|---------------------|--------------------|
|----------|---------------------|--------------------|

For Applicant's Spouse:

Employer Name: _____ Job Title: _____

Supervisor's Name: _____ Phone: _____

Hours Worked Per Week: _____ Monthly Net Pay (after deductions) _____

If in jail, is your job waiting? _____ Yes _____ No Unemployed? _____ Yes _____ No

If unemployed, what type of work you do and when do you expect to return to work?

If your income is different than it has been in the last 12 months, please describe why: _____

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS FOR THE PAST 2 YEARS)

| Employer | Dates of Employment | Net Monthly Income |
|----------|---------------------|--------------------|
|----------|---------------------|--------------------|

For Other Household Member:

Employer Name: _____ Job Title: _____

Supervisor's Name: _____ Phone: _____

Hours Worked Per Week: _____ Monthly Net Pay (after deductions) _____

If in jail, is your job waiting? _____ Yes _____ No Unemployed? _____ Yes _____ No

If unemployed, what type of work you do and when do you expect to return to work?

If your income is different than it has been in the last 12 months, please describe why: _____

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS FOR THE PAST 2 YEARS)

| Employer | Dates of Employment | Net Monthly Income |
|----------|---------------------|--------------------|
|----------|---------------------|--------------------|

Section E: Other Money Received

The following is a list of different kinds of other money received. Circle yes for the other money received by yourself or spouse.

| | | | | | |
|-------------------------------|---|---|-------------------------------------|---|---|
| Child Support/Spousal Support | Y | N | Money from Friends, Relative, Other | Y | N |
| Rental Income | Y | N | Money from Inheritance | Y | N |
| Lottery Winnings | Y | N | Pension/Retirement | Y | N |
| Insurance/Lawsuit Settlement | Y | N | Railroad Benefits | Y | N |
| Interest/Dividend Income | Y | N | Social Security Benefits | Y | N |
| Workers Compensation | Y | N | Unemployment Benefits | Y | N |
| Veteran's Benefits | Y | N | Other (specify)_____ | Y | N |

For all items above circled yes, provide the following:

| Type of Other Money Received | Who Received | How Much | When Received |
|------------------------------|--------------|----------|---------------|
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |

Have you or your spouse applied for benefits not yet received? Yes No

If yes, please explain: _____

Section F: Assets

Do you or your spouse own or are purchasing the following:

| | | | | | |
|--------------------------------|---|---|----------------------------|---|---|
| Annuities/Money Market Account | Y | N | Inheritance/Trust | Y | N |
| Business Accounts/Inventory | Y | N | Life Estate/ Life Lease | Y | N |
| Cash on Hand | Y | N | Real Property | Y | N |
| Certificates of Deposit | Y | N | Retirement Funds (IRA etc) | Y | N |
| Checking/Credit Union Accounts | Y | N | Savings Bonds | Y | N |
| House/Mobile Home | Y | N | Stocks/Bonds/Mutual Funds | Y | N |
| Income Producing Equipment | Y | N | Other (specify)_____ | Y | N |

For all items above circled yes, provide the following:

| Type of Other Money Received | Who Received | How Much | When Received |
|------------------------------|--------------|----------|---------------|
|------------------------------|--------------|----------|---------------|

How many vehicles do you own? _____

List all vehicles you own, jointly own, or being purchased by you and/or your spouse.

| Make/Model | Year | Value | Amount Owed |
|------------|------|-------|-------------|
|------------|------|-------|-------------|

Section G: Extraordinary Financial Considerations

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

___Yes ___No If yes, please explain: _____

Section H: Acknowledgement

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that if I have supplied false information in the application, it may lead to criminal prosecution and conviction. I understand that I have a continuing duty to inform the court of any changes in my financial condition, employment status or household size. I understand that I may be required to pay back the attorney fees and related expenses to the Commission on Indigent Defense. By signing this application, I authorize the screening entity to investigation my income, assets and benefits and that this form will serve as a Release of Information to any source which might have such information regarding my financial condition and employment.

SWORN to before me this _____ day

of _____, _____

Signature: _____

Date: _____

Notary Public for South Carolina

My Commission Expires: _____

FOR USE BY SCREENER ONLY

Application Fee: ☐ Paid ☐ Reduced to \$ ☐ Due

Supporting Document(s) Provided: ☐ Yes ☐ No

Applicant is found to be:

☐ Not Indigent. The application for counsel is denied.

Reason for denial: _____

☐ Indigent. Counsel is to be assigned by the Public Defender in Criminal and Juvenile cases and by
the Clerk of Court in Family Court cases.

Date: _____
Clerk of Court or Designee

RIGHT TO COUNSEL & HOW TO APPLY FOR APPOINTED COUNSEL

You have been charged with a criminal offense and you have the right to be represented by an attorney. If you are financially unable to hire an attorney to represent you (and you meet certain guidelines), you may apply to have an attorney appointed to representing in certain cases. To apply for an appointed counsel, you must:

1. Go to the Clerk of Court (Chief Magistrate) office to complete the Affidavit of Indigency & Application for Appointed Counsel form. The Clerk of Court (Chief Magistrate) office is located at:

2. You must take the following documents with you when you apply:
 - a. Paystubs for past 30 days.
 - b. Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.) (obtained from Agency providing assistance)
 - c. Printout of any child support that is either being paid or received. (obtained from Family Court)
 - d. A copy of tax returns from previous year.
 - e. Social Security Income report for past 12 months (obtained from the SS Administration.)
 - f. Letter from current or former employer (if no longer working).
 - g. Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.
3. A \$40 non-refundable application fee

To qualify to have an attorney appointed to represent you, several factors are considered to determine if you are indigent. Those factors include, but are not limited to, your income, property you may own, the number of people in your household and their income, your debts, and the US Poverty Guidelines. The Poverty Guidelines changes every year.

NOTICE: The information you provide to apply for an appointed attorney must be true and accurate. If it is determined that you have provided false information, your court appointed attorney may be relieved from representing you and you may be prosecuted for perjury.

INDIGENCY APPLICATION REVIEW CHECKLIST

Is the Application complete?

_____ Application completed and signed?

_____ Supporting documentation attached?

_____ Paystubs for past 30 days.

_____ Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.)

_____ Printout of any child support that is either being paid or received.

_____ A copy of tax returns from previous year. (if no paystubs)

_____ Social Security Income report for past 12 months

_____ Letter from current or former employer (if no longer working).

_____ Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.

_____ Application fee paid?

What is the Applicant's Household Net Annual Income? _____

What is the Applicant's Number of Household Members? _____

Does a presumption exist?

_____ Applicant's Net Income is less than or equal to Poverty Guidelines

_____ Applicant personally receives State/Federal Government Poverty Benefit(s)

_____ Applicant is currently incarcerated and has been for 10 or more consecutive days

Does Applicant have any Non-Income Assets that can be used to hiring counsel?

Are there any extraordinary factors to be considered? _____

Application Reviewed by: _____

Print Name: _____

SAMPLE DENIAL LETTER

DATE: _____

TO: _____

FROM: Clerk of Court (Chief Magistrate)

CASE NUMBER: _____

Your request for appointment of counsel has been denied because you do not meet the income/asset eligibility guidelines to be considered indigent.

You may request that a Circuit Court Judge review this decision. If you want the Judge to reconsider your application, you should submit the attached written request for review with an explanation of why you think the decision is incorrect to the Solicitor's office (this office). The Solicitor's office will schedule a hearing date/time for you to go before the Judge for your request. (This office notifies the Judge of your request and a hearing date/time will be set for the Judge to consider your request.)

Your case will not be postponed or continued because you have filed a request for review. If you intend to file a request for review, you should do so as soon as possible.

cc: Solicitor
Public Defender

SAMPLE REQUEST FOR REVIEW

| | | |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN COURT OF GENERAL SESSIONS |
| |) | |
| COUNTY OF |) | |
| |) | |
| STATE, |) | |
| |) | CASE NO.: _____ |
| vs. |) | |
| |) | |
| _____ |) | REQUEST FOR REVIEW OF APPLICATION |
| |) | FOR APPOINTED COUNSEL |
| _____ |) | |

Now comes the Defendant, _____, asking the Circuit Court Judge to review the denial decision of the Affidavit of Indigency and Application for Appointment of Counsel in the above matter. The Defendant believes the decision is incorrect because: _____

WHEREFORE, the Defendant pray that the Court set a hearing to review this decision and determine if the Defendant is indigent and able to receive appointed counsel in this case.

Defendant signature

Defendant's Printed Name

Date: _____

ATTACHMENT F

SAMPLE ORDER UPON JUDGE'S REVIEW

| | | |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN COURT OF GENERAL SESSIONS |
| |) | |
| COUNTY OF |) | |
| |) | |
| STATE, |) | |
| |) | CASE NO.: _____ |
| vs. |) | |
| |) | |
| _____ |) | ORDER UPON JUDGE'S REVIEW OF |
| |) | INDIGENCY DETERMINATION |
| _____ |) | |

The above-named Defendant requested a review of the denial of the Affidavit of Indigency and Application for Appointment of Counsel. Upon review of the same, and based on

the Court hereby finds that the defendant is:

_____ Not Indigent.

_____ Indigent. The Public Defender is appointed to represent the defendant in this case.

_____ Indigent but can afford to pay a portion of the cost of the indigent defense services.

The Public Defender is appointed to represent the Defendant. The Defendant shall

reimburse the Office of Indigent Defense: _____

payable at the rate of

_____ through

the Clerk of Court office.

Dated this _____ day of _____, 20____

Circuit Court Judge

cc: Defendant
Solicitor
Public Defender

¹ S.C. House of Representatives, House Legislative Oversight Committee, "Letter from SCCID to Oversight Subcommittee with attachments (Sept. 7, 2018), Agency's Response to Oversight Subcommittee's August 17, 2018 Letter, Questions #25," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on," and under "Correspondence," [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20\(Sept.%207,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20(Sept.%207,%202018).pdf) (accessed October 12, 2018).