



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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October 20, 2021

The Honorable Chris Wooten
Chairman, Law Enforcement and Criminal Justice Subcommittee
S.C. House Legislative Oversight
Post Office Box 11867
Columbia, South Carolina 29211

Re: SCCID feedback regarding proposed PPP recommendation

Dear Chairman Wooten:

Please find enclosed the Commission on Indigent Defense's (SCCID) response to the Committee's request for feedback regarding the following draft recommendation:

18. Collaborate with the Commission on Indigent Defense to ascertain if opportunities exist to create uniformity in information requested and processes for determining which individuals receive indigent representation and/or hardships while under supervision of PPP. Within a year, provide a report to the Committee outlining steps taken, information gathered, results of analysis performed, decision of agencies, and lists of other state agencies that may waive fees owed to the state due to hardship.

While there could be opportunities to create some uniformity in forms, (See attached forms currently used by each Agency) information requested, etc., the actual analysis to determine indigency for the appointment of counsel and the determination whether fees and fines should be waived or reduced as a "hardship" are different in many ways.

The process of determining indigency is set by S.C. Court Rule 602 which states:

For purposes of this rule, a person is indigent if that person is financially unable to employ counsel. In making a determination whether a person is indigent, all factors concerning the person's financial condition should be considered including the income, debts, assets, and family situation. A presumption that the person is indigent shall be created if the person's net family 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.

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As outlined above, Rule 602 sets an objective standard regarding the “presumption” of indigency and provides for the consideration of other more subjective factors. The Rule 602 analysis is used to determine if someone can employ private counsel.

The financial obligations monitored by PPP are part of a sentence received by the defendant. The defendant could be obligated to pay regardless of being indigent (meeting the criteria established by Rule 602 for appointed counsel). The analysis for PPP is the defendant’s ability to pay (some fees are non-waivable), at what rate of payment, etc. There may be instances where the defendant is found indigent and unable to employ private counsel, yet PPP can structure/waive some fees and fine payments to prevent a “hardship”.

In summary, some of the same information reviewed could be standardized, and PPP may want to establish or set some type of presumption for “hardship” if they do not have one already. However, the analysis of the ability to hire a private lawyer and the ability to pay fees, fines, restitution, etc. as part of a court-ordered sentence are not necessarily analogous or suited to uniformity.

This Agency looks forward to appearing before the Subcommittee to answer any further questions, concerns, etc.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Hugh Ryan III', written in a cursive style.

J. Hugh Ryan III

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
THE STATE OF SOUTH CAROLINA)
)
)
vs.)
)
)
)

IN THE COURT OF GENERAL SESSIONS
_____ JUDICIAL CIRCUIT

**AFFIDAVIT OF INDIGENCY
AND
APPLICATION FOR COUNSEL**
(Defense of Indigency Act, Form No.2)

CRIMINAL CHARGING DOCUMENT NO. _____

NAME OF APPLICANT	
ADDRESS	
TELEPHONE NUMBER(S)	
DATE OF BIRTH	
SOCIAL SECURITY NO.	
NAMES OF CO-DEFENDANTS	

1. Are you presently employed? Yes No

a. If "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER

If "no", state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month.

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER	TERMINATION DATE

2. Include employment information for the spouse, if applicable.

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER

If the spouse is not currently employed, state the name and address of last employment, date of termination of employment, and amount of salary or wages per month.

SALARY OR WAGES PER MONTH	NAME AND ADDRESS OF EMPLOYER	TERMINATION DATE

3. • List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support.

NAME	AGE	RELATIONSHIP	AMOUNT OF SUPPORT

4. **Have you received within the past twelve months any money from any of the following sources?**

- a. Business, profession or form of self-employment? Yes No
- b. Rent payments, interest or dividends? Yes No
- c. Pensions, annuities or life insurance payments? Yes No
- d. Gifts or inheritances? Yes No
- e. Any other sources? Yes No

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

SOURCE OF MONEY	AMOUNT

5. **Do you own cash, or do you have any money in a checking or savings account?**

Yes No

If the answer is "yes", state the total amount of the cash owned. _____

6. **Do you own any real estate, stocks, bonds, notes, or other valuable property (excluding ordinary household furnishings and clothing)?**

Yes No

If the answer is "yes", describe the property and state the appropriate value of the items owned.

7. **What kind of motor vehicle do you own?** _____

Is it paid for? Yes No

If not, what are the payments? _____

8. **How much do you owe (on liens, mortgages, other encumbrances or debts)?** _____

I do solemnly swear that the account by me delivered into this court with my application for counsel does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I or any person in trust for me have or at the time of my possession had, or am, or was, in any respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand the appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the cost of representation less the amount paid to appointed counsel, the public defender office and/or the Commission on Indigent Defense. I understand that such claim shall be filed in the office of the Clerk of Court in the county where I, my child, or ward are assigned counsel, but that the filing of a claim shall not constitute a lien against my real or personal property unless, in the discretion of the court, part of all of such claim is reduced to judgment by appropriate order of the court after serving me with at least thirty (30) days notice that judgment will be entered.

I understand that, pursuant to §17-3-30(b), I am required to pay a non-refundable \$40.00 application fee to the Clerk of Court for public defender services or other appointed counsel.

I am financially unable to employ counsel and request that counsel be assigned to represent me. I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This _____ day of _____, _____

Defendant or Parent/Guardian if applicable

Subscribed and sworn to before me this

_____ day of _____, _____

(L.S.)

Notary Public for South Carolina

My Commission Expires: _____

The applicant's request for court-appointed counsel is hereby granted / denied.

Dated: _____

Judge/Clerk or Deputy Clerk

_____, South Carolina

(ATTACHMENT 2: PPP FINANCIAL DECLARATION FORM)

South Carolina Department of Probation, Parole and Pardon Services
Declaration of Financial Ability

Please print, complete in full and return at the time of your first interview.

Full Name	Marital Status	Number of Dependents
	<input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Common Law	

EMPLOYMENT	Yours	Spouse
Employer		
Address		
Type of Job		
How Long Employed	_____ Yrs. _____ Mos.	_____ Yrs. _____ Mos.
Currently Working	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Gross Salary	\$ _____ <input type="checkbox"/> Month <input type="checkbox"/> Week	\$ _____ <input type="checkbox"/> Month <input type="checkbox"/> Week
Net Salary (Take Home Pay)	\$ _____ <input type="checkbox"/> Month <input type="checkbox"/> Week	\$ _____ <input type="checkbox"/> Month <input type="checkbox"/> Week

MONTHLY NET INCOME STATEMENT		Enter income from all sources as listed:	
(1) Yours	(2) Spouse	Sources of Income	
\$	\$	Salary and Wages	
\$	\$	Pension and Retirement	
\$	\$	Unemployment and Disability	
\$	\$	Social Security	
\$	\$	Public Assistance (Welfare, AFDC, etc.)	
\$	\$	Child Support	
\$	\$	Veterans Benefits	
\$	\$	Workman's Compensation	
\$	\$	Rent Income	
\$	\$	Dividends and Interest Income	
\$	\$	All Other Sources (specify)	
\$	\$	Anticipated Income (new job, etc.)	
\$	\$	TOTAL MONTHLY INCOME (1+2)	\$

South Carolina Department of Probation, Parole and Pardon Services
Declaration of Financial Ability

MONTHLY EXPENSES		(Do not include Payroll Deductions)
\$		Rent/Mortgage Payments
\$		Real Property Taxes
\$		Food
\$		Utilities
\$		Telephone
\$		Laundry and Cleaning
\$		Clothing
\$		Medical /Dental
\$		Insurance Payments
\$		Child Care / Babysitting
\$		Child Support Payments
\$		Entertainment
\$		Auto Payments
\$		Auto Expenses (Oil, gas, etc.)
\$		Miscellaneous
\$		Alimony
\$		Other Expenses (List)
\$		TOTAL EXPENSES

*Investigator to denote items with an asterisk that appear excessive and can be decreased or eliminated.

ASSETS	
Cash on hand	\$
Cars/Boats/etc.	\$
Real Estate	\$
Stocks/Bonds/Securities	\$
Household Furnishings	\$
Money owed to me	\$
Other personal property	\$
Other Assets - List	\$
	\$

BANKS		List all banks you do business with
Name	Address	

I certify that this information is true and correct to the best of my ability.

Executed on _____ (Date) _____ County, in the State of _____
in _____

Signature _____ Name of person completing
form _____

Form 114 (Template) Revised 1/24/2013