

CHAPTER 10
ELIGIBILITY GUIDELINES FOR COURT-APPOINTED COUNSEL

[Prior to 2/20/02, see 493—Chapter 13]

493—10.1(815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance.

493—10.2(815) Income guidelines. Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

493—10.3(815) Designation of eligibility reviewer. The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of a person for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

493—10.4(815) Application. Any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation before being provided legal representation. The applicant should provide information on an affidavit of financial status. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

10.4(1) Affidavit. The applicant shall provide information required by the affidavit of financial status under penalty of perjury.

10.4(2) Family. The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

10.4(3) Income. The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

10.4(4) Household income. The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse need not be included if the spouse is the alleged victim of the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

10.4(5) Assets. The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

10.4(6) Liabilities. The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

10.4(7) Nature of proceedings. In a criminal case, the affidavit of financial status shall contain a statement of the charge(s) against the defendant. In a juvenile or civil case, a statement of the nature of the proceedings shall be included.

10.4(8) Child applicant. If the applicant is a child, the child's parent, guardian or custodian shall complete the affidavit of financial status. The affidavit of financial status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

10.4(9) Additional information. The applicant shall provide such additional information as may be required by the court to determine the applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the affidavit of financial status to reflect changes in the information previously provided.

493—10.5(815) Evaluation of affidavit of financial status. In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

10.5(1) Family size. The total size of the applicant's household shall be used to determine eligibility for appointed counsel.

10.5(2) Household income. The applicant's income, or the combined income of the applicant and the applicant's spouse if they are living in the same residence, shall be used in determining an applicant's household income, subject to the following:

a. The income of the applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

b. The income of a child shall not be considered unless the child is requesting representation in a delinquency case or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

c. In a juvenile proceeding, the income of both parents shall be considered in determining whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

10.5(3) DHHS poverty income guidelines. The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is 125 percent or less of the poverty level; between 125 percent and 200 percent of the poverty level; or 200 percent or greater of the poverty level.

10.5(4) Income 125 percent or less of the poverty level. If the applicant's household income is 125 percent or less of the poverty level, the applicant is entitled to appointed counsel unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(5) Income between 125 percent and 200 percent of the poverty level. If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed counsel unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial financial hardship. In determining whether substantial financial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(6) Income 200 percent or greater of the poverty level. If the applicant's household income is 200 percent or greater of the poverty level, the applicant is not entitled to appointed counsel unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial financial hardship. In determining whether substantial financial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(7) Applicability to juvenile cases. In evaluating whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income, but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

493—10.6(815) Payment procedures.

10.6(1) Payment to clerk. An applicant who has been determined eligible for appointed counsel shall pay to the office of the clerk of the district court any sums ordered by the court. This order for payment may be entered during or following the pendency of the action.

10.6(2) Wage assignments. If the applicant is employed, the applicant shall execute an assignment of the applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of the district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

493—10.7(815) Forms. The state public defender shall promulgate forms to be used in court proceedings, including an Adult Affidavit of Financial Status, Juvenile Affidavit of Financial Status, Wage Assignment, and such other forms as the state public defender deems appropriate. Such forms

shall be available at the administrative office of the state public defender and published on the state public defender's Web site at <http://spd.iowa.gov>.

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