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 following forms are recommended for use in carrying out these rules.

10.7(1) *Adult affidavit of financial status form.*

In the Iowa District Court for _____ County

State of Iowa, or
_____, : No._____
Plaintiff/Petitioner
:
vs. ____ Criminal
_____, : ____ Civil
Defendant/Respondent

Financial Affidavit/Application for Appointment of Counsel/Order

Name:_____Social Security No._____D.O.B._____

Address:_____Phone_____
Street City State Zip

Pending charges_____Jail ___yes___no

Do you have a job?_____Who do you work for?_____Full-Time Part-Time

How much do you earn before taxes or deductions?_____per hr/mo/yr (Circle) Hours/Week_____

Does your spouse live with you?_____Number of children living with you_____

Does anyone who lives with you have a job? _____How much do they earn_____per hr/mo/yr?

List all other income you, or anyone living with you has_____

List what you own including money in banks, vehicles, real estate, cash, or anything else worth more than $100

List amounts you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts

I understand that I may be required to repay the State for all or part of my attorney fees and costs, I may be required to sign a wage assignment, and I must report any changes in financial status. I certify under penalty of perjury that the statements I make in this application are true and that I am financially unable to employ an attorney to represent me.

Date_____ Signature_____

Order

The Court finds as follows:
_____Not eligible for court-appointed counsel.
_____Income at or below 125% of guidelines, defendant unable to pay an attorney.
_____Income between 125% and 200% of guidelines, not appointing would cause substantial financial hardship.
_____Income 200% or more of guidelines, felony charge, not appointing would cause substantial financial hardship.

Application is____denied____approved. _____(_____) is appointed.
(attorney) (phone)

Date_____ Judge_____

10.7(2) *Juvenile affidavit of financial status form.*

In the Juvenile Court for _____ County, Iowa

In the Interest of :
Juvenile No._____
_____ :
Child/Children

Financial Affidavit of Parent
Application for Appointment of Counsel for _____Child_____Parent
Order

Name:_____Social Security No._____D.O.B._____

Address:_____Phone_____
Street City State Zip

Case: CINA____TPR____Other_____Relationship to Child: Parent_____Other_____

Do you have a job?_____Who do you work for?_____Full-Time Part-Time

How much do you earn before taxes or deductions?_____per hr/mo/yr (Circle) Hours/Week_____

Does your spouse live with you?_____Number of children living with you_____

Does your spouse have a job? _____How much does your spouse earn_____per hr/mo/yr?

List all other income you and/or your spouse has_____

List what you own including money in banks, vehicles, real estate, cash, or anything else worth more than $100

List amounts you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts

_____

_____

I understand that I may be required to repay the State for all or part of my attorney fees and costs and those of my child, I may be required to sign a wage assignment, and I must report any changes in financial status. I certify under penalty of perjury that the statements I make in this application are true and that I am financially unable to employ an attorney to represent me.

Date_____ Signature_____

Order

The Court finds as follows:

_____Not eligible for court-appointed counsel.

_____Child eligible for court-appointed counsel, parent may be responsible for attorney fees.

_____Applicant eligible for court-appointed counsel, not appointing counsel would constitute substantial financial hardship considering income, assets, and nature of the proceedings.

Application is____denied____approved. _____(_____) is appointed.
(attorney) (phone)

Date_____ Judge_____

10.7(3) *Wage assignment form.*

In the Iowa District Court for _____ County

STATE OF IOWA, :

_____, :
Plaintiff

: NO._____
vs.

:
_____,
Defendant :

ASSIGNMENT OF WAGES

I, _____, state to the Court as follows:

1. I am the defendant in the above-captioned matter.
2. An attorney was appointed to represent me in the above-captioned matter.
3. I understand that under Iowa Code Section 815.9 I must pay all costs and fees incurred for legal assistance to the clerk of court.

4. I am not able to pay for all of the costs and fees incurred for legal assistance in the above-captioned matter within the time specified in Iowa Code §815.9.

5. I agree to assign my wages to pay said costs and fees. I am currently employed by
Name of Employer _____

Address of Employer _____
Street City State Zip

Employer Phone No. _____

6. I will notify the clerk of court within 10 days if I change employers.

Date _____ Signature _____

JUDGMENT AND ORDER FOR ASSIGNMENT OF INCOME

The matter of payment of the costs and fees incurred for defendant's legal assistance in the above-captioned matter comes before the court pursuant to Iowa Code Sections 815.9(8) and (9). The Court finds that the costs and fees incurred total $ _____; that judgment for costs and fees to be paid by defendant should be entered in the amount of $ _____; and that defendant agrees to an assignment of his/her income to pay this amount.

IT IS THEREFORE ORDERED that judgment is entered against defendant in the amount of $ _____ for costs and fees incurred for defendant's legal assistance in the above-captioned matter.

IT IS FURTHER ORDERED that an assignment of income is adjusted and entered against the defendant _____ to pay the costs and fees incurred for defendant's legal assistance.

IT IS FURTHER ORDERED that defendant's employer/income provider, _____ _____, shall deduct from the defendant's income the sum of $ _____ per month as payment for the costs and fees incurred for defendant's legal assistance.

Such deduction shall commence ten (10) working days after service of a copy of this Order upon the employer/income provider. The employer/income provider shall deliver a copy of this Order to the defendant _____ within one working day after receipt of the Order.

The employer/income provider shall transmit a check for the amount deducted to the following address:

Clerk of Court, _____ County Courthouse
_____
_____

All sums remitted shall be sent to the above-mentioned location within ten (10) days from the date the defendant is paid and shall be labeled to identify the defendant by name and shall be further labeled by adding the following case number _____.

IT IS FURTHER ORDERED that, should the amount hereby assigned exceed fifty percent (50%) of the defendant's disposable net earnings in a given period, the employer/income provider shall withhold only fifty percent (50%) of the defendant's net earnings for that pay period, and shall transmit that amount to the clerk of court as ordered above.

IT IS FURTHER ORDERED that this assignment shall be binding on subsequent employers/income providers of the defendant.

IT IS FURTHER ORDERED that this order for income assignment shall remain in full force and effect until the judgment is paid in full, or until further order of this court.

The employer/income provider shall promptly notify the court when the defendant's employment terminates and shall provide the court with the defendant's last known address and the name and address of the defendant's new employer, if known.

IT IS FURTHER ORDERED that the employer/income provider maintain a record or accounting of amounts withheld under this Order and make the record available to defendant upon request.

Dated _____

_____
JUDGE, _____ JUDICIAL DISTRICT OF IOWA

These rules are intended to implement Iowa Code section 815.9.

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