

CHAPTER 1 - INTRODUCTION

This manual was originally published in 1984 following the passage of indigency guidelines by the General Assembly. This revision reflects changes in laws or procedures that have been put into effect since that date.

This manual is designed to provide a practical guide for judges, court personnel and others involved in the appointment of counsel process in Virginia's courts. Specifically, it includes information to assist courts in implementing the financial guidelines as required by [Va. Code § 19.2-159](#) for determining eligibility for court-appointed counsel. It also contains recommended procedures for the selection and rotation of attorneys, payment of attorney fees, and recovery of costs as provided for by statute. Finally, the manual addresses payment for attorneys appointed to serve as guardians ad litem for certain children and reimbursement of their expenses.

I. SUMMARY OF THE FINANCIAL ELIGIBILITY GUIDELINES

The 1984 General Assembly amended the existing statutes on indigency determination in order to provide judges with more definitive guidelines for deciding whether or not a person is entitled to legal representation at public expense. In effect, no substantive changes to the laws were made. Rather, the legislature revised the procedures by adding guidelines for judges to use in evaluating the financial information provided by the person requesting court-appointed counsel.

Present law requires that all defendants requesting court-appointed counsel provide a written financial statement to support the claim of indigency. To expedite decisions on appointment of counsel, the guidelines include a presumption of indigency where the person is a current recipient of a public assistance program for the indigent. The rationale for this action is that such individuals previously have been qualified as being indigent in order to have been deemed eligible for these state or federal programs. For example, where an accused is found by examination to be receiving food stamps, no further inquiry into his/her financial resources is required. However, this presumption is rebuttable where the court finds that a more thorough examination of the person's resources is necessary. In these situations, the person must fully complete the financial statement.

If a person is not presumptively eligible, the court reviews the financial statement. Information on net income and assets is to be listed on the statement along with any exceptional expenses that might prohibit the defendant from hiring private counsel.

The guidelines then provide courts with monetary amounts to use in determining whether or not counsel should be appointed. These amounts are figured at 125% of the federal poverty income guidelines and are similar to those utilized by Legal Aid Society offices. If a person's available funds exceed 125% of the poverty guidelines, he/she normally will not be eligible for court-appointed counsel. However, the guidelines provide that in exceptional circumstances, the judge may appoint counsel so long as the judge states in writing the reasons for so doing.

II. IMPACT ON THE COURTS

A person requesting court-appointed counsel must complete form DC-333, [Financial Statement - Eligibility Determination for Indigent Defense Services](#). To prevent undue delay in the processing of criminal cases through the courts, a number of options exist before trial for obtaining the necessary financial information from the accused. They include designating the magistrate's offices and/or intake officers serving the juvenile and domestic relations district courts (juvenile cases only) to be responsible for collection of the required data and for transmittal to the district courts. Some courts assign personnel from the clerk's office to assist the defendant in completing the financial statement. Another option is the use of court volunteers supervised by the clerk's office in handling these responsibilities.